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**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

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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 Minister 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.