

9 June 2022

Energy Safe Victoria
Level 54 Riverside Quay
Southbank VIC 3006
Email : Consultation@energysafe.vic.gov.au

**GEA RESPONSE: VICTORIAN ENERGY SAFETY COMMISSION
Consultation Notice - Open Flued Gas Space Heaters - Proposed prohibition
of supply and declaration of non-acceptance**

Dear Victorian Energy Safety Commission,

Gas Energy Australia (GEA) appreciates the opportunity to respond to the Victorian Energy Safety Commission Consultation Notice - Open Flued Gas Space Heaters - Proposed prohibition of supply and declaration of non-acceptance.

GEA is the national peak body representing the downstream gas fuels industry, encompassing Liquefied Petroleum Gas (LPG), Liquefied Natural Gas (LNG), Compressed Natural Gas (CNG) and Hydrogen (H₂). The industry comprises major companies and small to medium businesses in the gaseous fuels supply chain, including refiners, fuel marketers, equipment manufacturers, gas transporters, consultants and service providers to the industry.

In responding to the Department of Environment, Land, Water and Planning (DELWP) discussion paper: Options for Addressing Risks from Open Flued Gas Space Heaters (OFGSH) in Victoria, GEA welcomed DELWP initiative on this issue and recommended enhancements to the safety performance of OFGSH's be made uniformly across all states and territories through the Standards Australia processes. GEA's position has not changed, in that we welcome a uniform national approach, rather than standalone Victorian regulation.

GEA is confused as to the prohibition notice and its application. We refer you to the documents released on the website as context. They use different wording to explain the application of the prohibition notice. To illustrate this, please see the following extracts from the three documents:

- the Gas Safety Act 1997 1 *Section 76 (1) ...*, may prohibit the supply or sale of...
- Prohibition notice *Open-flued gas space heaters Section 4*. Pursuant to section 76(1)(b) of the Act, the supply and sale..., and
- Consultation Notice *Open Flued Gas Space Heaters— Proposed prohibition of supply and declaration of non-acceptance* - opening paragraph ...to prohibit the sale and supply of

The Gas Safety Act gives power to prohibit **supply or sale**, the draft Prohibition notice, prohibits **supply and sale**, and the Consultation Notice is "consulting on prohibiting **sale and supply**". All referring to the same power (Section 76) but using different wording that could be interpreted to mean different applications.

¹ <https://content.legislation.vic.gov.au/sites/default/files/2020-12/97-99aa045%20authorised.pdf>

GEA does not support prohibitions made through Victorian regulation and seeks urgent clarity as to the intent and application of the prohibition notice as it is proposed in the consultation notice.

GEA is also concerned with the consideration of a declaration of non-acceptance under section 69A of the Act. The declaration appears to be a “sledgehammer cracking a nut”, which has potentially more reach than the application of a prohibition notice. In issuing a declaration the appliance is then no longer accepted for the purposes of the Act. The reason for issuing the declaration is that the product is unsafe. The concern is that any appliance already connected would then be deemed to be unsafe for the purposes of the Act, which would then potentially make the gas installation unsafe. This opens Division 1—General duties of gas companies for consideration. GEA does not support declarations made through Victorian regulation.

The consultation asks if there are any other issues or matters that you would like ESV to consider before ESV decides whether or not to proceed with either or both of the proposed enforcement actions.

GEA suggests that the best way to promote uniform national safety regulation would be for each jurisdictional regulator to remove appliance regulation and consumer safety, which are embedded into gas regulatory frameworks, and transfer these regulatory powers to a single national body. The Australian Competition and Consumer Commission, which already has a national role for consumer protection and product safety, would be a logical place to start.

GEA reiterates our previous position that enhancements to the safety performance of OFGSH's be made uniformly across all states and territories through the Standards Australia processes. Further, that consumer protection and safety laws should be removed from jurisdictional gas regulatory frameworks and transferred to a single national regulator.

Kind regards,

A handwritten signature in black ink, appearing to read "Brett Heffernan".

Mr Brett Heffernan
Chief Executive Officer
Gas Energy Australia