Consultation on the draft Victorian Petroleum Regulations & code of practice

[Redacted] is a national grassroots organisation made up of over 120,000 supporters and more than 250 local groups who are concerned about the impacts of unconventional gas and coal mining on communities nationally. These groups are located in all parts of Australia and include farmers, Traditional Custodians, conservationists and urban residents.

We thank the Victorian Government for the opportunity to write in submission to the *draft Victorian Petroleum Regulations 2021* and *draft Code of Practice for the construction, operation and decommissioning of petroleum wells in Victoria*, providing input to a critical issue for all Victorians with implications for the energy future of Australia.

Summarised concerns

- An emphasis on encouraging the restart of the onshore gas industry
- Insufficient explicit recognition of Traditional Owners as an impacted group
- Lack of transparency and accountability to the impacted community
- Lack of transparency and accessibility of information to the public
- Too much power resting with the Minister with insufficient opportunities for community objection or oversight
- Insufficient monitoring of leaks and fugitive emissions
- Grievously inadequate penalties for breaches
- No obvious safeguards against companies with a history of breaches
- Insufficient bond amounts and post wellhead retirement management and monitoring
- Vague terminology within the code of practice
- Reporting shortfalls in the code of practice
- Under defined alternative actions in the event of faults or failures of best practice or equipment

Petroleum regulations

The Petroleum Act is inherently flawed in that its objective is to *encourage onshore conventional petroleum resource exploration and development in Victoria*. For an Act of Parliament to encourage an activity as inherently destructive to the environment and climate as petroleum extraction is of great concern as we consider the warnings of the Intergovernmental Panel on Climate Change's dire warnings for accelerated dangerous climate change.

Increasingly, encouraging onshore gas exploration and production in Victoria is recognised as being at odds with healthy environmental outcomes and for this reason amongst others deprives this industry of social licence, however stringent and considered the regulatory framework.

The review of Victoria's Petroleum Regulations should be considered in light of the changing landscape for the gas and oil industry nationally and globally and adopt a more prohibitive approach to the management of a fossil fuel which is on the threshold from asset to liability. The ability to drill for what remains of petroleum resources is not, and should not, be viewed as a right but instead should carry the full burden of responsibility for the impact that it has on the climate, the natural environment and all communities so affected.

The Base Case as defined on page v of the Deloitte report permits the Petroleum Act to operate in an under-regulated manner and fails to consider the range of possible impacts and commensurate safeguards required by the community. Clearly this is not in the best interest of the community, the environment or the government.

The three evaluation criteria defined in the RIS document are therefore in conflict. Investment and exploration for onshore petroleum in Victoria will result in environmental impacts, even with the most stringent regulations and highest level of industry to community communication and cooperation.

We support measures to ensure the maximum level of accountability and transparency in each step of the permit, exploration, production and retirement process by Government and industry. For this reason we urge that all applications for permits, licences and leases be published in accessible format on the Earth Resources website or another relevant government website.

Community consultation must be comprehensive and adequate, with community members informed of their rights and pathways to object including applicable legal mechanisms. Gas drilling has been found to have profound impacts on local communities and we believe that it is appropriate to consult directly with all landholders within a local government area and, where one or more local government area abuts the property under licence within a 5km area, that these adjoining municipalities are included in consultation.

Further, all reports provided to the Minister with relation to consultation, exploration or production activities should be published prominently and accessibly on a government website as they are received by the Minister and without significant delay.

We hold grave concerns about the discretionary Ministerial powers inherent through the various decision-making processes. A higher level of community consultation and engagement should inform a whole-of-department decision, including arms-length decision making and appropriate concurrence provisions, with decisions publicly reported in an accessible format.

Penalties for breaches are manifestly inadequate. A 20 point penalty can be considered a licence to breach. It is therefore recommended that all breaches be minimum level three, or 2400 points to act as an appropriate deterrent for regulatory breaches. References to penalty standards set in other Australian jurisdictions are not appropriate guidance for establishing penalties for offences under The Act or in associated regulations given our experience that penalties in these jurisdictions are too low to meaningfully deter breaches. Instead, potential consequences of breaches must be weighed up against the benefits to the companies for failing to comply with legislative and regulatory requirements. Victoria is the only state in Australia with a ban on fracking and acidisation and the only jurisdiction in the world where that ban is enshrined in the constitution. There is precedent for Victoria to recognise, ahead of other states and territories, the burden on its

environment and community presented by the petroleum industry. Penalties should reflect this recognition.

