South Australian Chamber Of Mines & Energy

18 November 2022

Mr Michael Malavazos
Director, Engineering Operations
Energy Resources Division
Department for Energy and Mining

*Via email*: DEM.Engineering@sa.gov.au

Dear Mr Malavazos

The South Australian Chamber of Mines and Energy (SACOME) is the leading industry association representing the resource and energy sector in South Australia. In 2020/21, the total royalties payable to the Government from the sector were $323 million and are projected to grow to $380 million in 2021/22.

SACOME welcomes the opportunity to comment on the Government's draft Petroleum and Geothermal Energy (Energy Resources) Amendment Bill 2022 (the Bill), noting the Bill is substantially the same as the one introduced by the former Government. SACOME is grateful to the Department for the offer of future engagement.

To inform its submission, SACOME consulted with impacted member companies, including meeting with the Department to seek further clarity on extant issues on 7 November 2022.

As has been consistently stated throughout the consultation process, SACOME welcomes the regular review of the *Petroleum and Geothermal Act* (the Act) and is of the view that the Bill makes sound efficiency and administrative improvements. SACOME's submission in response to the Issues Paper for the previous iteration of the Bill is appended as Attachment A.

SACOME reiterates, however, its concerns with the concept of a royalty on carbon sequestration, under the guise of "regulated resources" in cl 26 of the Bill.

Commercial Carbon Capture and Storage (CCS) is crucial to large scale emissions reduction. The International Energy Agency's (IEA) Sustainable Development Scenario requires a hundredfold increase in CCS between now and 2050 to achieve the world's

climate goals – from 40 million tonnes of $CO_2$ stored each year in 2021 to 5.6 billion tonnes in 30 years.

The imposition of this royalty strongly disincentivises investment in the nascent CCS industry, which represents a long-term abatement strategy, and runs counter to national climate change policies and decarbonisation efforts. Coupled with proposed reforms to the Commonwealth's Safeguard Mechanism – which have been expressed to the Department – hard to abate sectors will be especially penalised.

Indeed, the current Malinauskas Government, when in Opposition, made similar submissions regarding the deleterious impact of a levy on electric vehicles, a growing industry in Australia key to decarbonisation efforts; a policy they promptly branded a tax.

SACOME observes that royalties are traditionally paid for the extraction of a non-renewable resource; not the storage of a resource. South Australia would be an outlier in pursuing this "royalty" for which there was little justification provided, save for flippant asides that the storage sites were owned by "the people of South Australia". It appears to be nothing more than an opportunistic decision by Treasury and Finance. This does nothing to salve industry's legitimate concerns or the inherent policy inconsistency.

Notwithstanding the above, SACOME proffers the following comments on consultation and the royalty scheme as it is currently drafted or intended to operate.

**Consultation**

The majority of the amendments in the Bill were the subject of an Issues Paper circulated by the Department in 2021. However, the only form of consultation that has occurred in relation to a royalty has been the circulation of the Bill for comment and subsequent verbal discussions.

The imposition of this royalty – or, arguably, *carbon sequestration tax* – has been presented to industry as a fait accompli and without any rational justification. The final scope of the tax is to be settled in Regulations, a draft of which the Department will not provide.

Moreover, reflective of the amendments to the *Mining Act*, industry is justifiably concerned that the Regulations will follow years after the passage of the legislation, compounding the uncertainty for the sector. Given the inclusion of the tax at such short notice, SACOME strongly recommends its removal from the Bill, or at least until such time as the Regulations are formalised.

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**Drafting**

Clause 26 currently excludes carbon dioxide produced from a natural reservoir in the State that has both been processed in the State and stored in a natural reservoir located wholly within the State; or as exempted by the Regulations.

- SACOME understands following its meeting with the Department on 7 November the Government intends to exempt by Regulation third party users of CCS for carbon dioxide produced in the State. SACOME welcomes this change, affecting as it does hard to abate sectors, but strongly recommends this be enumerated in the Bill as cl 26(3)(c)(iii) to provide industry with certainty.

- SACOME also understands that following this same meeting further exemptions would be considered for emerging technologies for carbon sequestration still in the trial phase, as these initiatives are often initially uneconomic. Defining the parameters of this exemption would be complex, and lends weight to the need to release and consult on draft Regulations to provide certainty and not send investment to more welcoming jurisdictions.

