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Energy Technical and Safety Leaders Group – Draft Energy Technical and Safety Harmonisation Plan

The Australian Pipeline Industry Association (APIA) welcomes the opportunity to comment on the MCE Energy Technical and Safety Leaders Group Draft Energy Technical and Safety Harmonisation Plan.

APIA agrees with the position of the Leaders Group on the majority of issues and has provided comments on issues directly affecting the gas transmission industry. APIA considers the primary harmonisation outcomes this process must achieve are:

1. mutual recognition of safety management systems (Energy Network Safety Systems in the Draft Plan) across jurisdictions; and
2. a single piece of national legislation governing the regulation of energy safety and technical matters.

The MCE must take caution in progressing any proposal that does not lead to these outcomes.

It is important for the Government to be aware that the electricity and gas supply industries are fundamentally different, and this harmonisation process must be cognisant of this fact. It would, therefore, be appropriate for the word 'energy' to be replaced by the phrase 'electricity and gas' as much as possible. Electricity and gas are both forms of energy that are readily accessible and widely used in our economy, but there are more differences than commonalities in their respective production, transportation and usage. Similarly, it is a mistake to use the term 'energy networks' in reference to energy supply infrastructure, as gas transmission infrastructure in particular is not typically part of a network. APIA would prefer the term 'energy supply infrastructure' is used in place of 'energy networks' in most occurrences.

Yours sincerely



CHERYL CARTWRIGHT

Chief Executive



APIA welcomes the opportunity to provide comments on the MCE Energy Safety and Technical Leader Group's Draft Energy Technical and Safety Harmonisation Plan.

APIA is the peak national body representing the interests of Australia's transmission pipeline sector. APIA's current membership is predominantly involved in high-pressure gas transmission. APIA's members include contractors, owners, operators, advisers and engineering companies and suppliers of products and services. APIA's members own, operate and service the gas transmission infrastructure that supply the gas market

For ease of incorporating this submission into a summary document, APIA has directly quoted the issues on which stakeholders are requested to provide comments.

Scope of the Draft Plan

The Leaders Group through this Draft Plan seeks stakeholder views on the exclusion of electricity generation and gas plants from the scope of the Final Plan.

Further, stakeholders' views are sought on what, if any, measures should be taken to harmonise energy regulation not covered by the model National OHS Act for generators and gas plants.

APIA accepts the general reason for the proposed exclusion of electricity generation and gas plants from the Draft Plan. However, APIA considers that the reason provided for the exclusion of electricity generations and gas plants in the Draft Plan in paragraph 69 on page 13:

"the majority of risks can be adequately addressed by existing industry specific and proposed model OHS legislation"

implies that energy networks and transmission cannot address their risks by existing industry specific and proposed model OHS legislation. APIA believes this implication is incorrect and existing regulation adequately manages the technical and safety risks of energy networks and transmission. APIA considers that this current harmonisation process is not primarily intended to improve risk management in energy networks and transmission, but instead is intended to minimise inconsistencies across jurisdictions and reduce the burden of regulatory compliance.

The Draft Plan should explicitly state that this harmonisation process is not being conducted because energy networks and transmission are inherently unsafe or less safe than electricity generation and gas plants, but because they are ubiquitous infrastructure that cross jurisdictional boundaries and, therefore, are difficult to adequately isolate from the public.

Legislation and a new Australian Standard

The Leaders Group seeks stakeholder views in the extent to which, and how, harmonised energy supply industry legislation may impact the operation of existing state and territory regulatory arrangements.

As APIA has previously submitted to the Energy Technical and Safety Leaders Group, the universal adoption of AS2885 means that differences in regulatory frameworks between regulators have become largely irrelevant, with all regulators ultimately referring to AS2885. Therefore, the gas transmission industry has been able to work within the current regulatory regimes which, whilst having differing requirements and legislation, all have the common 'language' of AS2885.

APIA supports the Leaders Group proposal that a single enabling legislative mechanism be used to effect harmonisation. If each jurisdiction is left to ensure its existing legislation is aligned with model legislation, APIA considers that harmonisation will be minimal. Whilst such an approach will lead to a single Act in each state for network operators and upstream and downstream safety obligation holders, it does not guarantee harmonisation across jurisdictions and it would lead to every energy network and transmission operator with assets in more than one jurisdiction having to comply with multiple sets of legislation rather than a single Act.

