

EARTH RESOURCES REGULATION

DRAFT STAKEHOLDER ENGAGEMENT STRATEGY 2016-2018

COMMENTS FORM

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Your comments

1. Our approach to stakeholder engagement pg5

Do you think our approach will facilitate your engagement expectations adequately?

Community engagement is only engaging once a licence has been approved so the limitations of the objection process is to increase the risk posed to the landholder and the community rather than eliminate a range of risks that your engagement strategy is trying to achieve. This is your first hurdle to convince me that anything you do in the future is truly transparent and in the best interest of the Victorian economy.

- I challenge economic responsibility because you do not look at all the risks being 'financial' as noted by the comment on page 4

"We are focused on safeguarding the health and wellbeing of local communities and ensuring that resource developments do not pose environmental and public health risks."

To conform to this statement the legislation must reflect that risk be eliminated.

Regulations reflect that engineering controls be in place to eliminate risk and monitoring is supposed to confirm this outcome which we know government have been caught out on with mining warden reports and auditors generals report.

Given the financial risks have been conveniently ignored, this conflicts with your comment on PG 5

*“Our approach is to look at **all the risks of a project and balance the needs of the environment, community and the Victorian economy.** “*

How can mining be effectively removed from one part of the legislative framework of the Planning & Environment Act 1987 and be declared superior to all other acts when Ministers Discretion via government policy overrules any adverse risk and the outdated EES process facilitates a project to minimise the risks that the project will cause.

ERR’s action plan noting Risk Strategies is your weakest category and of most concern to the community.

‘ERR will develop a risk management framework for the full range of its activities, from licensing and approvals to operations. This overall risk framework will allow a shared understanding of risks and enable a consistent approach to managing, in partnership with industry, the risks arising from earth resources activities.

What are these risk based strategies?

The State Minister for Water and Environment is subservient to the State Energy Minister who, in turn, acquiesces to the Mining Industry.

This also means that co-regulatory bodies are at your whim and can only be reactive to an impact because their strategic planning roles mean they are to contribute to the development and implementation of Government policy with regard to mineral exploration and extraction.

Yet, the following comment -

*‘We do this by providing **robust regulation** and engaging with all of the sector’s stakeholders. This is known as a risk-based approach.’*

Lending institutions and insurance companies are not deemed stakeholders yet their interest in a landholders land value is their prime interest and puts the landholder at financial risk. They need to be included for the landholder has specific contractual agreements that conflict with any mining development on their land.

- **define robust regulation** as industry’s own self-regulation is a risk to the community for self-reporting on their own pro forma cannot be enforceable.

How is DEDJTR -

- encouraging compliance
- monitoring compliance
- responding to non-compliance

This is a regulator under the influence of industry

- **Is the current legislation fit for purpose** when it has been drafted for conventional mining industries and not unconventional because the risk for one is centrally located within a defined boundary tenement in contrast to unconventional with a continued expansion across community creating a broad spectrum of risks?

- **Then there are the varying contractual agreements** that a landowner has to abide by that are impacted by a resource licence over their land or that of the neighbour.

What risk based strategy will you employ to ascertain if an exploration licence can progress to a retention licence when the length of time that this licence can be held is at the detriment to a landholder's business and ability to be able to service their contractual commitments?

The reality check is that banks are now creating risk profiles for areas and prepared to call in a debt

MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 - SECT 2

- i) *risks posed to the environment, to members of the public, or to land, property or infrastructure by work being done under a [licence](#) or [extractive industry work authority](#) are identified and are eliminated or minimised as far as reasonably practicable;*

We have no legal means to protect both the known and unknown risk from being reality rather it is at the discretion of the Minister or dept head.

- Consideration of retention licences here
- Devaluation of land
- Banks perceived new risk profiles on devaluation of land the moment a licence is granted even before any development proceeds

We don't know when mining will happen, how much land they will take, how long they will be there for but will you give me a loan? Try taking that to the bank manager.

'Ensure you know your rights' AND 'Engaging with them during the process in a transparent, timely and meaningful way.' – **discuss in qu 2**

This document means nothing unless we can see reform of the acts, as an example

- Continuity of both acts
- Mining loses its exemption rights.
- Presumptive liability
- Buffer zones
- Inclusion of unconventional mining
- Fracture stimulation

2. Our principles and commitments - pg6

Do you think our principles and commitments meet your expectations as a stakeholder?

'I can expect to be engaged in a timely and meaningful way on earth resources projects or issues.'

'Timely' means in the application stage.

'can expect my rights in relation to an earth resources project or issue to be made clear.'

- **All disclosures need to be up front in the application stage** and would be paramount to prove transparency. Failure to do so will be the ultimate failure in engaging with the community.
- Shareholder risks need to be declared including operating risks so these risks need to be available to land holder and community
- This way any legal risks could be made open and addressed by other stakeholders to protect the landowner.
- Refusal to grant land access and what the process is
- How to protect their interests in land access and compensation agreements

'I can expect that decision-making processes and assessment criteria are publically available.'

An assessment criteria is the important issue here. No point in being able to access how a decision was made after a licence was granted because there is nothing that can be done to undo a poor decision or can a licence be rescinded.

