



Environmental Defenders Office

24 March 2021

Adelaide office: Level 1, 182 Victoria Square
Adelaide SA 5000

Department of Energy and Mining

Via email DEM.Engineering@sa.gov.au

Re: *Petroleum and Geothermal Energy Act 2000*- Issues Paper on Proposed Amendments

The Environmental Defenders Office (EDO) is the largest environmental legal centre in the Australia Pacific, dedicated to protecting our climate, communities and shared environment by providing access to justice, running ground breaking litigation and leading law reform advocacy. The EDO appreciates the opportunity to contribute to this review of the *Petroleum and Geothermal Energy Act 2000* (the Act) and to comment on the Bill due for tabling in July. However we understand the proposed amendments do not represent a review of the entire regulatory system and therefore look forward to participating in a fuller review at a later stage.

We address below particular matters raised in the Issues Paper.

1. PGE Act objects and fundamentals

Preamble

The EDO recommends including language such as “Management of South Australia’s petroleum, geothermal, gas storage and transmission and other regulated resources shall be carried out in a safe and sustainable manner so as to provide the highest level of protection for the environment and the community.”

Review of Objects

The EDO supports the inclusion of the three proposed objects. Whilst the Act¹ directs that the Minister must have regard to and seek to further the objects of the *Landscape South Australia Act 2019* amongst others this does not give sufficient importance to the principles of ESD which should be included in an upfront objects clause. The objects currently in s95 could be

¹ S6A,S95

T +61 8 8359 2222 **W** edo.org.au

E melissa.ballantyne@edo.org.au

GPO Box 170, Adelaide SA 5001

ABN: 72002 880 864

included in the main objects in a revised Division 2 with s3 Objects and Principles and 3A General statutory duties. We strongly recommend wording for additional objects and principles including ESD, climate change and cumulative impacts together with more detailed duties. These could be derived from the relevant sections in a number of Acts including the *Environment Protection and Biodiversity and Conservation Act 1999* (Cth), *Landscape SA Act 2019* (SA) and the *Planning, Development and Infrastructure Act 2016*(SA).

Use of determinations

This is supported but there needs to be particular care taken in their drafting. They must be thorough and tailored to each specific circumstance. They must clearly set out all the matters which are critical to the proposal and ensure that proponents provide all relevant information to key stakeholders and potentially affected communities. We recommend that templates or the like be developed which set out key matters which should be included in every determination.

2. Definitions and Interpretations

The EDO supports the proposed amendment to the definition of environment. The definition could be based on the EPBC Act and include ecosystems (whether marine or terrestrial) and their constituent parts, including people and communities, the ecosystems existing within a bioregion or sub-bioregion; natural and physical resources, the qualities and characteristics of locations, places and areas, heritage values of places and the social, economic and cultural aspects of those matters referred to above.²We also support the inclusion of a due diligence definition and clarifying the definition of risk. NOPSEMA guidelines might be used.

3. Consultation and engagement

Many EDO clients approach our office concerned about poor consultation by proponents. One of the objectives of the Act is to “establish appropriate consultative processes involving people directly affected by regulated activities and the public generally”³. Giving affected members of the public meaningful information recognises that operations can often have a high level of impact on a community’s wellbeing. The type of projects assessed under the Act potentially pose grave risks to the environment and therefore it is in the public interest that there is full scrutiny of such proposals. However, concerns expressed include:

- a. Information on the impacts of projects are often not clear, understated, incomplete and inaccurate.
- b. Key stakeholders are not always fully identified and therefore not consulted
- c. Insufficient time is given to stakeholders to comment on complex proposals

² definition of environment adapted from the definition in s 528 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

³ S3(e)

- d. Insufficient time is allocated for meetings to fully discuss issues of concern
- e. Key operational people who have experience in relation to environmental impacts are not present at meetings and public forums.

The EDO also supports replacing the low/medium/high classification process with another system but recommends that the consultation period be “at least 30 business days” to allow for a longer period in the case of highly significant and complex projects.

The proposed use of a consultation plan is cautiously supported if used in conjunction with a Code of Conduct which provides guidance on best practice processes and minimum standards. The Code could cover a number of matters including notification, provision of information, timing, feedback and review. A key process is identifying key stakeholders. The Code could include processes such as :

- a. Consulting with stakeholders whose rights may be directly and adversely affected by the nature and extent of a proposed activity together with organisations such as environmental not for profit groups whose interests are more broadly based.
- b. Convene multi stakeholder advisory committees for individual projects which assists consultation on particular projects.
- c. Community Information Packages which provide in depth descriptions and interpretation of assessment documentation for proposals.
- d. Communicate with the public in a transparent way throughout the process. We recommend that DEM take a lead role here by developing a subscription service so that interested parties can receive details of when an application is lodged then have the ability to track progress via the DEM website (similar to the new Portal for planning issues).

In addition to the right to comment on proposals from a very early stage it is also critical that the community has rights to ensure decisions can be scrutinized where appropriate through the legal system. Appeal rights enable the costs and benefits of proposed operations to be reviewed in a transparent manner. With such appeals the rule that each party bears their own costs should apply. Such rights do not currently exist in the Act. The EDO strongly recommends the inclusion of such rights.

4. Statements of Environmental Objectives

The EDO supports the proposals in 5.1 particularly greater use of quantitative measures. The proposal for reporting at 5.2 is not supported and in the interests of transparency the current interpretation should remain. For the same reasons we do not support the proposal in 5.3/

5. Enforcement and Penalties

The EDO supports the proposed changes in this area. Additionally the EDO notes that the current regime does not provide for third party enforcement rights. Where the regulator is not in a position to take enforcement action third parties should be able to do so.

6. Performance indicators and notifiable incidents

The EDO supports the proposed changes.

7. Reporting and data

The EDO supports the proposals in this section as they help to improve transparency.

Should you have any questions on the above, please do not hesitate to contact Melissa Ballantyne via email melissa.ballantyne@edo.org.au

Yours sincerely

Environmental Defenders Office

A handwritten signature in cursive script that reads "mBallantyne". The signature is written in black ink on a light-colored background.

Melissa Ballantyne

Managing Lawyer (South Australia)