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Carbon Price Legislation Branch  
Carbon Strategy and Markets Division  
Department of Climate Change and Energy Efficiency  
GPO Box 854  
CANBERRA ACT 2601  
Via email: [cleanenergybills@climatechange.gov.au](mailto:cleanenergybills@climatechange.gov.au)

Dear Sir/Madam

### **Comments on the exposure draft of the Clean Energy Bill 2011**

The Australian Pipeline Industry Association (APIA) welcomes the opportunity to comment on the exposure draft of the *Clean Energy Bill 2011*. APIA is the peak industry body representing Australia's gas transmission industry, the owners and operators of the high-pressure steel pipelines that transport Australia's natural gas resources from production sites to demand centres.

APIA has particular concerns with two areas covered in the exposure draft:

- section 34; dealing with liability entities in the natural gas supply chain; and
- the failure of the draft to address issues of contractual impediments to pass-through of carbon costs.

APIA believes that the additional compliance costs created by section 34 far outweigh the low volume of emissions that it covers, and that it is appropriate to set the same emissions threshold test for natural gas facilities as it is for all others.

These concerns are addressed in the attached submission.

Should you have any questions or require any additional information, please contact APIA's policy adviser, Steve Davies, on (02) 6273 0577 or [sdavies@apia.asn.au](mailto:sdavies@apia.asn.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cheryl Cartwright', with a long horizontal flourish extending to the right.

CHERYL CARTWRIGHT  
Chief Executive



## Submission on the exposure draft of the Clean Energy Bill 2011

The Australian Pipeline Industry Association (APIA) welcomes the opportunity provided by the Australian Government to comment on the exposure draft of the Clean Energy Bill 2011 (the exposure draft).

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, transporting natural gas from the typically remote production facilities to demand centres and cities. APIA's members include contractors, owners, operators, advisers and engineering companies and suppliers of pipeline products and services.

Australia's gas transmission industry has two issues it would like to raise in relation to the exposure draft.

### Section 34 - Liable entity – application to own use of natural gas

In this section, small gas facilities are considered to be those that have facilities that do not pass the 25kT CO<sub>2</sub>e threshold test for direct liability set out in section 20(4) of the exposure draft.

There are three important definitions that impact the effect of section 34, being *natural gas retailer*, *distribution pipeline* and *transmission pipeline*. These definitions will be covered in the Regulations, and care must be taken to ensure the definitions meet the intent of the Bill.

### Stated Policy Position

In dealing with liabilities arising from the combustion of natural gas, the exposure draft has departed from previously stated policy principles. The principle put forward in the Carbon Pollution Reduction Scheme (CPRS) White Paper is:

#### Policy Position 6.11

*Scheme obligations for emissions from the domestic combustion of natural gas and other gaseous fuels will apply to entities that first supply these gases for use in the domestic market.*

There has been no indication that this policy position would be departed from prior to the release of the exposure draft.

Further, the declared intent of the *Clean Energy Bill 2011* is that the carbon price should minimise costs to business and apply only to large polluters. This is the position stated by the Government in its communications on a carbon price mechanism and is reflected on page 30 of the Commentary on Provisions released with the exposure draft:

*It is important to ensure that the mechanism is practical and minimises costs to business. For this reason, only firms that release over a certain amount of carbon pollution a year, or are large suppliers of natural gas, will pay the carbon price.*

### Effect of section 34

The liability for small gas facilities users, that is proposed in the exposure draft, does not follow this position. If gas is supplied through the retail supply chain (defined as gas supplied by a retailer and withdrawn from a distribution pipeline), the retailer will be liable for the emissions. In other circumstances, the small gas facilities will be directly liable through the 'application to own use of natural gas' provision in section 34 of the exposure draft. This means that all facilities that use natural gas and do not acquire that natural gas through the retail supply chain will be liable for their own emissions, regardless of the level of emissions.

