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Parliamentary Joint Committee on Intelligence and Security
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Via email pjicis@aph.gov.au

INQUIRY INTO THE SECURITY OF CRITICAL INFRASTRUCTURE BILL 2017

The Australian Pipelines and Gas Association (APGA) welcomes the opportunity to comment on the Security of Critical Infrastructure Bill 2017.

APGA is the peak body representing the Australian gas transmission sector. Our members include the owners, operators, constructors, designers, suppliers and service providers of Australia's gas transmission pipeline infrastructure. APGA participates in several Government security initiatives and has a keen interest in the work of the Critical Infrastructure Centre (CIC).

APGA notes the email (dated 1 Feb 2018) it recently received from CIC in response to APGA's submission to their November 2017 Discussion Paper, *Strengthening the National Security of Australia's Critical Infrastructure*. Although the CIC described some positive changes that were made to the draft Critical Infrastructure Bill as a result of APGA's submission (as well as suggestions from other gas industry stakeholders), APGA nevertheless notes that most of the issues raised in our submission have not yet been addressed or responded to adequately. In addition, direct consultation with the gas infrastructure owners at the time was minimal.

With regard to the Security of Critical Infrastructure Bill 2017 that is the subject of the current inquiry, APGA finds itself in the unusual position of having to reiterate our original concerns raised in relation to the CIC Discussion Paper in November 2017. We look forward to a more meaningful consideration of APGA's members concerns during this inquiry.

Contractual management of reliability and confidentiality

Direct customers of gas infrastructure (in particular gas transmission infrastructure) tend to be large, sophisticated entities with significant operations that in most instances each generate many hundreds of millions of dollars in revenue per annum. As such, these entities place reliability and security of supply and the confidentiality

of information at the forefront of their requirements when negotiating energy supply arrangements. Given the size of these customers, they are capable of managing reliability and security of supply issues and confidentiality matters that meet their requirements through binding contractual agreements with the owners of gas transmission infrastructure.

Given that these negotiated agreements cover the security of supply and information that appear to be the driver of the provisions of the Bill, consideration should be given to either removing transmission pipelines from its coverage or finding a less intrusive means of achieving its intent.

APGA would prefer that the Bill sets out obligations covering measures to ensure security of supply and information that must be achieved by owners of critical infrastructure. The Commonwealth could gain confidence that these obligations are being met through a number of ways such as:

- Requiring the provision, on a regular (say, annual) basis, of a statutory declaration by a company officer that declares there has been compliance with the obligations; and
- At the Commonwealth's election, requiring an audit to be undertaken to assess compliance with these obligations.

APGA understands this would be consistent with related obligations required by the Foreign Investment Review Board.

In this way, the intent of the Bill could be achieved without the duplication currently sent out in the reporting obligations for the critical infrastructure register and minimising the additional costs that will ultimately be required to be borne by the customers.

Proposed functions of the CIC

APGA supports the intent of the Australian Government in addressing national security risks from foreign involvement in Australian critical infrastructure. APGA is concerned that the function of the CIC is focussed solely on national security risks in respect to foreign involvement. The scope to cover National Security Risks for critical infrastructure should be wider than just foreign involvement.

APGA and its members currently participate in Government initiatives such as the Trusted Information Sharing Network (TISN) (through involvement in the Energy Sector Group) and the National Gas Emergency Response Advisory Committee (NGERAC). We are also aware of initiatives such as the Critical Infrastructure Resilience Strategy and the Critical Infrastructure Program for Modelling and Analysis. Some states have their own designations for critical infrastructure.

It seems sensible to APGA that the range of security and resilience activities focussed on infrastructure undertaken by the Australian Government be co-ordinated and centralised in a single location. This would facilitate improved and efficient engagement with industry and would offer performance efficiencies and address potential resourcing issues within the Critical Infrastructure Centre to ensure its functions can be met. An entity with as general and all-encompassing name as 'the Critical Infrastructure Centre' should have a remit beyond national security risks arising from foreign involvement in critical infrastructure.