APIA remains concerned that the harmonisation process may not result in greater national consistency in the approach taken to licence approval in each jurisdiction. Currently, because the regulator has the power to impose conditions on the approval of a licence for energy infrastructure, this provides a regulator with more power than is necessary. Regulators in different jurisdictions tend use this power with great variation. Any move towards nationally consistent legislation should include provisions to ensure consistency in the conditions imposed on licences. Under the harmonisation process currently envisaged, a gas network or pipeline that crosses jurisdictional boundaries may still have substantially different licence conditions imposed on it by the regulators in each jurisdiction.

If the harmonisation process seeks to address issues such as those outlined in paragraph 100 of the discussion paper, whereby small extensions of a gas network or pipeline across state borders are treated as separate networks by the different state regulators, then the ability of individual regulators to impose different licence conditions on the same piece of infrastructure should also be addressed.

The Leaders Group seeks stakeholder views in the proposed regulatory architecture and the various legislative instruments and standards. Stakeholders are also requested to consider and comment on the requirements for legislation and the creation of a new national Australian Standard for an Energy Network Safety Scheme.

APIA appreciates that the Leaders Group has recognised that AS 2885 and AS 4645 already provide the basis for performance based safety management systems for gas transmission and gas distribution respectively.

However, continuing to use the term 'ENSS' in the Draft Plan has the potential to create confusion. It appears that the Leaders Group is now proposing that a new Australian Standard for ENSSs will only be developed for electricity networks. However, safety management systems for gas transmission and distribution networks will also be called ENSS. The content of the ENSS is to be described in national regulation.

The description of the new Australian Standard provided on page 27 of the Draft Plan appears to be too focused on the generic content of an ENSS and is not electricity specific. The Draft Plan does not include a proposal to develop a generic Australian Standard for ENSSs, yet this section sets out such a Standard. Given that in the March Discussion Paper the Leaders Group advocated an option to develop a generic Australian Standard for ENSSs, it should be made explicit in the Draft Plan that the content of all ENSSs will be prescribed in regulation, and the new Australian Standard will provide a best practice guide for electricity networks to develop an ENSS.

APIA considers it appropriate and less confusing if the term ENSS is not used in relation to the new Australian Standard proposed in the Draft Plan. It is a mistake

Two-Tiered Implementation of the Proposed Framework

Stakeholders comments are sought on whether it is desirable to adopt a two tiered approach to implementation where, in the first tier, the proposed overarching legislation, worker mobility initiatives and governance arrangements would apply to both gas and electricity supply sectors equally and fully. While, in the second tier, specific sector issues can be dealt with, particularly initially the development of a national electricity network ENSS standard.

APIA considers the proposed two-tiered implementation is appropriate.

APIA notes that paragraph 139 explicitly sets out that the new Australian Standard will be for the development of an *Electricity Network Safety System*. The language in the earlier sections of the Draft Plan should be amended in the Final Plan to reflect this fact.

If a two-tiered implementation is decided upon, APIA considers more information should be provided on how electricity networks should develop an ENSS prior to the development of the new Australian Standard.

Mandatory Requirements

The Leaders Group seeks views on the Draft Plan's two options on referencing of mandatory requirements. Stakeholders views are also sought on the proposal to task the Policy Committee to develop criteria to guide:

- *what standards and mandatory requirements need to be developed; and*
- *the referencing of standards or other normative documents as mandatory standards or "deemed to satisfy" standards.*

As APIA has stated previously, the gas transmission industry strongly supports the referencing of the relevant Standards in legislation. For gas transmission infrastructure, AS 2885 sets out critical safety issues such as those described in paragraph 149. It would neither be appropriate nor efficient to include these in legislation, as there are often not single answers or solutions to these issues and inclusion in legislation would restrict the operation of the Standard in practice and, possibly, create real safety issues. The principles of ALARP ('as low as reasonably possible') safety management mean that different circumstances require different solutions, and it would be counterproductive to mandate multiple solutions to safety issues in legislation.

The appropriate forum to address critical safety issues such as safe distance clearancesvegetation clearance, bushfire management, exclusion zones etc is in Australian Standards. Australian Standards are not static documents, they are subject to continuous improvement and allow industry to refine and improve safety measures over time. By referencing the Standards in legislation, regulators can be satisfied that current best practice solutions will be available to gas network and pipeline operators.

APIA supports Option 2: No specification of mandatory requirements other that for the relevant ENSS.