- Santos' Moomba gas plant operates as the processing facility for the Cooper Eromanga Basin, which straddles southwest Queensland and therefore will attract a tax for the processing of hydrocarbons from outside of the State. The decision to stand up the CCS project at Moomba was based on the regulatory settings of November 2021, in which no tax was payable. Accordingly, SACOME strongly recommends that an exemption for the Moomba CCS facility should be incorporated into the Bill, regardless of where the hydrocarbons being processed are produced.

- The Bill and the resultant Regulations should also be flexible enough to ensure that other future CCS facilities can be exempted from the tax in similar circumstances to the Moomba CCS facility. For example, if there were to be a processing plant or CCS facility in the State's southeast that dealt with nearby cross-border gas from Victoria.

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SACOME concludes by noting the trend for significant CCS incentives, most notably in the United States. South Australia has the potential to be a leader in technology that the world will need. The Government has a clear choice: to allow innovation in a growth sector, or to tax.

Yours sincerely

**Rebecca Knol**
Chief Executive Officer

CC: The Hon Tom Koutsantonis MP; Mr Stephen Patterson MP

ATTACHMENT A

# Petroleum & Geothermal Energy Act Review Issues Paper

Submission to Department of Energy & Mining – Energy Resources Division

March, 2021

**South Australian Chamber of Mines & Energy**
*The leading industry body representing the resources sector in South Australia*

ATTACHMENT A

SACOME

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ATTACHMENT A

# 1. Introduction

The South Australian Chamber of Mines and Energy (SACOME) is the peak industry body representing companies with interest in the South Australian minerals, energy, extractive, oil and gas sectors and associated service providers.

SACOME welcomes the opportunity to provide comment on the Petroleum & Geothermal Energy Act (PGE Act) Review Issues Paper.

This comment is provided further to consultation sessions between the SACOME PGE Act Review Working Group (Working Group) and the Department for Energy & Mining Energy Resources Division (DEM-ERD) where proposed changes set out in the Issues Paper were directly discussed.

Recognising that these consultation sessions have resolved a significant number of the queries raised by SACOME, feedback in this submission is provided by exception and in a manner that mirrors the format of the Issues Paper.

# 2. Feedback on proposed changes in Issues Paper

## Section 1 – PGE Act Objects & Fundamentals

### 1.4 Introduction of Ministerial Determinations

SACOME acknowledges that DEM-ERD will undertake consultation with stakeholders regarding introduction of the proposed Ministerial Determinations.

Recognising that the use of Ministerial Determinations offers regulatory flexibility to DEM, SACOME believes that this needs to be appropriately counterbalanced by ensuring that they are consistent with head powers granted by relevant sections of the Act/Regulations.

SACOME recognises that consultation on the Ministerial Determinations will afford further opportunity for review and will engage with DEM-ERD accordingly.

### 1.7 Development encroachment on gas pipelines

SACOME acknowledges that amendments to the *Planning, Development and Infrastructure (General) Regulations 2017* were made in March 2021 to address the issue of development encroachment on gas pipelines, with this outcome being welcomed.

SACOME reiterates that pipelines must be given primacy where questions of development encroachment are raised; and that land use changes that are incompatible with the continued operation of pipelines should not be given approval.

## Section 2 – Definitions & Interpretations

### 2.1 Amend definition of environment

SACOME acknowledges that DEM's intent is to better align the definition of 'environment' under the PGE Act with the Mining and Environment Protection Acts.

SACOME recognises that further to initial consultation, DEM will not include the definition of 'likely foreseeable land use' as proposed in the Issues Paper, recognising that it was intended to address potential contamination issues which are already addressed under section 111 of the PGE Act and through EPA site contamination Regulations.

Regarding the definition of 'health, safety and well-being of all persons …' SACOME again flags concerns that this proposed change may result in duplication of Work Health and Safety Regulations (WHS Regulations) if it is expanded to persons working at operator facilities or undertaking work that supports operational activities.

SACOME seeks clarification as to whether this proposed change will overlap with the Work Health & Safety Act (WHS Act); and whether it is intended to apply to operator workforces in addition to the WHS Act.

### 2.9 Definition of Facility

SACOME understand this amendment may increase the scope of what needs to be covered by the 5-yearly Fitness for Purpose (FFP) assessments. This may also present an issue for non-permanent equipment such as drill rigs – when will they require a FFP assessment. Our member companies seek clarification on what the implications of this proposal are to activities such as drilling and workover rigs.

