

Response to report “Review of Electrical Safety Issues for Lighting Technologies under the NSW ESS”

Report prepared by David Hemming & Associates,
May 2012

NSW Energy Savings Scheme
Report to IPART
June 2012

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1 Background

The NSW Energy Savings Scheme (ESS) is administered by IPART as both Scheme Administrator and Scheme Regulator. While safety issues have not occurred in the ESS, we have become concerned that some practices and products installed could potentially compromise consumer and installer safety. We requested David Hemming & Associates to prepare a report on the potential for electrical safety issues to arise in relation to our administration of the ESS, in particular with respect to emerging lighting technologies. The detailed scope of work asked the consultant to:

- ▼ review and document the current requirements IPART has in place, including any advice it has provided regarding safety, especially in the context of emerging lighting technologies
- ▼ identify whether there are other measures the Scheme Administrator should consider in terms of ensuring the activities of Accredited Certificate Providers (ACPs) comply with safety requirements and/or the products that have been accepted by the Scheme Administrator meet relevant safety standards
- ▼ document a process for the Scheme Administrator to respond to any allegations should they arise in terms of safety of products
- ▼ consider whether any other measures should be taken, including the requirements on ACPs to have regard to safety levels and whether any changes to the ESS Rule might be required, and
- ▼ identify any learnings IPART can gain from the Commonwealth's administration of the Home Insulation Program.

Currently we have addressed electrical safety issues through Conditions of Accreditation, the issuance of Guidelines and specific ESS Scheme Administrator Notices. The report by the consultant has identified and recommended further measures for our consideration.

The draft report was circulated to members of ESS Committee and others on 24 May 2012. The consultant's report and its recommendations were considered by the ESS Committee on 7 June 2012. This report sets out our response to the consultant's report and any further actions required to implement the recommendations.

2 IPART response to recommendations

The recommendations and IPART's response are discussed below.

- 1 Seek a legal opinion about IPART's legal responsibility for safety in its role as administrator and regulator of the ESS.

We support this recommendation and will seek a legal opinion to clarify our role regarding safety risks in our administration of the ESS and the activities of ACPs. The Committee noted that our position will be strengthened with the implementation of the other recommendations in the report, including stronger referencing to other legislation that deals with safety.

- 2 Commission a safety review of the ESS to be undertaken by a specialist risk consultant. The terms of reference for such a review could be developed in consultation with Victorian Essential Services Commission which has undertaken a similar safety review of the VEET scheme.

We support this recommendation. As part of its licensing responsibilities for energy and water, IPART is in the process of commencing a Risk Review project which will include an assessment of the risks of administering the ESS. The consultant engaged for this work will be a specialist consultant asked to consider several categories of risk, including procedural, reputational, technical, and safety. The consultant will also consider the risk analysis undertaken by the Victorian Essential Services Commission in regards to its administration of the Victorian Energy Efficiency Target (VEET) or Energy Saver Initiative.

- 3 Impose an additional condition of accreditation that requires ACPs to maintain public liability insurance cover of at least \$5 million, and insurance cover for product replacement and rectification of works of at least \$5 million. This could be applied only to ACPs operating under the Commercial Lighting Formula and Default Savings Method, or to all ACPs.

We support this recommendation, especially for businesses operating lighting equipment upgrades. We will consider whether this should be applied to all ACPs¹. Where relevant we will include it in the application documents so that potential applicants are aware of the need for insurances. We recognise that the VEET Scheme requires these types of insurances to be held by all accredited businesses or their subcontractors.

Adding public liability insurance cover to our requirements for ACPs will:

- ▼ align the ESS with the VEET Scheme, and

¹ To extend this to all ACPs would require consulting with ACPs prior to amending all Notices of Accreditation. It is not proposed to proceed with this now, but to consider it when the next ESS Rule change takes place. ACPs should be made aware the Scheme Administrator is moving in this direction.

- ▼ raise the standards of ACP's systems and their awareness of safety in their operations.

We propose to consult on this proposal with our existing ACPs and applicants, and update our application documentation for future applicants.

- 4 Discuss with the Office of Environment and Heritage (OEH) and the Department of Trade and Investment, Regional Infrastructure & Services (DTIRIS) the need to amend the ESS Rule to specifically include electrical safety requirements in the ESS Rule in the same way as it is currently included in the VEET Guidelines 2010 and the REES Code.

We have amended the accreditation documentation to explicitly reference safety and to clarify that safety forms part of "the production or service levels" in the modification and/or replacement of end user equipment. However, we support a change to the ESS Rule to include specific reference to Recognised Energy Savings Activities (RESAs) being carried out in accordance with all laws, regulations, and codes of practice applicable to that activity, including OH&S, and any safety legislation.