### Issues

There are several problems with section 34:

- The declared intent of the *Clean Energy Bill* is to minimise cost to business and apply only to large polluters. The effect of section 34 is to require users of natural gas that acquire gas outside the retail supply chain to comply with the *Clean Energy Bill*, regardless of size.
- For most small gas facilities, these compliance costs will outweigh the costs of a carbon price on emissions.
- This change in policy position has not been discussed with industry, and APIA is aware of no effort by the Department of Climate Change and Energy Efficiency (DCCEE) or the Australian Government to identify, quantify and communicate regarding this issue with affected small gas facilities.
- Companies operating small facilities captured by section 34 face significant additional compliance costs. APIA requests DCCEE examine those costs and make comment.
- APIA also requests DCCEE provide an analysis of the extent of additional emissions that are picked up by section 34.
- APIA estimates a very small portion of additional emissions is withdrawn from natural gas transmission pipelines that would be covered by section 34, less than 0.5% of total pipeline throughput. However, the additional compliance costs (including additional record keeping, carbon price acquittal, contractual and non-contractual negotiations, potential metering and infrastructure upgrades and compliance-related administration activities) created by the requirement to report these would be considerable for small and large companies that have operational control of these small gas facilities.
- There is not an equivalent provision for facilities that use fuels that compete with natural gas, particularly coal. There is no evidence to support the DCCEE suggestion that there are no coal facilities that would be under the 25kt CO<sub>2</sub>e. The use of small-scale coal boilers still currently occurs in the economy. With the disparity in coverage between the users of these boilers and small gas users there is no incentive to for small energy users to shift from coal to gas.
- Section 34 creates a dual system of liability for small users of natural gas. One will apply to gas supplied through the retail supply chain, and the other for gas that is not supplied through the retail supply chain. This is inappropriate and could create market distortion as

small users of natural gas seek to acquire gas through the retail supply chain to avoid compliance costs.

- For the gas transmission industry, section 34 has the effect of requiring all gas transmission pipelines in Australia to be liable for emissions under the *Clean Energy Bill*. APIA estimates that volume of gas combusted in pipelines currently under the 25kT threshold accounts for around 0.05% of total pipeline throughput.

Whilst the Obligation Transfer Number (OTN) mechanism that tracked liability through the supply chain under the CPRS was problematic, in attempting to fix its shortcomings the exposure draft has created a new set of compliance issues for small gas facilities, that are less able to bear the level of costs that the large gas suppliers are expected to face.

It is noted that small users of diesel generators (a competing energy source to natural gas in remote areas) will bear a carbon price through changes in the fuel excise. The carbon price will automatically be deducted from their fuel excise refunds. What these users will not bear is the compliance burden of reporting and acquitting emissions. This may have the perverse outcome of discouraging users of small diesel generators to switch to natural gas.

### Solution

Section 34 creates a large compliance burden for small natural gas facilities that does not reflect the quantity of emissions covered by the section. This compliance burden is also inconsistent with the Government's stated policy positions on a carbon price.

There should be a material threshold that applies equally to all facilities. Section 20 sets out the 25kT CO<sub>2</sub>e threshold test for direct liability. APIA calls for removal of section 34 from the *Clean Energy Bill*. This action will re-establish the 25kT CO<sub>2</sub>e threshold for small gas facilities.

Alternatively, a threshold can be applied to section 34, so that those small gas facilities do not bear disproportionate compliance costs in covering a small liability arising from the use of natural gas. APIA welcomes the opportunity to work with DCCEE to identify an appropriate threshold.

APIA is aware that section 34 also covers gas users that purchase gas directly from a wholesale gas market. APIA is unaware of any small gas users that do so, and considers that all direct purchasers of gas from wholesale gas markets are sufficiently large to be covered by section 20 of the *Clean Energy Bill*.

The removal of section 34 would not create an incentive for small gas users currently supplied through the retail supply chain to attempt to acquire gas outside this supply chain. The costs associated with acquiring a gas supply agreement, acquiring a gas transmission agreement and direct connection to transmission infrastructure far outweigh the carbon costs that will be incorporated into the cost of gas supplied through the retail supply chain.

## **Contractual Impediments to Carbon Cost Pass-through**

APIA has articulated the issues associated with contractual impediments to carbon cost pass-through to the Government on multiple occasions. The most recent submission on this matter, made in response to the request for comments on the proposed architecture and implementation arrangements for a carbon pricing mechanism, is attached. In our earlier discussions, the Government indicated it hoped that parties to long-term contracts would resolve pass-through issues through commercial negotiation. This is also the stated position in the CPRS White Paper.

### **Policy Position 15.5**

*....the Government will continue to monitor the nature of contractual issues, including the scope for, and progress of, commercial negotiations, once stakeholders have had an opportunity to assess the exposure draft of the legislation.*

On passage of the *Clean Energy Bill*, companies can commence commercial negotiation to address cost pass-through. In the event this negotiation fails, APIA expects the Government will take measures to ensure carbon costs are not caught in the supply chain and are reflected in the costs to end-users. This action is required in order to ensure the *Clean Energy Bill* is efficient and effective in modifying end-user behaviour that will encourage a transition to a lower carbon intensity economy.