If the Government does not agree with this proposition, no action should be taken until there has been a full review by the Policy Committee.

Validation, Submission and Acceptance of an ENSS

The Leaders Group seeks stakeholders' views on the significance of the different approaches to 'acceptance' by jurisdictional regulators and proposals for a regulatory framework that facilitates mutual recognition should these differences not be resolved.

APIA considers that the primary purpose of this harmonisation process is to ensure that a single ENSS for gas networks and pipelines is recognised in jurisdictions. This is articulated well in paragraph 159. This process must lead to the mutual recognition of ENSSs across jurisdictions, if it does not then it then significant harmonisation of energy safety and technical regulation will not be achieved.

APIA would remind the Leaders Group and the MCE of the New Zealand experience of introducing mandatory independent validation or certification of safety management systems. When attempted in NZ, the lack of an appropriate market with sufficient skills to perform the certifications led to high cost for these services, a significant new expense for business. Sufficient lead-up to the introduction of such a system in Australia needs to be provided so that the market can prepare.

Stakeholders' comments are sought on the proposed principles for the Validation, Submission and Acceptance of an ENSS.

Further comments are also sought on the three models presented. The Leaders Group notes that under existing state and territory legislation, some jurisdictions formally accept submitted ENSS/safety cases, while others only require submission of a validation report and others only require it to be in place and implemented.

APIA strongly supports the principles set out for the validation, submission and acceptance of an ENSS and considers that if these principles are applied a harmonised regulatory environment for gas safety and technical regulation will be achieved.

Given it is the view of the MCE and the gas supply industry that this industry has sufficient safety issues to warrant its own National Energy Network Safety Act and Regulations, APIA considers that it cannot be a reasonable conclusion for Option 3 to prevail. Option 3 sets out that an energy network and transmission operator must have an ENSS in place, but that there is no third part validation or formal acceptance by the regulator.

APIA considers that, at the very least, all ENSSs be required to be independently validated and the validation report submitted for acknowledgement to the regulator.

Standards Development

Comment is sought on which pathway would be most appropriate for the development of the ENSS standard and what representation should be held on the body to develop the standard.

As the proposed new Australian Standard is to be electricity specific, APIA does not have a strong opinion on this matter. For the information of the Leaders Group, the gas transmission standard, AS 2885, is managed under Option 3: Committee Driven, and the gas transmission industry has been very satisfied with this arrangement. In the case of AS 2885 and the gas transmission industry, technical support is provided by industry, not consultants, as suggested in the Draft Plan.

Legislative Implementation

Comment is sought on the pros and cons of each option.

APIA strongly supports Option 1: to introduce legislation into a single State or Territory with a schedule to be adopted nationally.

The harmonisation process will not be successful if each State and Territory introduces its own legislation based on model legislation.

The suggestion that this proposal would allow the new provisions for network operators to reside within the safety requirements for upstream and downstream safety obligation holders under a single Act in each state would not work because electricity generators and gas plants are excluded from the process.

As stated above, this process must lead to the mutual recognition of ENSSs across jurisdictions, if it does not then it then significant harmonisation of energy safety and technical regulation will not be achieved.

APIA considers it would be difficult for regulators to recognise an ENSS approved by another jurisdiction if each jurisdiction operates under separate legislation.

National Energy Skills Passport

Stakeholder comment is sought on who would be the more appropriate party to administer and maintain a National Energy Skills Passport.

APIA does not have a view on the identity of the appropriate party to administer and maintain a National Energy Skills Passport. As this process is primarily focused on the electricity industry, it is more appropriate to term this initiative the 'National Electricity Skills Passport'.

Proposed Governance Arrangements

The Leaders Group seeks comments on the proposed ongoing governance structures in a nationally harmonised regulatory regime.

APIA considers the proposal put forward by the Leaders Group to have more merit than the alternative proposal outlined, which is aligned with the governance model of the Safe Work Australia Council. APIA does not consider this latter proposal to be appropriate, as it allows for only two employer representatives on the Council, when the gas transmission, gas distribution, electricity transmission and electricity distribution sectors are four distinct industry sectors.

In regard to how new or existing regulatory agencies should be incorporated into the proposed harmonised arrangements, APIA considers "Option 2: Maintaining the existing jurisdictional regulators but operating under a new uniform legislation and ensuring they operate in a highly harmonised way", to be the most efficient option in the short to medium term. The longer term appropriateness of this framework can be re-assessed once the new system is operating.