

Assessing the applicability of the Health and Safety at Work Act to the SRC

7 June 2016

Background

The Security and Reliability Council (SRC) functions under the Electricity Industry Act 2010 (Act) include providing advice to the Electricity Authority (Authority) on security of supply matters.

The SRC asked the secretariat to investigate and assess whether the new Health and Safety at Work Act 2015 (HSWA) applies in any way to the SRC. The secretariat gave a verbal briefing to the SRC's 15 March 2016 meeting that, based on an initial reading of the HSWA, the HSWA did not apply to the SRC.

This paper is the secretariat's formal written advice to the SRC on this matter.

The HSWA does not apply to the SRC in its own right

The secretariat sought and received legal advice on the matter of whether the HSWA applies to the SRC. The legal advice is that it does not apply to the SRC in its own right.

The rationale for that advice is as follows:

- Section 5 (Application of Act to the Crown) of the HSWA states that "an instrument of the Crown that is a Crown organisation... may be a PCBU in its own right". A Crown organisation that is a PCBU in its own right would accordingly be subject to and have responsibilities under the HSWA.
- Section 16 (Interpretation) of the HSWA provides that "Crown organisation" has the same meaning given to that term in section 4 of the Crown Organisations (Criminal Liability) Act 2002. Section 4 of the Crown Organisations (Criminal Liability) Act 2002 states that "Crown organisation" means a Crown entity, government department, or government-related organisation.
- The SRC is not a Crown entity, government department, or government-related organisation. Therefore, the SRC is not a "Crown organisation" for the purposes of the HSWA.
- On that basis, section 5(3) of the HSWA applies and the SRC is not a PCBU in its own right.
- The SRC is not a PCBU, and therefore has no obligations or responsibilities under the HSWA.

The sections of the Crown Entities Act that do apply to the SRC do not affect the conclusion that HSWA does not apply to the SRC

Section 22 of the Electricity Industry Act 2010 provides that various sections in the Crown Entities Act 2004 apply to the SRC. The secretariat's legal advice confirms that none of those sections would result in the SRC having any obligation or responsibility under the HSWA.

The SRC may wish to consider the following questions.

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| Q1. | What further information, if any, does the SRC wish to have provided to it by the secretariat? |
| Q2. | What advice, if any, does the SRC wish to provide to the Authority? |