## Section 3 – Licencing

### 3.3 Introduce Ministerial power to require access to facilities

SACOME recognises that the purpose of this proposed change is to provide the Minister with power to mitigate any anticompetitive behaviour that could result in stranded gas due to third parties being unable to access available pipeline capacity.

SACOME also notes that the Minster has similar powers under s49 of the PGE Act that have never been used; and that there has been no circumstance in South Australia where licensees of facilities or pipelines have restricted access by third parties.

Consistent with feedback provided through the Working Group, SACOME submits that existing market mechanisms operate effectively to facilitate third party access and the proposed legislative change is unnecessary under the circumstances.

### 3.5 Transfer of liability to third party upon licence relinquishment

This measure is supported, however, SACOME reiterates advice provided by the Working Group that difficulties can arise with transfers of infrastructure from operator to landowner due to Pastoral Board approvals being a prerequisite for non-pastoral land use.

Alignment of this proposal with the current draft Pastoral Bill review process; or further alignment between DEM and PIRSA to streamline administration would be of use.

## Section 4 – Consultation & Engagement

### 4.1.2 Consultation Plans

SACOME supports consultation plans for new Statements of Environmental Objectives (SEO), however, the requirement for preparation and approval of a Consultation Plan for SEO reviews is not supported.

SACOME does not support a mandatory 30-day consultation period on minor amendments (arising through the standard five-yearly SEO revision process), as this is seen as overly prescriptive by industry and likely to add time to the assessment/approval process.

SACOME acknowledges DEM's statements during consultation that it intends only to mandate the 30-day process for SEOs where it considers significant/non-minor changes have been made. Although clarity on what would be considered a significant change is sought.

SACOME supports the alternate approach suggested by DEM during consultation, namely that it formalise landowner/stakeholder consultation requirements through regulations; and for the extent and form of any consultation to be guided by a DEM-developed policy guideline without the need for a formal Consultation Plan to be prepared and approved.

Similarly, recommendations for early engagement with DEM on consultation are supported.

## Section 5 – Statements of Environmental Objectives (SEO)

### 5.1 Requirements for Assessment Criteria

Member companies have advised that the inclusion of clear assessment criteria as proposed by DEM is supported, however, there is a need to ensure that an outcomes-focused approach is maintained rather than a prescriptive one.

### 5.2 Reporting obligations imposed by SEOs

Members have commented that this proposed change will likely result in an increased reporting load for operators.

SACOME is advised that other jurisdictions do not require the submission of the highly detailed Annual Reports that are currently required of proponents under section 106(f) and that further consideration should be given to streamlining of reporting requirements.

## Section 6 – Performance Indicators & Notifiable Incidents

### 6.1 Requirement for leading performance indicators

SACOME recognises that the introduction of leading performance indicators formalises the requirement for licensees to demonstrate the health of their systems at quarterly compliance meetings; and that the measures captured by this proposed change are Tier 4 indicators.

Operators do not oppose this measure per se but have expressed the view that this proposed change should replace, rather than be in addition to, existing requirements.

SACOME submits that implementing these measures via guidance documentation may be a less prescriptive approach.

### 6.2 Replace 'serious incident' with 'immediately notifiable incident'

DEM proposes to replace the term 'serious incident' with 'immediately notifiable incident' in the SEO document. This will also require the term 'immediately notifiable incident' to be defined within the SEO document.

SACOME submits that appropriate consideration should be given to the implications of this proposed change to ensure that it is aligned with performance criteria in the SEO (as is presently the case).

While the intent of this change is understood, SACOME is advised that the addition of further triggers for 'immediate notification' may impact on internal governance and assurance processes and encourages further consideration by DEM.

SACOME also submits that the amended definitions should be consistent with the WHS Act.

SACOME acknowledges that DEM will discuss the compliance implications of this proposed change directly with operators but believes there should be no lowering of the threshold of the kind of incidents that are 'immediately notifiable'.

## Section 8 – Enforcement & Penalties

### 8.4.2 Preserved rights under the *Cooper Basin (Ratification) Act 1975*

Consistent with feedback from the Working Group, operators wish to see continued preservation of rights under the *Cooper Basin (Ratification) Act*.

The removal of statutory rights through the exercise of an administrative discretion would constitute a significant erosion of the certainty that is afforded by a ratified state agreement and gives rise to sovereign risk.

