Submission 374290

Feedback - Regulatory Impact Statement for draft Petroleum Regulations

Overview

I am a community representative from **[Redacted]** active in advocating for mining reform and rational decision-making. My interest and concern originated from Gippsland's legacy impacts of onshore aquifer depletion and subsidence from both offshore oil and gas extraction and dewatering of Latrobe Valley coal mines.

As the RIS gives relevance to the Proposed Draft Petroleum Regulations 2021 enabling onshore gas exploration under new Petroleum Regulations I will confine my feedback to what is relevant in both the RIS and the Draft Regulations.

The small amount of 2-7 months' supply of hypothesised onshore gas in Gippsland is noted in the Victorian Gas Program #4 and #5. This underpins the reasoning behind my comments for the commercial viability of such a low amount spread across the central and south Gippsland region rather than a single graticular licenced tenement.

Consequently, I am concerned that onshore gas exploration is more to obtain a licence tenement for the sole purpose of capital raising for the authority holder. The problems that arise out of that is the statutory requirement under the Act to 'work' the licence. Hence, the many, many hundreds of legacy oil and gas wells that blight our Gippsland landscape that remain unrehabilitated. This is a shocking indictment on Earth Resources Regulator as I was part of a Gippsland group requesting compliance and management of these wells, rather, all we got was inaction from the department tasked with managing the Petroleum Act 1998. This and many other interactions with the numerous Resource Department tags has expanded my knowledge and why I believe this current RIS and draft regulations will fail some of your objectives.

I support Option 2; however, I have read the RIS in conjunction with the Proposed Draft Petroleum Regulations 2021 and they are not complimentary to achieving the RIS Options 2 objectives to:

- Build community social license in the onshore conventional petroleum resource sector.
- Minimise risk to improve outcomes for the environment, public safety, and amenity as they relate to petroleum development in Victoria.
- Cost to government. (Taxpayer)

I want to make a point about the evaluation strategy as I believe the proposed timeframe of 5 yrs needs consideration. A five-year period is too long and could be bought back to 3yrs for understanding of progress as the all-important engagement with community would have commenced for exploration and land access agreements. The objective of the RIS is to be a driver for investment but at what cost. Basing evaluation on level of investment is to ignore market influence as well as knowing such a lowly conventional resource exists onshore

which could mean why bother when commercially viability vs production costs decide investment.

This is important as the VGP and supporting documents for the RIS have greatly exaggerated the potential benefit to Victoria, work opportunity and increased competition will bring down gas prices. This is significantly misleading. It is just 27mts supply for Gippsland and not much better for the Otways.

3. What are your views on the proposed consultation requirements with the community and affected stakeholders in relation to notice/submissions as part of application process for authorities (e.g. retention and production titles)?

This should also apply to exploration. The minister definitely needs to consider existing constraints identified by the community as part of the VGP highlighting the many land, planning and environmental limitations that exist in both the central and south Gippsland areas. How would the Minister be referring to those constraints in assessment of permits or licence? Why grant an exploration permit if a constraint exists and will have further cumulative impacts to what already exist? There needs to be transparent information of land disturbance

4. What are your views on the proposed consultation requirements with the community and affected stakeholders in relation to notice/submissions as part of Operation Plan?

Important that all have access to work/operation and management plans.

7. Do you have any suggested improvements to the proposed regulations?

For the matter clarifying the adequacy of the Proposed Draft Petroleum Regulations, under Parts 2, 3 and 4, the term 'local' needs to be inserted to all relevant points for *'prescribed factors'* in accordance with the Act but not defined to area or scale of risk. For example:

(a) the likely regional economic, social and environmental risks and impacts of the program;
(b) the likely regional benefits of the program relative to its likely risks and impacts; and (c) the extent to which these risks and impacts can be managed at the regional level and how the applicant proposes to do this.

By only giving a 'regional' position this principally creates uncertainty to what is expected by authority holder and community.

Having a local analysis is essential to effectively assess work programs, granting of permit/licences evaluate insurance, bond and rehabilitation risks and costs that must be transparent & accounted for if the objective is to improve transparency, consultation and accountability.

