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Discussion Paper – Harmonisation of Energy Supply Industry Technical and Safety Regulation

The Australian Pipeline Industry Association (APIA) welcomes the opportunity to comment on the MCE Energy Technical and Safety Leaders Group Discussion Paper on the Harmonisation of Energy Supply Industry Technical and Safety Regulation.

While APIA is prepared to support, to some extent, a harmonised approach to energy safety and technical regulation, the gas transmission industry's standard, AS2885, already ensures consistency across jurisdictions and does not require further adjustment.

The discussion paper acknowledges the gas industry is more advanced in regard to harmonisation than is the electricity industry, and it is the experience of the gas transmission industry that a nationally accepted technical standard, such as AS2885, has done much to ensure a reasonable level of consistency. We understand the gas distribution industry is working towards a similar outcome with their standard, AS4645-2008.

Therefore, APIA considers that the development of a standard Energy Network Safety System (ENSS) is not a useful exercise, as the level of technical commonality across the energy supply industry is not high. In developing a standard ENSS, it is highly likely that the resulting document would be so generic it could apply to any industry that has a performance based risk management approach to health and safety issues.

Also, importantly, APIA is concerned that many of the options presented in the discussion paper appear to lead to pre-determined conclusions, negating industry's responses to the paper. This is unfortunate.

For example, the options presented for acceptance/certification procedures of an ENSS all rely on an independent 3rd party to audit and/or certify the ENSS. APIA considers it appropriate that the regulator have primary responsibility for testing and certification of the ENSS, however this is not presented as an option.

Yours sincerely



CHERYL CARTWRIGHT
Chief Executive

APIA welcomes the opportunity to provide comments on the MCE Energy Safety and Technical Leader Group's Discussion Paper on the Harmonisation of Energy Supply Industry Technical and Safety Regulation. For ease of incorporating this submission into a summary document, APIA has directly quoted the issues on which stakeholders are requested to provide comments.

Stakeholder comments:

The Leaders Group seeks stakeholder views on the scope of harmonisation as outlined in the discussion paper, and potential impacts on any related technical requirements that are currently included in State and Territory regulations but are not specifically related to public or worker safety and that cross over into other regulatory spaces, such as reliability and economic regulation.

The gas transmission industry considers the key component of national harmonisation of technical and safety regulation is the development and adoption of national technical standards for each of the sectors of the energy industry. AS2885 is the national standard for the gas transmission industry, and is the underpinning document of technical and safety regulation. AS2885 is a dynamic standard, developed and improved co-operatively by regulators and the gas transmission industry.

Due to the universal adoption of AS2885, it is the experience of the gas transmission industry 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 with the current regulatory regimes which, whilst having differing requirements and legislation, all have the common 'language' of AS2885.

In principle, a harmonised approach to energy safety and technical regulation could work if it is a move towards national, risk based standards for each of the distinct segments of the energy supply chain. It is quite inappropriate to attempt to "harmonise" technical standards for electricity transmission, electricity distribution, gas transmission and gas distribution. Each of these four sectors has different technical requirements and challenges and thus require individual standards. APIA considers that for the identified segments of the energy supply chain there is not sufficient commonality to harmonise more than the highest level framework for technical and safety regulation.

At the highest level, there may be sufficient commonality to develop a standard HSE (Health, Safety, Environment) Management System across the energy industry. However, the development of a standard HSE Management System across the energy industries would require a document so generic that it could be applicable to ALL industries. As such, it is not necessary, appropriate, nor an efficient use of government/industry resources to develop a new standard system specific to the energy industry.

Stakeholder comments:

Stakeholder views are sought on the coverage and detail of the descriptions provided for each State, Territory and Commonwealth legislation contained in **Appendix 3**.

In Appendix 3 there should be reference to the *NSW Pipelines Act 1967*.

Stakeholder comments:

The Leaders Group seeks comments on the extent of the problem in the current arrangements, and possible approaches to address these issues.

The Leaders Group also seeks comments on the above mentioned examples and other examples of limits to labour force mobility, emergency response, regulatory inconsistencies and compliance burden.

As noted above, due to the universal adoption of AS2885, the gas transmission industry does not consider there are significant problems with current arrangements.

Licence Approval: An area not specifically covered in this paper that, perhaps, needs greater national consistency is 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, regardless of the approach taken, should include provisions to ensure consistency in the conditions imposed on licences.

In relation to labour force mobility, it is appropriate for this process to consider issues of skills only to the extent that such technical and safety regulation requires industry's workforce to be competent and capable of ensuring safe operation of energy networks, which would usually be a matter for a company when preparing a Safety and Operating Plan.

Stakeholder comments:

The Leaders Group seeks stakeholder views on the interaction between the scope of the National OHS Review and the scope of this discussion paper, and the potential impact the scoping paper may have on the recommendations and/or options included in the discussion paper. In particular, the Leaders Group seeks comments on whether the proposed approach (potentially isolating the ESI requirements) may introduce undesirable inconsistencies between safety requirements for the ESI and electrical workers outside the ESI.