### 8.7 Authorised investigation or export report costs to be borne by licensee

Part 14 of the PGE Act allows for authorised investigations to demonstrate licensee compliance. An authorised investigator may be engaged to provide additional information and/or an export report to DEM and/or the Minister in accordance with section 86.

The proposed change would provide the Minister with power to request that a licensee provides an expert report demonstrating compliance.

In addition, the Minister would be provided with powers to engage an independent third-party expert to undertake reporting and require the licensee to reimburse the government for the full amount of reasonable costs incurred.

SACOME seeks further clarification on how this process would work in practice, with further detail sought on: when this requirement will be triggered; when an export report will be required; whether mechanisms for an operators to have a right of reply to rectify inadequate reporting are contemplated; and whether mechanisms for cost sharing between government and industry will be implemented.

### 8.9 Sharing of information and records between co-regulatory government bodies

Confidentiality, including 'Commercial in Confidence' and privacy considerations are of paramount concern with this proposal. In addition, it would be useful to understand the mechanisms that would be put into place to ensure that regulatory jurisdictions are clearly defined; and supporting procedures are in place to ensure that sensitive information is handled appropriately.

## Section 9 – Reporting & Data

As a general comment, SACOME submits that reporting and compliance obligations should consider and respond to good practice by operators. Rather than implement a structure that establishes a high surveillance model designed to regulate for the 'lowest common denominator', SACOME supports a flexible approach that encourages good operational practice and provides incentive for operators to move to a less onerous reporting and compliance model.

**9.2 Fitness for purpose provisions**

SACOME submits that this proposed change extends beyond the scope of current fitness for purpose requirements; and is likely to duplicate those requirements.

Operators seek assurances that this proposed change will not duplicate requirements; and that there is no overlap between regulation under the Workplace Health & Safety Act and the PGE Act.

**9.3 Information provided in Annual Reports**

As communicated during consultation sessions with DEM, the proposed amendments to PGE Regulation 13 are likely to result increased reporting obligations for industry, noting advice from operators that annual reporting requirements in South Australia are significantly greater than other jurisdictions.

The requirement to detail "any reasonably foreseeable threats to the environment that have arisen during the licence year or appear to be arising" lacks detail and it is unclear as to what such a requirement is seeking to achieve.

The requirement to report on 'any concerns raised on regulated activities' is also considered vague and undefined. Most operators communicate closely and regularly with a very broad range of stakeholders in respect of the extensive activities and operations they conduct.

'Concerns' may be raised by a landholder and these are addressed successfully as a matter of course. There are established avenues for stakeholders to raise issues directly with DEM, the proposed requirement is vague, indiscriminate and may also be subject to privacy considerations.

**9.3.6 Threats to environment and stakeholder concerns**

SACOME notes that DEM proposes to introduce a requirement under PGE Regulation 33(3) that an annual report provide details of:

- any reasonably foreseeable threats to the environment that have arisen during the licence year or appear to be arising, including details of any corrective action that has, or will be, taken to address these threats; and

- any concerns relating to the conduct of regulated activities that have been raised with the licensee by members of the public and/or other stakeholders during the licence year, including details of any corrective action that has, or will be, taken to address these concerns.

While the intent of this proposed change is acknowledged, operators advise that the requirement to detail '*any reasonably foreseeable threats to the environment …*' is not sufficiently clear. Clarification on the outcomes sought by DEM in relation to this proposed change would be of assistance to operators.

Similarly, the requirement to report on *'any concerns raised on regulated activities'* is also seen as vague and undefined, particularly in the case of operators who communicate closely with a broad range of stakeholders about an extensive range of activities.

Further clarification on the outcomes sought by DEM in relation to this proposed change would be of assistance given the significant additional reporting requirements that may result.

## Section 10 – Minor Amendments

### 10.19 Introduction of the requirement to submit relinquishment reports

SACOME seeks further detail regarding the intent of this proposed change, recognising that this new reporting requirement will be onerous to meet. The information being requested will in some cases be a duplication of information already provided through other reports (e.g. annual reports). The proposed timeframe for lodgement may also be ambitious.

# 3. Conclusion

SACOME welcomes the opportunity to provide feedback to DEM-ERD's Issues Paper and notes that DEM will provide a draft Bill for stakeholder consideration as the next step in the PGE Act Review process.

SACOME remains committed to working collaboratively with DEM in progressing the PGE Act Review process and thanks DEM-ERD staff for their ongoing engagement with SACOME and its member companies.