As risks need to be identified in *Work Programs* and *Environmental Management Plans* it is hypocritical and irresponsible to assess an application for exploration, retention and production permit/licences only against regional economic, social and environmental risks and impacts when an EMP is to identify & assess risks on a local scale. The two

are not mutually compatible when evaluating local environmental risks compare to regional. Likewise for economic evaluation on a regional scale.

> **Division 3—Miscellaneous matters**
> *19 Prescribed information for certain notices*
> *(1) For the purposes of sections 39A(2)(c) and 48A(2)(c) of the Act the following is prescribed information—*
> *(e) in the case of an application for a retention lease, a statement that subject to other statutory requirements being satisfied, the lease, if granted—*
> *(i) will entitle the holder to retain rights to a petroleum discovery that is not commercially viable to develop; and*
> *(ii) will entitle the holder to carry out further petroleum exploration and work incidental to that purpose; and*
> *(iii) will not entitle the holder to undertake petroleum production;*

I referenced the prescribed information related to PART 4--RETENTION LEASES of the Petroleum Act 1998 for further clarification and noted the following point, (1)(c)(i), which I believe is inconsistent with the whole purpose of opening up onshore gas drilling. Simply put, the government is sending mixed messages. If the gas exists then it is commercial now, not in the future.

> - SECT 40
> Factors determining grant of application
> (1) The Minister must grant a retention lease if—
> (a) the applicant for the lease has provided all the information required by the Minister and has otherwise complied with section 39; and
> (b) the applicant has complied with the conditions of its exploration permit and all applicable laws in relation to that permit; and
> (c) the Minister is satisfied that the extraction of petroleum from the proposed lease area—
> (i) was not commercially viable on the day the application for the lease was made; but S. 40(1)(c)(ii) amended by No. 20/2020 s. 11(1)(a).
> (ii) is likely to become commercially viable within the next 15 years; and

There now exists some complications with Government charging rent assuming ownership over land which they do not hold title to.
In the absence of procurement notices, the Crown need to clarify this matter. The graticular sections of mapping over private land and townships for longitude and latitude effectively have government charging for rent over whole land surface boundaries for businesses, townships, farms and homes regardless of many of the private titles already having rental agreements in place. A single title can only have one rental agreement per surface area of the title.

The government have taken ownership of the private titles due to the fact they collect rent for land surface areas in the boundary areas.
Royalties are paid for what is in the subsurface but as noted in the section 21 for Rent occupancy of Crown Land below, rent is for occupying the land surface. In actual fact the landowner or the bank, in relation to mortgages, have title to the surfaces rights. The government have become the landowners/landlords of the areas within the boundaries of a granted licence for a gas resource with companies as their tenants. The government has procured all our private title land in the boundary areas without sending Procurement of Land notifications to individual private title holders. The gov have taken private title and converted it to Crown land by the very fact they charge rent for ALL the surface of the land in the boundary areas without following proper procedure.

> PART 6—ROYALTIES AND RENT
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> ***21 Rent for occupancy of Crown Land***
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> *(1) For the purposes of section 160(3) of the Act, the amount of rent payable is the current market value for occupying the land, having regard to the use of the land permitted by the authority, as determined by a valuer nominated by the valuer-general.*
>
> *(2) The holder of the authority is liable for the costs incurred in obtaining the determination.*
>
> *(3) The rent must be reviewed by a valuer nominated by the valuer-general at intervals not exceeding 3 years but not less than one year.*
>
> *(4) Rent must be paid for each period of 6 months ending on 30 June and 31 December in each year and must be paid within 10 days of the commencement of the period for which the rent is payable.*
>
> *(5) In this regulation — valuer-general means the valuer-general referred to in section 3(1) of the Valuation of Land Act 1960.*

8. Do you believe the proposed regulations ensure that social, economic and environmental factors are adequately considered in decision-making for grant of Exploration, Retention and Production Titles?

Definitely not, again refer to response in Qu 7. Balancing test of benefits and impacts goes only be effective when considered on a local basis in the absence of a regional scale of area. Minister's Discretion is definitely a concern that requires a criterion of transparency and accountability for their decision-making power. Additionally, this should also apply to Department Head or Executive Director for any role conferred to them by the Minister or the Act to make decisions on the Minister's behalf.