In addition, it is important for the Critical Infrastructure Centre to engage with state-based activities. APGA members participate in state-based emergency management arrangements that consider issues directly relevant to national security, and through state based regulatory processes provide information on measures in place to control against potential security threats and mitigate the potential consequences. The Critical Infrastructure Centre should seek to make use of these existing arrangements rather than duplicate existing processes. In this regard, APGA welcomes subclause 32(3)(d) requiring that the Minister must be satisfied that consideration has been given to the use of any existing mechanisms, including regulatory systems at the federal, state and territory levels to eliminate or reduce the identified risk, prior to issuing a direction

APGA would also like to know more about the proposed risk assessment methodologies, particularly as it relates to providing advice to the Foreign Investment Review Board. An important question is the level of publicly available information on the methodologies. It is important that Australian owners and foreign investors have a clear understanding of risk assessment methodologies so they can make informed commercial decisions regarding the sale and purchase of critical infrastructure in Australia.

The Critical Infrastructure Asset Register

One area where a more centralised approach would benefit industry is in helping to minimise information provision obligations. The Bill sets out an approach that proposes a new asset register from the ground up and will rely on industry providing the relevant information to the CIC.

If it is not accepted that the regime, in so far as it applies to gas transmission infrastructure, should be structured so as to outline obligations with respect to which, owners and operators must comply, APGA and its members consider that:

- Its members already disclose information to Government authorities, and would like to see this better co-ordinated so that multiple departments and authorities are not provided the same or similar information.
- The amount of data to be disclosed and the frequency of this is ever increasing for little apparent benefit to industry.

The March 2017 Discussion Paper indicated that existing relevant government holdings will be considered. APGA is concerned that the establishment process for the asset register set out in the Bill places obligations on industry to register existing interests and provide the required information. No effort appears to have been made to map existing information holdings and identify any gaps that need filling.

APGA's initial analysis of existing information indicates much is already provided to Government. In its response to APGA's November 2017 submission, the Critical Infrastructure Centre said that the Government had considered the table provided (see below) and "has concluded that these existing sources are unable to be leveraged for the purposes of the Bill". However, it is unclear to APGA how the Government reached this conclusion.

Information Type	Agency info is provided to	Frequency of refreshing of information
Direct Shareholder information and ultimate parent company	ASIC	Initially on incorporation and within 28 days of any change
Beneficial Shareholder information	ERA/AER	Ring fencing compliance reports are required to be provided under the NGR on an annual basis
Beneficial Shareholder information	ASIC – contains ultimate parent company and can indirectly ascertain all indirect shareholders and country of incorporation	Initially on incorporation and within 28 days of any change
Board members and voting rights	ASIC	Constitution recorded with ASIC which includes voting rights. Any change to be notified within 28 Days
Asset description and location	DMIRS Petroleum Pipelines Act (WA) (for pipelines) and the PGER Act (WA) (for storage and processing)	When pipeline is first commissioned. Whenever there is a variation to the pipeline (eg an expansion), the variation is made to the licence. Extensions to pipelines are required to be the subject of a separate pipeline licence and are issued when the pipeline is commissioned

Information Type	Agency info is provided to	Frequency of refreshing of information
		Storage facilities information is provided once the facility is commissioned or varied
Asset description and location	AEMO - Gas Services Information Act (WA) – gas bulletin board	Whenever there is a change
Operators of assets	DMIRS Petroleum Pipelines Act (WA) (for pipelines) and the PGER Act (WA) (for storage and processing) – operators must be granted a licence to operate	Prior to there being a change
Description of operator arrangements	AER/ERA – for covered pipelines, included in access arrangements and ring fencing compliance reports	At least annually

APGA expects that previous work done for initiatives already mentioned would provide a starting basis for a single asset register that covers all matters relating to resilience and security of critical infrastructure. Government authorities such as Geoscience Australia, the Australian Energy Market Operator, the Department of Infrastructure and Transport and various state agencies including safety regulators would also hold relevant information.