The ESS Rule change should also consider making explicit the ability of the Scheme Administrator to withdraw its acceptance of a product in use by an ACP if it becomes aware of an issue with safety or if the product does not comply with safety standards.

- 5 Include in the scope of future audits of ACPs accredited under the Commercial Lighting Formula and emerging lighting technologies to ensure the activities of ACPs comply with safety requirements, that records are available that demonstrate that the products that have been accepted by the Scheme Administrator meet relevant safety standards, and that records are available that demonstrate that any rewiring has been undertaken by a licensed electrician

We support this recommendation and have recently prepared an amended Audit Scope of Works specifically for audits of Commercial Lighting RESAs. This Scope of Work requires the auditor to inspect products or equipment to confirm a number of safety related matters. For example, we require evidence of acceptance and therefore a Certificate of Suitability from NSW Fair Trading, which by definition deems the product to be safe. We will consider expanding the Scope of Works to include assurance that the ACP has a Safety Management System in place and that all installations have complied with all relevant safety standards.

- 6 Include in the Annual Reports of those ACPs undertaking RESAs using the Commercial Lighting Energy Savings Formula and Default Savings Factor calculation methods a requirement to report on how they are meeting the revised Conditions of Accreditation regarding safety, and what safety training has been undertaken by persons performing lighting upgrades using the Commercial Lighting Energy Savings Formula [as required under the ESS Rule]. ACPs should also confirm in their Annual Reports that any RESAs involving modification of electrical wiring was undertaken by a licensed electrician.

While we support closer monitoring of the activities of ACPs involved in commercial lighting activities, we believe that this recommendation can be dealt with through:

- ▼ strengthened audit scopes (that require the auditor to ensure safety training is in place and that all activities are carried out by licensed electricians)
- ▼ revised conditions of accreditation
- ▼ strengthening Fact Sheet 3 (see recommendation 7), and
- ▼ Scheme Administrator Notices and Guidelines.

- 7 Update Fact Sheet 3 "Minimum Requirements for Installer Conduct (Default Savings Factors)" to specifically include addressing safety (electrical and other) in installation of replacement lamps or other retrofit activities, through for example, minimum training requirements that cover safety issues and other accreditation requirements.

We support this recommendation and will update Fact Sheet 3, including broadening the title to "Minimum Requirements for Installer Conduct (Deemed Energy Savings Method)". This will capture those RESAs using both the Default Savings Factors and the Commercial Lighting Energy Savings Formula. To date the Minimum Requirements have been aimed at ACPs using the DSF method, and conducting activities door-to-door using subcontracted installers/salesmen.

While many of the ACPs doing commercial lighting are carrying out these activities themselves, we have become aware of businesses that are using agents (who are licensed electricians) to perform lighting upgrades. Because of this, there is increased need to make these ACPs and their subcontractors/agents aware of their responsibilities for training, including the need to comply with all relevant laws, legislation and safety.

We will also expand the Minimum Requirements document to more clearly articulate the requirements for adequate and appropriate training of any subcontractors, agents, or installers who act on behalf of the ACP.

- 8 Maintain and strengthen the relationship with NSW Fair Trading such that dialogue at both a formal and informal level occurs, in particular when IPART or NSW Fair Trading becomes aware of electrical safety issues concerning products covered by an existing or potential accreditation under the ESS.

We support this recommendation and have already had several discussions and meetings with officers at NSW Fair Trading. A timetable for meetings and a process for maintaining contact with NSW Fair Trading will be agreed between officers.

- 9 Seek a briefing from NSW Fair Trading on the NSW electrical safety regime for relevant members of the ESS team, and use it as a starting point in developing a formal process for the Secretariat and the Tribunal to address such matters, should either organisation become aware of a safety issue. A model, similar to that in Victoria,

based on a Memorandum of Understanding between IPART and NSW Fair Trading setting out roles, responsibilities and procedures may warrant consideration.

We support this recommendation. We agree that a Memorandum of Understanding (MOU) between IPART and NSW Fair Trading would assist our processes. The MOU should include an agreed process for alerting NSW Fair Trading about any potential electrical safety matters.

- 10 Develop a standard process (in the form of a flow chart) in consultation with NSW Fair Trading, that clearly sets out the steps that ESS staff should follow in the event that they become aware of unsafe products being installed or unsafe installation practices being undertaken by an ACP.

We support this recommendation. To provide for reporting of any incidences involving safety of electrical items, we also recommend creating a link to the NSW Fair Trading website from the ESS website.

3 Further Action

Following the acceptance of the report, IPART, acting as the Scheme Administrator for the ESS, will consult where required and will implement the above recommendations in the short term. The ESS website and relevant documentation will be updated to reflect any changes to our approach to safety.