



Proposed Trailing Liabilities Framework Submission response

Prepared by
Friends of Latrobe Water
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On behalf of Friends of Latrobe Water (FLoW) thank you for the opportunity to provide comment on the Proposed Trailing Liabilities Framework.

Do you agree that trailing liabilities provisions should only be applied to declared mines? What are your reasons for that view?

No, we do not agree.

A mine is declared because of significant risks with the subsurface footprint often impacting a broader area with subsidence, aquifer depletion, ground and surface water contamination. Other mines, quarries in the near vicinity could complicate and cause increased geotechnical/pollution risks which may impact their own rehabilitation plans that was previously unforeseeable. It is what is not seen and may eventuate with time that the MRSDA needs to provide an eye into the future.

This should also extend to offshore oil and gas projects in Victoria as regional impacts to the Latrobe Group Aquifer from overextraction of groundwater from both Latrobe Valley coal mines and offshore oil and gas extraction has still to be fully realised. The ongoing depletion of the Latrobe Group aquifer and coastal subsidence have potential to have significant residual impacts.

ESSO's Bass Strait field is currently progressing their abandonment plans in Commonwealth waters, but the next 6 months will provide an opportunity for input on decommissioning of drilling platforms. At a recent community engagement event hosted by ESSO it was stated that NOPSEMA are yet to fully understand how the decommissioning process will proceed. Members from FLoW will be engaged in this process because decommissioning of infrastructure in state waters have the potential to be left insitu.

What are your views on the Commonwealth Government's trailing liabilities regime?

FLoW fully support the Cwlth scheme as the oil and gas sector are experts in mergers and acquisitions, manipulating the paying of royalties and taxes to as low as possible. The offloading of an aging asset by Woodside Petroleum in the Timor Sea proves that decommissioning responsibilities and obligations are not taken seriously by the industry so protective legislative instruments were introduced. It highlighted NOPSEMA, as the industry led regulator, has little power to ensure compliance and enforcement without more legislative support.

Do you believe the Commonwealth Government trailing liabilities regime, developed for the offshore petroleum sector, could be adapted to Victoria's declared mines? What are your reasons for that view?

Yes. The scheme is based on applying the same principles to prevent changes in company control, increased requirements and financial assurances framework, enhance decommissioning planning and proactive use of remedial directions for better outcomes. Legislative changes can easily be applied under the MRSDA.

Do you think the proposed trailing liability regime will be effective in ensuring Victorians are not exposed to rehabilitation liability risk?

Yes. It would give the community transparency and provide increase accountability for both the proponent and the Regulator on decision-making and planning. Earth Resources has been exposed as complicit in lack of compliance enforcement in the past which is continuing. A directive given to ENGIE to maintain a fire sprinkler system 24/7 to protect the community of Morwell from fire is presently providing water fill by stealth as the sprinklers have been place in the southwest corner on the bottom batters. How is that protecting the township of Morwell.

What are your views on the proposed Victorian trailing liability regime?

The many poor regulated mines around Victoria have cause irreparable damage to the environment and public health under the MRSDA so a Victoria trailing liability regime will be welcome.

Do you have any suggested improvements to the proposed Victorian regime?

1. Given the potential for infrastructure damage and ground movement from water fill the licensees public liability insurance policy needs to be reviewed as appropriate as insurance are not unconditional and could be subject to exemptions.
The MRSDA needs to ensure public liability is appropriate kept current. A policy may be cancelled or not renewed without reference to the Regulator.
2. Same consideration for Joint Venture partnerships
Whether or not the JV entity itself is protected through its own insurance program, the partners need to be certain that their insurance policies provide coverage for losses arising from the JV. Even if the JV entity is separately insured, there are circumstances under which the JV's coverage may be inadequate or not apply at all.
3. Risk assessments are required to determine the potential impact on human health. These assessments make use of available health standards for water, air, soil and food.

The majority of these are currently outdated with no or little reference guidelines.

Toxicity guidelines acknowledge that there is a grey area between concentrations of potential contaminants that are clearly safe and concentrations that are clearly unsafe.

The MRSDA to ensure outdated acts, standards and guidelines are not used to undermine potential for contamination.

If the trailing liabilities provisions were used, do you believe the related persons should have access to any existing rehabilitation bond to undertake the necessary works, as they would be doing the rehabilitation instead of the Government?

No. Only part bond should be offered post completion of rehabilitation otherwise it gives no incentive to the related persons to ensure best practice rehabilitation.

If the trailing liabilities provisions were used and rehabilitation obligations were completed successfully by the related persons, do you think their expenses should be reimbursed (in full or in part) from any rehabilitation bond held by Government against the operation?

FLoW recommends a post rehabilitation audit to understand potential residual issues with part bond maintained.

Should the MRSDA be amended to require declared mine licensees to seek approval of changes in ownership above a set threshold?

No threshold should be set. The MRSDA legislates that any change in ownership needs approval.

Do you have any further comment on any other aspects of the proposed trailing liability scheme?

Rehabilitation bonds should be increased.

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Friends of Latrobe Water