APGA does not support an outcome whereby infrastructure owners and operators have reporting obligations to multiple registers concerned with infrastructure resilience and security. Industry should not be placed in the position of reporting different aspects of information related to resilience and security to different registers at the state and federal level. This will inevitably to costly duplication at a time when rising energy costs is being raised as a risk to ongoing economic prosperity.

The Critical Infrastructure Asset Register could be used to establish a single point of communication and a single source of data. Whilst APGA acknowledges the initial administrative and logistical challenges associated with legislating mandatory obligations on the above agencies (particularly those established at a State level), the long-term benefits of establishing these information channels through existing

reporting processes will ensure the Critical Infrastructure Centre has access to current, accurate information covering all matters of interest for the centre. This will enable a more expansive assessment of the CIC's proposed risk assessment processes than what an assessment of information contained in the proposed asset register could offer.

To the extent that there are particular corporate structures that are not required to report to the above agencies (such as partnerships, foreign corporations and trusts), the mandatory reporting obligation should be limited to those specific corporate structures.

Last Resort Powers

APGA is concerned that the Bill introduces a 'last resort power' when it is not clear that an assessment of existing government powers for various infrastructure sectors has occurred. With regard to energy infrastructure, a range of powers are already available to Energy Ministers and statutory authorities and it is appropriate to document and assess these powers before contemplating the introduction of a new 'last resort power'.

The discussion from the CIC indicates that existing powers must be exhausted before using the 'last resort power'. However, there is no evidence that any analysis has occurred to understand and document current existing powers. If current powers are not understood, it is not possible to exhaust them.

Costs associated with security upgrades

APGA understands that the 'last resort power' is only envisaged to be used when companies are unable or unwilling to implement recommendations from the CIC or other agencies.

Most contractual arrangements allow for the pass through of costs incurred through compliance with legislative or regulatory directions. This would include the costs associated with any direction under the use of the last resort power.

Perversely, such contractual provisions are not likely to apply for any costs incurred to voluntarily upgrade or modify existing systems in accordance with advice from the CIC or other agencies.

It would be helpful to infrastructure owners if the Bill or associated regulations could provide for regulatory notices to give effect to voluntary undertakings. In this way, the costs associated with security upgrades that ultimately benefit the users of critical infrastructure and the Australian economy can be passed through to them in line with other mandated costs.

We understand from discussions between APGA members and the CIC that the CIC intends to engage with regulatory agencies to discuss the above approach proposed by APGA. Our members look forward to receiving confirmation of the outcomes of those engagements.

Inclusion of gas assets

As noted in the introduction, minimal consultation has been undertaken with gas infrastructure owners.

In our November 2017 submission, APGA noted that it seemed appropriate that the thresholds used for each infrastructure subset should be state specific. Otherwise, for example, thresholds as originally proposed would have seen major pipelines, but not major processing facilities, in the NT captured.

Further, we noted that infrastructure capacity is not the only characteristic that should be taken into account.

The number of customers is equally important. There are several major pieces of gas infrastructure that only serve one customer. These should not be deemed critical to the economy automatically. Further, the type of customer should be relevant. Gas infrastructure appears to have been picked up due to the importance of gas as a fuel for electricity generation, but only 30% of gas is used for electricity generation.

To summarise, the characteristics that are relevant to a determination that a gas transmission pipeline is critical infrastructure for the purposes of the draft bill are:

- Capacity;
- Number of customers; and
- Type of customers.

APGA acknowledges that some positive changes were made to the proposed thresholds in response to feedback received from gas industry stakeholders in November.

If you would like to discuss any of these issues further, please contact APGA's National Policy Manager, Andrew Robertson [REDACTED]

Yours sincerely

STEVE DAVIES
Chief Executive Officer