The discussion paper states that greater consideration to electricity generation, gas plant and gas retailer issues will be given upon release of the National OHS scoping document. The National OHS process will overlap all technical and safety regulation in Australia, and APIA does not consider that this harmonisation process should run in parallel with the National OHS process.

This process should not result in the energy network sector being treated differently from any other sector of the economy on the matter of OHS.

Stakeholder comments:

The Leaders Group seeks stakeholder views on the content of the legislation and what, if any, further matters should be addressed in the legislation. Stakeholder views are also sought on basing the legislation on the concept of compliance with a national ENSS standard.

It is APIA's strong view that legislation can only achieve national harmonisation if it references specific technical standards for:

- Gas transmission;
- Gas distribution;
- Electricity transmission; and
- Electricity distribution.

Any such legislation should strive to be as flexible as possible, avoiding prescription. However, if prescription is applied to regulators, this could benefit harmonisation. Legislative prescription as it applies to regulators is necessary to ensure consistency in regulatory decisions. An example of this has been provided previously, APIA considers the legislation should be prescriptive on the matter of licence conditions.

Stakeholder comments:

The Leaders Group seeks stakeholder views on the proposed Energy Network Safety System and its coverage.

The proposed Energy Network Safety System (ENSS), as set out in paragraph 110, is an acceptable performance based risk management system that deviates little from existing 'Safety Case' or 'Safety Operating System' systems, not only for the energy supply industry but for most, if not all, industries that utilise performance based safety management systems. As such, APIA sees little value in forcing the energy supply industry to develop a specific, standard ENSS, when the areas of commonality are at such a high level. Should consideration of this proposal proceed, further consultation on the detail will be required.

In the design of any ENSS, flexibility must be maintained, with standardisation across energy industries only at the highest level to help ensure the ENSS is workable.

Stakeholder comments:

Stakeholder comments are sought on whether it is desirable to develop a generic standard covering the management systems of both gas and electricity networks, so as to facilitate a common ENSS standard for network operators.

It is not desirable to develop a generic standard for ENSSs for the energy supply industry. There is not sufficient commonality between the gas and electricity industries, let alone between transmission and distribution networks with gas or electricity, to justify such an approach. As discussed above, the development of such a standard that could actually be

applied to the energy supply industry would result in a document so generic it could, and perhaps should, readily apply to other industries.

APIA would bring to the Energy Technical and Safety Leaders Group's attention documents such as:

- the Guidelines for the Preparation and Submission of Facility Safety Cases, DISR 2000; and
- the National Petroleum Offshore Safety Authority's Safety Case Guidelines, 2004.

Both documents have been prepared through national consultative processes and are sufficiently high level to be considered generic. Clearly, it would be sensible to include high level guidance regarding the purpose of an ENSS in the legislation and individual national technical standards would facilitate ENSS preparation for network operators.

APIA proposes that the guidance set out in paragraph 110 (capitals are APIA inclusion):
'The proposed ENSS will:

- *describe the full extent of all relevant operations;*
- *DETAIL THE SCOPE AND BOUNDARIES OF THE ASSETS;*
- *identify all hazards related to designing, constructing, operating and maintaining the energy network (all hazards approach);*
- *detail and systematically assess the risk associated, with those hazards;*
- *identify the control measures that will reduce risk to As Low As Reasonably Practicable (ALARP);*
- *document relevant safety related standards, any departures and how equal or better outcomes will be achieved; and*
- *apply an ENSS to ensure the controls are effectively and consistently applied and performance is measured and continuously improved.'*

is the appropriate generic prescription to include in legislation.

Stakeholder Comments

The Leaders Group seeks views on the two options for the treatment of small and isolated networks.

If an exemption is permitted for small and isolated networks, the Leaders Group seeks views on the definition of a "small and isolated network"?

The Leaders Group also seeks views on whether or not either of these options should also be applied to small embedded networks.

APIA believes that small and isolated networks should not be exempt from any safety management system. A sufficiently flexible safety management system should ensure that the burden in producing an ENSS scales in line with the size of the network (and its proximity to other networks) covered by the ENSS.

Stakeholder comments:

The Leaders Group seeks views on the two options presented with respect to the issue of mandatory standards.

APIA is strongly supportive of option 1 and, in the case of the gas transmission industry, any move away from national standards is inappropriate. The gas transmission industry's

experience of regulation under a national technical standard is generally positive and this standard provides appropriate guidance in regard to regulation of other energy industries.

As explained above, a generic ENSS standard should not be developed.

Stakeholder comments:

Stakeholder views are sought on criteria to guide:

- the development of standards; and
- the referencing of standards or other normative documents as mandatory standards or "deemed to satisfy" standards.

Any such recommendations must be accompanied by justification in terms of the COAG Best Practice Regulation criteria.