9. Do you believe that the proposed regulations ensure that social, economic and environmental factors are adequately considered in decision-making for Operation Plan approval/variation and authority surrender?

No, because they only relate to regional prescribe factors and not local considerations so it would be a huge failure.

10. Are the proposed operation plan requirements to manage risks and impacts likely to be effective specifically as they relate to environment management plans, well operation management plans, code of practice of well operations management and rehabilitation plans?

They will have some success but there also needs to be some higher monetary fine than what currently exists, a rehabilitation bond that is real, appropriate risk insurance shared with the community. More importantly, the community need to have access to the workplan at no cost including all management plans.

11. Are the proposed information and reporting requirements likely to be effective specifically as they relate to progress against a work program?

Yes

12. Are the proposed information and reporting requirements likely to be effective specifically as they relate to rehabilitation undertaken and changes in liability?

No, when looking into my crystal ball. There are currently no rehabilitated mines and we have a vast area of Gippsland covered in unrehabilitated wells so no faith in ERR. As well, the bond system is not holding cash only the promise that the nominated amount will be sitting in the bank in 20yrs time. There is no way a bank is going to pay out their money on a promise.

Additionally under PART 8—COMPENSATION of the Petroleum Act 1998 133. Time limit on compensation claims, landowners should be guaranteed complete indemnity for all adverse impacts, both immediate and consequential, upon their business, land, water and assets. Landowners need the assurance that redress is not just available for the life of the resource project which is only production plus 3 years.

13. Are the proposed information and reporting requirements likely to be effective specifically as they relate to results of monitoring undertaken?

No, if it is self-regulating. It would have more integrity if EPA were paid by the authority holder to conduct monitoring.

14. Are the proposed information and reporting requirements likely to be effective specifically as they relate to community engagement undertaken?

Yet to be determined in the absence of Code of Practise. Normally CoPs are full of ‘shoulds’ and ‘musts’ and appear to have no legal binding.

15. Are the proposed information and reporting requirements likely to be effective specifically as they relate to operational activities?

No, 20 penalty units is not strong enough to disincentivise irresponsible behaviour, shortcuts or reporting of incidents. This RIS has stated that there will be no change to penalties but money talks. The RIS and Draft Regulations also needs to consider that currently, no presumptive liability exists.

If, in the event, an incident occurs related to or the result of works, under the current legislation the licensee is only liable when an event is obvious or reported; that is, a reportable incident.
If an incident goes under the radar there is no point of entry, date or incident record that can prove that the licensee is liable and therefore no proof of incident event, assessment, or detailing type of contamination. Additionally, potential for contamination relates to what

are real or perceived impacts. In Victoria the issue has always been that the landowner has to prove that an incident and impact has occurred; however, it should be that the licensee has to prove that they did not cause the incident and to remunerate as instructed. The onus should not be on the landholder to prove that the proponent was deliberately negligent and caused the incident – very costly and high probability of failure. If contamination is obvious, state acts are applicable. If contamination or other incidents cannot be proved, no insurance company will compensate.

Also, there is no ***Industry Fund*** that has been established to cover the costs of the remediation of a triggered event in the event the Holder of an Authority or Licensee or entities engaged by them become insolvent, underinsured or engaged in legal proceedings with their respective insurer due to an insurance claim.

16. Are the proposed information and reporting requirements likely to be effective specifically as they relate to incidents?

No. See response to Qu 15

17. Are the proposed information and reporting requirements likely to be effective specifically as they relate to geological data?

I do have hope that unnecessary exploration and drilling of wells on private land can be greatly reduced if the essential geological data is used effectively via desktop studies first. Goes back to my point of obtaining an exploration licence on a pretend resource.

18. Do you believe that the new regulations will provide a clear and effective administrative framework that facilitates petroleum development activities?

No as it is lacking some crucical and important terms that create loopholes and grey areas that can be exploited by both the Minister and authority holder. See Qu 7 response