

26 November 2019

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Dear Sir/Madam

## **CONSULTATION ON PROPOSED WORK HEALTH AND SAFETY (PETROLEUM AND GEOTHERMAL ENERGY OPERATIONS) REGULATIONS WA**

Thank you for the opportunity to comment on the proposed Work Health Safety (Petroleum and Geothermal Energy Operations) Regulations (the **WHS PGEO Regulations**).

The WHS PGEO Regulations represent an important opportunity to streamline and lower the costs of health and safety regulation in Western Australia. However gas transmission pipelines in WA have been operating under a safety case and risk based regime since the early 2000s. Therefore many of the potential benefits of the WHS PGEO Regulations are likely to be more apparent for other industries than the pipeline industry. Accordingly, care needs to be taken to ensure that in reducing the regulatory burden on facilities currently captured by other Acts and Regulations, new and increased burdens are not added to pipelines.

Detailed comments are set out below and in the submission template attached to this letter.

### **Structure of the Regulations**

To simplify implementation and compliance it is preferred that a single set of regulations apply to pipelines. In this regard it is requested that those limited provisions of the WHS (General) Regulations that do apply to pipelines are duplicated in the WHS (PGEO) Regulations as opposed to the current proposal for disapplication of some 46 parts and 17 schedules from within the WHS (General) Regulations.

### **Scope of activities included and excluded under the proposed regulations**

Currently, seismic survey is covered under the PGERA for which an approval is required from DMIRS. Excluding seismic surveys for petroleum exploration or production, can create a disjoint between PGERA and WHS PGEO Regs. This is particularly important where a seismic survey is required for an existing operation, as in most circumstances, the same systems and processes will be applied to the seismic survey activities. However, for seismic surveys prior to commencement of any other petroleum and geothermal operation, it may be appropriate to exclude these surveys from the WHS (PAGEO) Regulations, as there is no possibility of interaction with an existing operation and there may not be established processes to address the requirements of WHS (PAGEO) Regulations.

### **Duties to the public not just the workforce**

This change is important in that it will enable DMIRS to consider broader societal risks, however we are concerned this may be broadly conceived to include trespassers for example. We suggest the drafting and relationship with other sections needs to be carefully managed to avoid the unwanted consequence that trespassers or malicious damage is captured through the 'other persons' definition.

Care also needs to be taken to ensure that the Operator is responsible for other persons only when directly related to the pipeline operation on the pipeline licenced area. They should not be responsible for any other party completing work, not part of the pipeline operation, on the licenced area, eg, a council worker mowing the grass where a pipeline runs through a community park or a landowner having a BBQ in the backyard where the pipeline runs through their property.

### **Application of the Dangerous Goods (Storage and Handling of Non Explosives) Regulations 2007 to petroleum pipelines**

1. The requirements of Regulation 73 of the Dangerous Goods (Storage and Handling of Non-Explosives) Regulations 2007 should not be applicable to petroleum operations, as the purpose of a Safety Case is to identify hazards associated with a petroleum operation including controls to prevent and/or mitigate the effects of incidents involving dangerous goods. These prescriptive requirements may not be consistent with safety studies undertaken to ensure that process safety risks (including dangerous goods) are managed to a level that is acceptable and ALARP, particularly those with MAE potential.

It is understood that natural gas within a pipeline facility or petroleum facility will be classified as dangerous goods (Class 2.1). Some areas of the operation may be provided with a passive fire protection system (Regulation 73 requires active fire protection system with fire fighting media that is compatible with dangerous goods) rather than an active fire protection system, depending on the risks associated with the operation. Also, it is inappropriate to provide active fire protection system for all areas where natural gas may be present at a site.

Therefore, it is recommended that the requirements of Regulation 73 be excluded from the proposed WHS (PAGEO) Regulations.

2. It is not clear whether petroleum operations under the PGERA are exempt from the DGSA except certain requirements of the Dangerous Goods (Storage and Handling of Non-Explosives) Regulations 2007, similar to the disapplication clause for petroleum pipeline operations.

Similar disapplication provision should be introduced to petroleum operations that come under the PGERA, as the safety case regime already enables systematic identification of hazards associated with the operation, implementation of controls to reduce the risks to ALARP and ongoing monitoring and maintenance of those controls to ensure effectiveness. As such, application of DGSA is not only unlikely to offer any further improvement in safety (in particular the licensing requirements) but may create inconsistencies in applying the safety case regime.

### **Accommodation**

Recreational and domestic activities (e.g. cooking and exercising etc.) conducted within accommodation that is considered part of the pipeline operation should be excluded from the pipeline operation. The intent of this suggestion is to ensure that personal activities are not covered under the systems in place in the safety case (e.g. permit to work and risk assessments etc.). This approach would help to ensure the workforce has access to the personal down time essential for maintaining mental health, without worrying about workplace rules and regulations.

### **Person in charge**

The Petroleum Pipelines Act 1969 makes the following provisions:

- *The licensee for a pipeline operation must ensure that, at all times when one or more natural persons are engaged in the pipeline operation, there is present at the workplace a natural person (the licensee's representative) who has day to day management and control of the pipeline operation.*

- *The licensee for a pipeline operation must ensure that the name of the licensee's representative is displayed in a prominent place at the workplace.*

Acknowledging the continuous, linear and remote nature of the 'workplace' in any pipeline context, this drafting has introduced ambiguity and impracticality that this reform presents an opportunity to address.

Ultimately, it is understood that the Operators Representative is intended to serve as a point of contact between the Regulator and the Operator and also the Health and Safety Representatives and the Operator. It is thus recommended to reconsider the requirement for the Operators representative to be 'present at the workplace' or for their name to be displayed in a 'prominent place at the workplace'. Possible drafting is as follows:

- *The operator must ensure that, at all times when one or more natural persons are engaged in the pipeline operation, there is a natural person (the operator's representative) who has day to day management and control of the pipeline operation.*
- *The operator must ensure that the name and contact details of the operators representative is communicated to the workforce.*

## **Reporting**

Previous enquiries have revealed uncertainty surrounding the scope of employee hours to be reported. From a time sheeting perspective it is impracticable for an operator to quantify hours spent within the pipeline licence but instead to track hours worked on the pipeline operation (i.e. irrespective of whether they were spent in the pipeline licence area, in the office or in transit).

## **Transitional provisions**

It is requested that minor amendments to a safety case are permissible under the old regulations for at least the first two years. This would enable adequate time to develop revised safety cases without restricting any minor projects requiring minor amendments to the safety case arising in the interim.

Should you wish to discuss the issues raised further, please don't hesitate to contact me.

Yours sincerely



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