Economic modelling is done on a flawed process. The **economic modelling** for a project's assessment of jobs and value adding to the local economy is a process of making politically fraught decisions about a project's future based on a government's department's ability to correctly assess and apply a monetary value on the environment vs net community benefit vs short term capital gain in increasingly and unreliable market conditions.

3. Our engagement responsibility pg7

Do you think our shared responsibility will support your engagement adequately?

'We complement their activities by producing earth resources regulation related information, including guidance material for both industry and community.'

- **Define guidance material**

The Code of Practice is not provided but would be a huge resource for the landholder to know what to expect and to understand rehabilitation signoffs and that any subsequent owner could be responsible for the maintenance.

The Crown should become party to the land access agreement and take on responsibility for all left over infrastructure

'We also work closely with local councils and the community to establish dialogue to help resolve community concerns around licensed earth resources industry activities.'

They have no idea what to expect especially for onshore gas projects that is why they don't want it.

The following is at the top of their list

- Inadequate regulation
- costs involved with local infrastructure impacts
- Impacts on community renewal from the boom/bust cycle
- the potential for impacts on subdivision expansion

4. Our engagement methodology pg8

Does our methodology reflect what you think are necessary elements for supporting engagement adequately

Disclosures - 'Establish stakeholders affected by, or interested in, an earth resources project or issue'

- Full risks as declared to shareholders should be upfront and compensation paid in acknowledgement of those risks.
- Lending institutions and insurance companies should be involved in the negotiations of any compensation agreement to ensure sufficient compensation covers the loss of value of the property or any loss of income able to be generated from such property.
- Land compensation is often for loss of land per hectare whereas a bank will develop the whole of the property over time so percentage of loss per years if way more than what a mining company is prepared to pay.

Consideration and clarification- 'Address identified issues or concerns determining available solutions'

- Again problematic post licence approval. Needs to be addressed in application stage.

5. Our engagement objectives, priorities and actions pg 9-13

3. Ensure stakeholders understand our roles and responsibilities relating to earth resources regulation by providing clear, consistent and transparent information about what we do, and how this relates to other government departments and co-regulators working in the earth resources sector

Following statement off ERR Action Plan just shows me how ineffectual the co-regulatory agencies will be when resource regulation is superior to all others. All other can only be reactive to mining impacts.

'DEDJTR and the Department of Environment, Land, Water and Planning (DELWP) have already developed a Partnership Agreement to establish collaborative arrangements, recognising the interdependencies in delivering responsibilities. ERR will review this Partnership Agreement and strengthen and implement memorandums of understanding (MOU) with all other regulators with the goal of more clearly articulating roles of each agency, as well as regulatory consistency and timeliness. These regulators include the Environment Protection Authority (EPA), Energy Safe Victoria and WorkSafe. ERR will give effect to these MOUs through proactive intelligence sharing, and by engaging with other regulators in carrying out its regulatory approval functions.'

- Working with others - *'Be the authoritative source of earth resources information in Victoria.'*

Where do you get your information from to take the authoritative lead?

In regards to you –

'Taking the lead role in coordinating, developing and publishing meaningful information about earth resources legislation, regulation, activities and messages in the sector.'

Interestingly, when I see similar information on Minerals Council of Australia website and then it is reflected in government policy and Earth Resources then promote and facilitate licences with no changes to the acts nor setting the compliance reports, I wonder who is the authoritative voice here.

How are you going to –

'Incorporate the methodologies identified in this strategy into risk-based work plans and compliance activities.'

Example of siting of well at Seaspray. **How would ERR incorporate methodologies today to show how this could never happen again?**

How was the siting in this workplan (see image following) ever approved in exploration stage and granted without any consideration to the risks involved in hydraulic fracturing and storage of toxic waste water in holding ponds and potential for irreversible damage to the town's water supply?

The gas well is 150m from Merrimans Creek and 525m upstream of the township water supply. Was the Catchment Authority and Gippsland Water (GW) consulted?



Then how could a retention licence be granted in 2015 to Ignite Energy for the Gelliondale project in a water stressed area. This process is so superficial with industry calling the shots and DEDJTR Industry's own lobbyist.

'Be accountable and predictable.'

- You are assuming because you declare a decision publically will make you accountable. So you need to explain how that will be so.

'Develop and implement a process for communicating our decision-making processes and assessment criteria consistently, transparently and meaningfully.'

- Realising risk-based regulation - *gain and maintain stakeholder trust and confidence in our decision-making process by recognising and communicating the needs and interests of stakeholders in a timely, consistent and meaningful way.*
- Go back to an assumption but nothing in this document gives me confidence and trust in the system that improvements will not protect our communities
 - Building resources and capability - *stakeholder expectations.*
- This document has failed to show me that you understand the expectations of your most impacted stakeholder and what you have offered shows that you will continue to assess project approval based on individual application with no consideration to other existing industry enterprises or compromised geology in a bioregional footprint as to the cumulative impacts to abide by the principle of **Section 2(a) sustainable development.**

6. Any other comment

As the crown exercises its rights to the mineral, it also has responsibilities to the surface right holder of the implications and the obligations to afford legislation to protect.

So that is what it comes down to. This document did not show me that you can protect my family and my business from all risks including financial?

How are you going to change that?