The development of AS2885 is an example of the appropriate approach for development of national standards. COAG agrees. After its February 1994 meeting, COAG said:

"to adopt AS2885 to achieve uniform national pipeline construction standards by the end of 1994 or earlier"

(http://www.coag.gov.au/coag_meeting_outcomes/1994-02-25/docs/attachment_b.cfm)

The satisfaction of the gas transmission industry with the existing technical and safety regulatory regimes is testimony to the development process of AS2885 and the benefits of underpinning regulation by national standards.

Stakeholder comments:

The Leaders Group seeks views on the three options for "acceptance" or "certification" of a network operator's ENSS.

APIA does not consider either option 1 or 2 is particularly desirable as the certification process for a network operator's ENSS. As option 3 is a combination of option 1 & 2, it also is not desirable. The introduction of independent third parties to the certification process has two results:

1. It increases the economic burden of developing an ENSS. This is particularly true/significant for smaller network operators.
2. It absolves the government regulator of full responsibility in the accreditation process. If the MCE wishes to impose a nationally harmonised ENSS system on energy networks, it should be prepared to accept its full role in the system.

If there is a decision to establish an ENSS, the approval process should involve industry and the regulator working cooperatively and the policy should not be developed without full industry consultation.

Stakeholder comments:

The Leaders Group seeks stakeholder comments on the need for the proposed Central ENSS Register and its contents.

Please note that this discussion paper has sought comments on whether there should be an ENSS. This point above assumes agreement – which there is not. Therefore, APIA does not see the need for a Central ENSS Register that performs the tasks outlined in the discussion

paper. Any ENSS would contain confidential information and intellectual property that should not be shared with a company's competitors.

Stakeholder comments:

Stakeholder comment is sought on the proposal for a National Energy Skills Passport.

Stakeholder comment is also sought on what additional steps, particularly to industry work practices, are required to facilitate greater portability of ESI workers.

Greater portability of ESI workers is not an issue that should be considered in this process because of the diversity of the energy sector.

In the case of gas transmission workers, APIA provides a "Pipeliners' Passport", which contains information about a worker's qualifications and employment history. Such a document is useful for the gas transmission industry, but in the broader energy sector it would be meaningless.

Effort should be applied to ensuring that each industry group, i.e. gas transmission, gas distribution, electricity transmission, electricity distribution, electricity generation, and gas production, develop a framework of nationally accepted competency standards which provides the basis for industry segment specific competency passports. It is noted, however, that a Passport should only provide an indication of acquired competency and industry should use a range of competency validation methods for assuring themselves that workers have the required competencies.

Stakeholder comments:

Comment is sought on the preferred option for the development of standards and other normative documents required for the proposed regulatory model.

APIA considers the Australian Standards approach, used successfully to develop AS2885, is the best approach under which to develop national standards.

Stakeholder comments:

The Leaders Group seeks comments on bringing energy supply technical and safety issues within the ambit of the MCE.

APIA considers that neither the MCE nor the Departments that advise it have the necessary knowledge or experience to add significant value to the regulation of safety and technical matters in the energy industry, as their focus and skills cover economic issues. Such a move would be inappropriate and could cause problems for government unless staff with relevant skills are employed from other government agencies.

Stakeholder comments:

The Leaders Group seeks comment on the need for an Advisory/Regulatory Committee, its representation and accordingly what should its role be?

As mentioned above, it is inappropriate to bring energy supply technical and safety issues within the ambit of the MCE. Therefore, such an advisory committee is not warranted. Obviously, to separate the regulators and industry into separate committees would create an unnecessary adversarial relationship, and it is the gas transmission industry's experience

that far more efficient outcomes are achieved through a collaborative approach. Clearly, before any such action is taken, there should be substantial investigation of the matter.

Stakeholder comments:

The Leaders Group seeks comment on the proposed governance framework for energy technical and safety regulation, the options presented and any other options.

APIA considers Option 1 to be the most desirable framework. The gas transmission industry is generally satisfied with the current regulatory framework and deviation would create the potential for less efficient and less desirable regulatory outcomes. If uniform legislation is adopted under Option 1, APIA considers there is the potential for an improved regulatory outcome if issues such as inconsistency in the application of licence conditions is addressed.

Stakeholder comments:

The Leaders Group seeks comment on the options presented for legislative implementation.

APIA does not have a view of the options for legislative implementation and considers there are many issues to resolve prior to addressing this matter.

Stakeholder comments:

The Leaders Group seeks stakeholder feedback on the proposed subsequent documents required in addition to the Harmonisation Implementation Plan and suggestions on any other documents that may be required.

Many of the follow up documents listed assume outcomes which are open for stakeholder consultation in this discussion paper. For example, APIA considers it highly inappropriate to discuss the need for a first draft of a standard for the ENSS when the issue of whether or not to adopt a standard for the ENSS is supposed to be open for discussion as part of this consultative process.

Stakeholder comments:

The Leaders Group seeks stakeholder feedback on how the proposed model should be implemented. What sequence should the model be implemented in and are there some aspects of the proposed model that need to be implemented before others?

As above, APIA considers there are too many aspects of the model being discussed as part of this consultation process to commence considering implementation of the model.