



SafeWork NSW



MEMORANDUM OF UNDERSTANDING

Between

SafeWork NSW

And

Independent Pricing and Regulatory Tribunal

1. PURPOSE

1.1. This Memorandum of Understanding (MoU) between the Independent Pricing and Regulatory Tribunal of NSW and SafeWork NSW recognises the overlapping jurisdictional responsibilities of both regulators in relation to the response to, and investigation of, accidents involving Electricity Works in NSW.

1.2. By establishing a framework for the response to, and investigation of, serious electricity works accidents, this MoU supports a co-operative relationship between both regulators and ensures the effective and targeted use of resources.

2. DEFINITIONS

2.1. Words used in this MoU have the following meanings, when they appear in title case, unless context dictates otherwise.

Agencies	means SafeWork and IPART.
Base Level Services	means Base Level Services as described in the Service Level Agreement agreed between the Agencies
Chief Executive Officer	means: (a) in respect of SafeWork, the Secretary of the Department of Finance, Services and Innovation; (b) in respect of IPART, IPART's chief executive officer.
Commencement Date	means the day on which this MoU takes effect.
ES Act	means the <i>Electricity Supply Act 1995</i> .
Electricity Works	has the same meaning as under the ES Act.
GIPA Act	means the <i>Government Information (Public Access) Act 2009</i> .
HRIP Act	means the <i>Health Records and Information Privacy Act 2002</i> .
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales, established under the IPART Act.

IPART Act	means the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> .
MoU	means this Memorandum of Understanding.
PPIP Act	means the <i>Privacy and Personal Information Protection Act 1998</i> .
Responsible Officer	means an officer specified in Schedule A to this MoU.
SafeWork	means SafeWork NSW, established under clause 1 of Schedule 2 to the WHS Act.
Serious Electricity Works Accident	has the same meaning as under the ES Act, except that it includes an incident suspected to be, or that has the potential to be, a Serious Electricity Works Accident under the ES Act.
Service Level Agreement	means an agreement expressed to be made under this MoU, which is consistent with the terms of this MoU, is executed by a Responsible Officer on behalf of each Agency, and which makes provision for one or more of the matters for which this MoU allows such an agreement to make provision.
Term	means the period from the Commencement Date until this MoU is terminated in accordance with clause 13.3 of this MoU.
WHS Act	means the <i>Work Health and Safety Act 2011</i> .

3. LIAISON

3.1. The Agencies will be responsible for the day to day implementation of this MoU and agree that there will be regular communication as required to facilitate this MoU and any associated Service Level Agreement.

Each Agency will ensure that, at all times during the Term, at least one of its staff members is designated and known to the other Agency as its contact officer(s) for the purposes of this MoU. An Agency is to give written notice to the other Agency of any change to its contact officer(s), promptly after the change is made.

4. INFORMATION SHARING & HANDLING REQUIREMENTS

Legal requirements

- 4.1. Each Agency is subject to statutory obligations which govern the disclosure and use of confidential, personal, health, sensitive or protected information including:
- a) the WHS Act;
 - b) the ES Act;
 - c) the GIPA Act;
 - d) the PPIP Act; and
 - e) the HRIP Act.
- 4.2. Despite anything else in this MoU, each Agency agrees to provide information to the other Agency, and use information obtained, only to the extent that it is permitted to do so by law.

Disclosure of information

- 4.3. Each Agency agrees to provide information to the other Agency as is required to support the purpose and intent of this MoU and any associated Service Level Agreement.

Confidentiality

- 4.4. Each Agency acknowledges that information that comes into its possession under this MoU is confidential and agrees to maintain the required level of confidentiality.

Safeguards

- 4.5. The Agencies are responsible for ensuring that reasonable security safeguards are put in place in accordance with legal requirements, to protect information provided pursuant to this MoU, to guard against any loss or destruction of information, or any unauthorised access, use, modification, disclosure, recording or other misuse of information.

Production of information pursuant to a legal requirement

- 4.6. If information provided by either Agency pursuant to this MoU becomes the subject of a subpoena, notice to produce, request for information under the GIPA Act or other legal demand for access, the responsible Agency must:
- a) promptly notify the other Agency that the subpoena, notice to produce, request, or demand has been made;
 - b) seek comments and/or advice from the other Agency about the potential release, disclosure, publication or production of the information; and

- c) take all reasonable steps to maintain the confidentiality of the information, in accordance with the relevant legal requirements.

Use of information

- 4.7. Each Agency is to use the information provided pursuant to this MoU only to:
 - a) perform its functions or exercise its powers (including use for the purposes set out in s 6(1) of the *Data Sharing (Government Sector) Act 2015*); and
 - b) do all things necessary for, or incidental to, the performance of those functions or the exercise of those powers.

