the australian PIPELINE industry association Ltd

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Review of the Aboriginal Heritage Regulations 2007

The Australian Pipeline Industry Association (APIA) welcomes the opportunity to provide comment on the effective operation of the Aboriginal Heritage Regulations 2007.

APIA is the peak national body representing the interests of Australia's high-pressure transmission pipeline sector. APIA's current membership is predominantly involved in construction and operation of high-pressure pipelines for transmission of oil and gas, however, the Association also includes members of companies and individuals involved in the pipeline construction and the transmission (via pipelines) of other products, including CO_2 and water.

APIA holds broad concerns with regard to some of the new requirements under the regulations. The new legislation requires more detailed risk assessment and investigation in the planning and assessment phase of the project, and will increase the planning time required for the project in addition to approval time frames that expand further if amendments are required.

Yours sincerely

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Chief Executive

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Australian Pipeline Industry Association would like to make the following comments on the review of the Aboriginal Heritage Regulations 2007

The Aboriginal Heritage Regulations 2007 require a greater level of field investigation in the early stages of a project than previously required.

The previous process

Pipeline routes are settled based on completion of environmental, heritage and social investigations. It is an iterative process where sensitivities are identified and then avoided by careful route selection.

Under the previous requirements, the process generally followed would be:

1. Desktop studies carried out to determine if the proposed pipeline route would impact on any registered or known sites. The local cultural heritage custodians would also be consulted.
2. A walk along the proposed pipeline corridor would be conducted by archaeologists and representatives of the local community, concentrating on areas of potentially high significance. Limited test pitting would be carried in areas of high sensitivity.
3. A Cultural Heritage Management Agreement would be negotiated with the local area cultural heritage custodians for:
    a. the provision of monitors during construction
    b. to set up protocols and a process for the timely investigation of any artifacts found during construction, and
    c. the issue of consents to destroy, if appropriate and required.
4. Further test pitting might be carried out, prior to construction.
5. Monitors would be observing clear and grade and trenching for possible artifacts.

Note: A successful example of this process was the discovery of a midden during the construction of the recent Brooklyn-Lara Pipeline (on the edge of the right of way). The site was located more than a metre below the surface and was not discovered during pre-construction testing. The monitors on site quickly

identified the site, an archaeologist was called in and the area fenced off. The pipeline owner paid for archaeologists to fully record the site. Construction work was not held up.

It should be noted that, from a regulatory and impact assessment basis, this approach has worked well in that a risk-based approach protects sites, both known and unknown. The risk of destruction is reduced. Significant sites have been found during construction and excavation processes, and mitigation measures can be put in place immediately in order to avoid impact on those sites.

Aboriginal Heritage Regulations 2007

Under the Aboriginal Heritage Regulations 2007 more extensive test-pitting (beyond the test-pitting in high risk areas which is currently undertaken) would either:

1. be required before the route is settled as "final", and therefore would likely need to be repeated if routes are adjusted (as is often the case as detailed design is subsequently undertaken), or
2. require more detailed test-excavation work when the route has been settled on other matters such as engineering, environmental and landholder issues. This would add significantly, possibly as much as 6 to 12 months for large, cross-country pipelines, to project timelines.

Nevertheless, such a timeline assumes that regulators permit conditional approval of the environmental and social impact assessment report, subject to completion of the test work. Should conditional approval not be provided there would be further delays as environmental impact statements and pipeline permit applications could not be submitted until the heritage impact assessment (including the extensive up-front test-pitting) is completed. Such a process would extend pipeline approval processes by at least 12 months.

Also, APIA notes that, under the new process, no monitors are required on site during construction. Instead, a more thorough investigative process is followed prior to a pipeline licence being issued. This presents specific problems for long-distance projects and greatly increases the lead time for the pipeline licence process.

During the route selection stage the proponent does not have easement agreements in place and therefore has only limited access to the land. Unlike a subdivision development or a new shopping complex the proponent of the pipeline project does not have ownership or control of the land. Where a landowner is opposed to a project and intends to lodge an objection to the pipeline licence application, it is unlikely that the landowner will agree to

extensive testing of the land. Approval would need to be sought for access the land for the test digging. This would further increase the lead time for pipeline approvals and causes further conflict with the landowner.

A further difficulty occurs if something unexpected is found during construction. With no monitors on site to expedite the identification of the site and quickly ascertain a solution, there could be increased delays to projects while waiting for clearances from AAV or the registered Aboriginal parties.

The Regulations appear to be more appropriate for a simple site, such as a new shopping complex or residential subdivision. In this case, the investigative work could be extensively carried out in the initial stages. For lineal projects such as pipelines, which can involve clearing works extending over hundreds of kilometres through farm land owned by different individuals, the rights of access are not available at the time when the testing should be carried out.

Conclusion

In conclusion, because of the lineal nature of pipeline construction projects, the proposed approach does not improve the possibility of finding or dealing with sub-surface artifacts. It is not possible to excavate sufficient lengths before construction in order to determine the presence of artifacts. As well as the time and cost implications, landholders and areas of native vegetation (e.g. river banks) would be significantly impacted by such test excavation work and this would require compensation and rehabilitation.

With regard to the impact assessment and regulatory processes, pipeline routes are settled after completion of environmental and social investigations. It is an iterative process where sensitivities are identified and then avoided by route selection. Under the proposed approach, more extensive test-pitting (beyond the test-pitting in high risk areas which is currently undertaken) would be required before the route is settled as "final", which would lead to repetition of the work if routes are adjusted. Alternatively, if the more detailed test-excavation work is undertaken when the route has been settled on other matters, the timelines would be substantially extended.