



**AGL Energy Limited**  
ABN: 74 115 061 375  
Level 24, 200 George St  
Sydney NSW 2000  
Locked Bag 1837  
St Leonards NSW 2065  
t: 02 9921 2999  
f: 02 9921 2552  
agl.com.au

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**Linda Bibby**  
**Director Policy & Legislation, Resources**  
**Department of Jobs Precincts and Regions**  
**1 Spring St**  
**Melbourne VIC 3000**  
By email: linda.bibby@ecodev.vic.gov.au

Dear Ms Bibby,

**Minerals Regulation – Regulatory Impact Consultation**

AGL Energy Ltd (**AGL**) welcomes the opportunity to make a submission in response to the proposed Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019 (Vic) and supporting Regulatory Impact Statement (**RIS**) released on 25 March 2019.

AGL is one of Australia's largest integrated energy companies and also the owner and operator of the AGL Loy Yang mine and Loy Yang A power station. The mine produces approximately 30 million tonnes per annum to fuel both Loy Yang A and B power stations, together these two power stations currently provide approximately 50% of the State's electricity requirements. AGL remains committed to closing the Loy Yang A power station no later than 2048.

The commitment by the Victorian Government to review the current regulatory obligations and framework, is an opportunity to both simplify and enhance the development of a robust, transparent and well-regulated minerals industry.

AGL implores the Department to fully test their proposed changes to the legislation on a real life example. This would road test the changes which could provide industry with a fully worked and real life example of what is / should be expected.

We have provided responses to the specific questions posed by the Department in the text following this letter. This submission can be made public.

Should you have any questions in relation to this submission, please contact Paul Barrand, Regulatory, Compliance and Business Development Manager on 0427 536 267.

Yours sincerely,

A handwritten signature in black ink that reads 'Nigel B' followed by a long horizontal flourish.

**Nigel Browne**  
General Manager, AGL Loy Yang



Date: 18/04/2019

## **Survey Questions**

### **Licence Applications**

**Are the proposed amendments to information requirements for licence applications likely to be effective? If not, what changes would you suggest and why?**

No comment.

### **Work Plans**

**Are the proposed amendments to work plans and work plan variations effective? In not, what changes would you suggest and why?**

The concept of Risk Based Work Plans seems to be a positive step forward for the industry. However, in practice, the absence of firm prescriptive legislation or the application of a risk management approach has been difficult to interpret by both the regulator and the proponent.

This difficulty has resulted in both untimely approvals and numerous Work Plan Conditions placed on proponents. Neither of which have streamlined approvals nor improved or simplified approval pathways.

The application of Codes of Practice or compliance to a Department approved guideline also remains contentious.

At times:

- Department officers have requested the application of Standards or Codes of Practice which may be appropriate for alternate industries but not necessarily the minerals sector.
- Department has taken an inconsistent approach to Work Plan approval Conditions between operations that contain a similar risk profile.
- Industry has interpreted the use of guidelines as an adjustable form of legislation. This has the potential to result in ill-considered guidance and confusion for both regulators and industry.
  - An example of this is recently issued:
    - Rehabilitation and Closure Guidelines that were subsequently retracted by ERR;
    - and
    - Guidance on reportable events that seemingly extend beyond that set out in Regulation.

AGL supports the certainty and consistency provided by prescriptive regulation.

**Should there be an option for regulated parties to apply the risk management approach, contained within a Code of Practice for risk management issued by the Minister under Part 8A of the Principal Act?**

**Yes or NO**

**Do you have any comments on the proposed Code of Practice (see DJPR's attachment C)?**

See answer above.



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### **Rehabilitation**

**Do the proposed changes to rehabilitation plans and progressive rehabilitation milestones sufficiently clarify the legal obligations to ‘rehabilitate land in accordance with a rehabilitation plan’ and to ‘rehabilitate land in the course of doing work’?**

**No**

**If not, what changes would you suggest and why?**

AGL proposes changes to Reg 43 as follows.

Reg 43(b)(i) articulates the desire to achieve a safe, stable and sustainable landform;

Reg 43(f) requires the declaration of all risks to the environment, any member of the public or land, property or infrastructure with associated monitoring, maintenance and treatment plans.

These two requirements are very broad and do not contain any thresholds of consequence or harm.

#### **Safe, Stable and Sustainable**

Safe, stable and sustainable is defined in reg 3 as follows:

*safe, stable and sustainable means—*

*(a) does not cause, and is not likely to cause, injury or illness;*

*(b) structurally, geotechnical and hydrogeologically sound;*

*(c) non-polluting; and*

*(d) aligns with the principles of sustainable development*

AGL understands use of the words “not likely to cause” in paragraph (a) of the definition of safe, stable and sustainable to be a direct reference to appropriate risk standards. AGL supports this definition and approach. However to also include within the definition the words “does not cause... injury, or illness” imposes an overly onerous obligation on proponents without reference to the materiality of the harm.

Proponents should not be unnecessarily worried by low consequence events and should instead focus on higher consequence events. The current definition seems to run counter to a risk based approach being taken by the Department.

AGL proposes the removal of the words “does not cause” within the definition of safe, stable and sustainable in reg 3 and proposes a more proportionate approach to harm.

#### **Reg 43 (f)**

Reg 43 (f) provides no threshold as to the criticality of the risk being considered – essentially suggesting that all risks (no matter how low) require the same treatment as to those of a very high or catastrophic nature.

AGL would support a proportional or filtered approach to risk management where very high or elevated risks take priority over lower risk events.



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**Do you support the move to a more flexible, proportionate, outcomes-based rehabilitation plan approach (as outlined in the proposed regulations and the preferred option in the RIS)?**

**No**

See above response. AGL does not consider that the changes give effect to the objective to move to a more flexible, proportionate, outcomes-based rehabilitation plan approach.

**Advertising**

**Are the proposed amendments to advertising requirements likely to be effective? If not, what changes would you suggest and why?**

AGL support the proposed changes.

**What alternative forms of advertising could be used to ensure interested parties are informed of proposed licences?**

No comment.

**Reporting requirements**

**Are the proposed amendments to information requirements for annual reports and returns likely to be effective? If not, what changes would you suggest and why?**

Yes

**Is the 28 day time period for lodging returns an appropriate length for submitting the required documentation?**

Yes

**Should the reporting date for annual returns be changed to a date other than 30 June?**

No

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