Conditions on information-handling

- 4.8. The Agencies may agree, in writing, to impose conditions on the use and/or disclosure of particular categories of the information provided pursuant to this MoU in addition to the obligations set out in this MoU. The Agencies are to comply with any such conditions.

5. INSPECTORS

- 5.1. IPART may appoint a person as an inspector under s 63M of the ES Act, where that person holds an appointment as an inspector under s 156 of the WHS Act.
- 5.2. IPART may refrain from appointing a person as an inspector under s 63M of the ES Act, or revoke such an appointment, if IPART, in its absolute discretion, reasonably considers that there is good reason to do so.
- 5.3. Where IPART refrains from appointing a person as an inspector under s 63M of the ES Act, or revokes such an appointment, IPART must promptly notify SafeWork that it has done so.

6. SERVICES TO BE PROVIDED BY SAFEWORK

- 6.1. SafeWork agrees to provide to IPART, services as established in a Service Level Agreement that supports the purpose and intent of this MoU.

7. SERVICES TO BE PROVIDED BY IPART

- 7.1. IPART agrees to provide to SafeWork NSW, services, as established in a Service Level Agreement that supports the purpose and intent of this MoU.

8. RECOVERY OF SAFEWORK'S COSTS

- 8.1. During the Term of this MoU, IPART is to pay to SafeWork a set amount as agreed under a Service Level Agreement for the Base Level Services, and any additional services agreed to be provided under a Service Level Agreement.
- 8.2. In the event that IPART requests SafeWork to undertake an investigation into a Serious Electricity Works Accident under the ES Act, funding arrangements will be based on an hourly cost and expenses incurred as agreed.

9. LEGAL EFFECT OF THIS MOU

- 9.1. The Agencies agree that this MoU:
- a) is a voluntary statement of the Agencies' intentions;
 - b) is not legally binding; and
 - c) is not enforceable.
- 9.2. The Agencies further agree that any Service Level Agreement:
- a) is a voluntary statement of the Agencies' intentions;
 - b) is not legally binding; and
 - c) is not enforceable.
- 9.3. For the avoidance of any doubt, neither this MoU nor any Service Level Agreement restricts either Agency in the exercise of its statutory powers and functions.

10. DISPUTE RESOLUTION

- 10.1. In the event of any dispute arising pursuant to this MoU, the Agencies will attempt in good faith to reach a prompt negotiated resolution by designating officers of appropriate authority to resolve the dispute.

11. VARIATION

- 11.1. This MoU may only be varied by an instrument in writing signed by the Chief Executive Officer of each Agency.
- 11.2. Any Schedule to this MoU may be varied at any time by written agreement between a Responsible Officer of SafeWork and a Responsible Officer of IPART, provided that the Schedule as varied is not inconsistent with the main body of this MoU.
- 11.3. All variations to this MoU are to be recorded in the Change Control Register in Schedule B of this MoU.

12. COMMENCEMENT OF THIS MOU

12.1. This MoU will take effect on and from the date when it has been signed for and on behalf of both SafeWork and IPART by the Chief Executive Officer of each Agency.

13. REVIEW AND TERMINATION OF THIS MOU

13.1. This MoU will be reviewed and evaluated by the Agencies initially at 12 months following its commencement and thereafter every 3 years to assess the potential for improvement in its terms or operation.

13.2. Either Agency may terminate this MoU by giving 30 business days written notice to the other agency. The termination will take effect on the date that is 30 business days after the notice is issued unless otherwise agreed, in writing, by the Agencies.

13.3. This MoU will remain in force unless terminated by either Agency.

Memorandum of Understanding between SafeWork and IPART

SIGNATURES

Signed for and on behalf of SafeWork:



Martin Hoffman

Secretary

Department of Finance, Services and
Innovation

Date of signature: 5/10/15

Signed for and on behalf of IPART:



Hugo Harmstorf

Chief Executive Officer

Independent Pricing and Regulatory
Tribunal

Date of signature: 19.10.16

LIST OF SCHEDULES

Schedule A: Responsible Officers

Schedule B: Change Control Register

SCHEDULE A

RESPONSIBLE OFFICERS

Clause 1 – Responsible Officer(s) for SafeWork

Director, Investigations and Emergency Response

Clause 2 – Responsible Officer(s) for IPART

General Manager, Licensing and Compliance, responsible for Energy Networks Regulation

[**Note:** Under this MoU, Responsible Officers of the Agencies may agree to amendments to the Schedules to this MoU on behalf of the Agencies.]

SCHEDULE B

CHANGE CONTROL REGISTER

Version	Date	Revisions made	Provisions affected