In line with this logic, there is scope for the regulations to recognise and address an applicant's previous breaches of environmental, petroleum and other relevant legislation and regulations, either through automatic rejection of their application or considerable increases in bond payments to appropriately cover possible shortfalls in compliance during operations or at the point of decommissioning. This is consistent with the approach in New South Wales which has provision for consideration as to whether a person or company is fit and proper to hold mining and petroleum titles. This will discourage companies with a poor track record of managing their environmental obligations from submitting tenders to operate in Victoria.

Measurement of fugitive hydrocarbon gas emissions nationally is not conducted in real time, ongoingly or accurately. Victoria has an opportunity to compel operators to continuously track, report and publish in real time gas leaks occurring at well heads and along the production and transport chain to storage. Inclusion of this in the regulations would establish best practice for an industry which has never accurately and transparently measured or quantified its greenhouse gas emissions. It would further provide a better understanding of the climate impact of this industry both nationally and internationally. Victoria can only confidently reach net zero emissions by 2050 if it appreciates the level of emissions produced by all industries.

On decommissioning, wellheads may become unstable, breach or leak. We advocate independent monitoring and reviews reporting to government and published in accessible format for community access on any loss of integrity of an abandoned and decommissioned wellhead at yearly intervals for five years[1]. Any leakage detected at a site must be subject to a full investigation with remedy undertaken under government supervision at the expense of the licence holder at the time that the wellhead was decommissioned.

Victoria has some of the highest gas use in Australia and most of this is in households. The state was built on the bounty of plentiful historic gas resources and has been slow to change this dependence. The good news is that household gas use is the easiest point of rapid transition to renewable electricity[2]. The combination of volatile gas prices, increased recognition of the health impacts of gas appliances in the home and concerns about the environment are creating pressure on households to retire their gas appliances in favour of renewable electricity, particularly rooftop solar, and on governments to support this switch.

Despite the stated aims of the Victorian Gas Substitution Roadmap and its climate change commitments, Victoria continues to maintain the expectation of relying indefinitely on a finite fossil fuel resource. 2021 is a pivotal year of analysis for Victoria's energy future. The review of the Petroleum Regulations provides a critical opportunity to ensure that Victoria's energy supply meets its increasing demand for cleaner energy sources with a zero emissions footprint.

We believe that an appropriate emphasis on the Regulations is to create the best possible safeguard from damage to the industry rather than facilitating gas exploration and production in Victoria, and to ensure that penalties for falling short of absolute best practice are onerous to the extent that they serve as the most powerful deterrent from failing the community and environment.

[1] https://www.reuters.com/article/us-usa-drilling-abandoned-specialreport-idUSKBN23N1NL

[2] http://environmentvictoria.org.au/wp-content/uploads/2020/06/Vic-Gas-Market-Demand-Side-Study-FinalReport-1.pdf

Recommended amendments

PART 2—EXPLORATION PERMITS

6 Assessment of risks etc

An application under section 20 of the Act must contain the following information in relation to the proposed work program submitted with the application over the life of the permit *and for the five years following the permit's retirement* —

PART 3—RETENTION LEASES

8 Assessment of risks etc.

Insert:

(2) (e) Independent expert verification of the extent to which the amount secured by a rehabilitation bond described in paragraph (c) is adequate to cover any costs of rehabilitation work necessary as a result of the relevant petroleum operation.

PART 4—PRODUCTION LICENCES

10 Assessment of risks etc.

Insert:

(2) (e) Independent expert verification of the extent to which the amount secured by a rehabilitation bond described in paragraph (c) is adequate to cover any costs of rehabilitation work necessary as a result of the relevant petroleum operation.

PART 5—PROVISIONS APPLYING TO AUTHORITIES GENERALLY

19 Prescribed information for certain notices

Insert:

The internet address at which a copy of the application can be inspected by members of the public

PART 7—CONDUCT OF OPERATIONS ETC.

22 Content of operation plan

(1)(a) Insert new point (v): Onsite fugitive hydrocarbon gas emissions monitoring and reporting

(c) must include, in relation to any facility proposed to be used in connection with the petroleum operation—

Insert new point (v): details of fugitive hydrocarbon gas emissions monitoring activities and reporting

23 Notice of operation plan

Insert:

(k) A summary of the nature of community concerns raised during consultation prior to and during the life of the petroleum operation and the extent to which these concerns have been realised

24 Prescribed factors for accepting or varying an operation plan

(2) For the purposes of section 163(3) of the Act, the Minister must take into account the following factors in considering an application to vary an operation plan—

Insert: (e) whether the Minister is satisfied that Traditional Owners and the local community have been adequately consulted and their concerns managed for the lifetime and post rehabilitation period of the petroleum operation

28 Consent to conduct production tests or well tests

(1) The holder of an authority must not conduct a production test or well test in a well except with, and in accordance with, the written consent of the Minister.

Penalty: 20 penalty units.

Increase to 2400 penalty units. The risks associated with proceeding with a test of a highly volatile substance impacting air quality, climate, substrata and aquifers prior to the Minister having an opportunity to consider the satisfactory compliance of the authority holder of the safety of operations are unacceptable.

29 Consent to suspend or decommission a well

Penalty: 20 penalty units.

Increase penalty units to 2400. Unauthorised well, production testing, suspension or decommissioning must act as a significant deterrent to companies to avoid becoming simply the cost of doing business badly.

Moving the two above mentioned failures of compliance to a level 3 offence should be the absolute minimum in recognising the seriousness of this type of breach. Further, the authority holder should face the risk of having their permit revoked immediately and their bond retained.

33 Implementation strategy for the environment management plan

Must include provisions for continuous monitoring and real time public reporting of fugitive hydrocarbon gas emissions at the well head as part of the environmental monitoring

(k) (iv) identifies the groundwater monitoring methodology, including the frequency of the monitoring and the parameters to be monitored prior to and during, *at the conclusion of and annually for a period of 5 years after* the petroleum operation;

35 Information on consultation with the community

In making reference to the community, Traditional Owners must be explicitly specified at every point of reference. For example:

(a) identify the community *including Traditional Owner groups* likely to be affected by the petroleum operation;

40 Report by holder of production licence

(2) The report must include—

(a) details of the amount of hydrocarbons, water and other substances produced from, or injected into, *or detected to have leaked from* each well in the licence area during the 6 month period to which the report relates;

45 Incident reporting

Increase all breaches to 1200 penalty units

Code of Practice

We agree that the code of practice must be made publicly available and question the decision to have this only be in person at the Department during office hours - particularly while Victoria is in lockdown. This unfairly penalises interested parties unable to present in person at the Department, including rural Victorians who are most likely to have a relevant interest in accessing the code. We encourage the code to be published on the Departmental website in an accessible format.

The weight of compliance between the operation plan and the code of practice should fall to the document with the most stringent requirements of operational workplace, environmental and community safety. Ideally, the code of practice would establish absolute best practice in operations and should therefore prevail in establishing the guiding principles, means of compliance and practices of operation rather than the operational plan.

We have concerns about the lack of independent oversight required by this code of practice, the shortfalls in specifying courses of action where the required steps are unsafe or not possible in the circumstances and the frequent use of the word “appropriate” in place of required minimum standards or other more specific measures that define what is appropriate. The subtext of this document speaks to the inherent dangers of petroleum extraction to the environment, water table and the workforce on location, as well as the larger community. There can be no room for error, interpretation or vagueness in what constitutes best practice as defined by this code.

All records mentioned within this document are not allocated a destination for retention. It is advised that these records be maintained by the operator and submitted to the Minister or relevant section of the Department within an expedient timeframe and be made publicly available on request.

In referring to the means of compliance (4.1.2) it is appropriate to ensure the requirement for independent verification at every step of operation and create no exceptions to this. This also holds for 4.1.3 good industry practice. Explicit reference to independent verification by suitably qualified and experienced personnel creates a safeguard against cutting corners or overlooking critical errors. Downhole safety valves should be mandatory, rather than simply “considered” for all production, storage and injection infrastructure and borehole stability analysis for wells of greater than 40 degrees should also be required.

We would welcome greater specificity in describing the safety factors appropriate for the well life and function and for the environment. Reference to an applicable standard or global best practice would provide sensible guidance rather than leaving this open to interpretation by the operator. Pressure testing can similarly be better defined with an upper and lower threshold of required pressure either by measurement or percentage comparative to the maximum anticipated formation pressure to avoid any uncertainty in the crucial stage of testing the casing.

Where hydrogen sulphide is detected, the Minister must be informed immediately and supplied with the planned management procedure and on each step of progress through the procedure. In

the event that a well is required to be shut-in the Minister should immediately be informed that this decision has been taken, the circumstances leading to this decision and the procedure to be followed on taking this decision including time frames. This section provides no guidance about alternative remedial actions for an operator to undertake where wind strength and direction are not favourable to flaring off hydrogen sulphide, which is a concern, nor what steps to take instead of testing when this is deemed unsafe and impractical. Further, the community within a radius of 10km of the leak must be notified directly.

In the event of equipment or infrastructure failure, including that of primary cementing of wells, the Minister and surrounding community within access of the aquifer and/or within a radius of 10km of the wellhead must be notified directly.

[Redacted] commends the Victorian Government for establishing a ban on hydraulic fracturing and acid well stimulation and enshrining that ban in the State Constitution. We look forward to seeing appropriate amendments to the draft Regulations and Code of Practice to reflect Victoria's commitment to net zero emissions and prioritising the wellbeing of the Victorian community and environment over the demands of gas industry operators.