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| Proposed Pipelines Regulations 2017  Regulatory Impact Statement  Department of Environment, Land, Water and Planning  19 December 2016 |



**PIPELINES REGULATIONS 2017**

**Regulatory Impact Statement**

This Regulatory Impact Statement (RIS) has been prepared to fulfil the requirements of the ***Subordinate Legislation Act 1994*** and to facilitate public consultation on the proposed Pipelines Regulations 2017. A copy of the proposed Regulations is provided as an attachment to this RIS.

Public comments and submissions are invited on the proposed Regulations, in response to information provided in this RIS. All submissions will be treated as public documents. Written comments and submissions must be received at the address below by 5pm on Friday 10 February 2017:

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Glossary

|  |  |
| --- | --- |
| **Act, the** | means the Pipelines Act 2005 |
| **APGA** | Australian Pipelines and Gas Association |
| **base case** | means the situation that would exist if the proposed Regulations were not remade |
| **competition** | means the process of rivalry between independent firms or individuals in business. Competition occurs within a market |
| **construction** | in relation to a pipeline, includes the placing or testing of the pipeline |
| **Crown Land** | means land which has not been alienated in freehold |
| **decommissioning** | means the suspension (pipelines are physically isolated from the network);abandonment in place (pipelines are disconnected from the network, purged,cleaned and sealed); or removal of pipelines (above ground pipelines entirelyremoved from the pipeline easement) |
| **DEDJTR** | Department of Economic Development, Jobs, Transport and Resources |
| **DELWP** | Department of Environment, Land, Water and Planning (Victoria) |
| **Department, the** | means the Department of Environment, Land, Water and Planning (Victoria) |
| **CEMP** | Construction Environment Management Plan |
| **CSMP** | Construction Safety Management Plan |
| **DAE** | Deloitte Access Economics |
| **EES** | Environment Effects Statement |
| **EMP** | Environment Management Plan |
| **EPA** | Environment Protection Authority |
| **ESV** | Energy Safe Victoria established under the *Energy Safe Victoria Act 2005* |
| **externality** | means the cost or benefit related to a good or service that accrues to personsother than the buyer or the seller of that good or service |
| **fee** | a charge levied in order to recover some or all of the cost of providing a specific service |
| **hydrocarbon** | means a compound of hydrogen and carbon in the liquid or gaseous state, or a mixture consisting mainly of such compounds |
| **incident** | in relation to a pipeline, means:  • any loss of containment (not including minor leaks at flanges);  • any damage to the coating of pipe caused by mechanical equipment; and or   * any other defect (e.g. corrosion) which requires either MAOP reduction or pipe repair (e.g. reinforcing sleeves, clock spring; or cut‐out replacement) |
| **inspector** | means a person authorised by the Minister under Section 157 of the Act |
| **licence** | means a licence issued by the Minister under Part 5 of the Act |
| **licensee** | in relation to a pipeline, means a person who is the holder of a licence issued under Part 5 of the Act for the construction and operation of that pipeline |
| **landholder** | includes both an owner and an occupier of land |
| **LPG** | liquefied petroleum gas |
| **MAOP** | the maximum allowable operating pressure at which a pipeline is allowed to operate |
| **market** | means an area of close competition between firms, or the field of rivalry in which firms operate. |
| **MCA** | multi criteria analysis |
| **Minister, the** | means the Minister for Energy, Environment and Climate Change |
| **negative externality** | means the situation that occurs when production and/or consumption imposes external costs on third parties outside of the market for which no appropriate compensation is paid. |
| **operation** | in relation to a pipeline, includes testing, maintenance, alteration, decommissioning and removal of the pipeline. |
| **OEMP** | Operations Environment Management Plan |
| **OSMP** | Operations Safety Management Plan |
| **pipeline** | means a pipe or system of pipes for the conveyance of anything through the pipe or system of pipes. |
| **prescribed** | means prescribed by an Act or regulations. |
| **Regulations, the** | Pipeline Regulations 2007. (note that where the term ‘regulations’ is not capitalised, this reflects the broader use of the term) |
| **RIS** | Regulatory Impact Statement. |
| **SMP** | Safety Management Plan |
| **VFF** | Victorian Farmers Federation |

Executive Summary

Background

The *Pipelines Regulations 2007* (the Regulations) exist pursuant to the *Pipelines Act 2005* (the Act). They provide for the regulation of pipelines which carry hazardous and combustible gaseous and liquid substances. Their objective is to ensure that industry participants construct and operate pipelines in a way that is compatible with the economic, social and environmental objectives of Victoria

The regulations do this by prescribing:

* standards for the construction and operation of pipelines;
* information required in an application for or change to a licence to operate a pipeline;
* forms to be used to notify the public of an application for a pipeline licence or an intention to enter land for a survey;
* reporting requirements for pipeline operators in the event of a safety or environmental incident;
* matters to be contained in Safety Management Plans (SMPs) and Environmental Management Plans (EMPs); and
* fees charged to recover the costs of administering the regulations.

The regulations also prescribe forms, infringements and procedures authorised by the Act.

The Regulations will sunset on 27 March 2017 and the Department of Environment, Land, Water and Planning (DELWP) has contracted Deloitte Access Economics (DAE) to prepare this Regulatory Impact Statement (RIS) for the Regulations.

The RIS has been prepared in accordance with the S*ubordinate Legislation Act 1994,* the Subordinate Legislation Act Guidelines, and the *Victorian Guide to Regulation*. These require that a RIS outlines the need for the Regulations (the problem), identifies a range of options (the options) to achieve the Government’s objectives, and then assesses these options against a common set of criteria.

The problem

Analysis in a sunsetting RIS is required to consider the problem that would arise if the regulations expired, as a way of evaluating the value of having those regulations.

DELWP’s view is that the direct risks to safety or the environment posed by the construction and operation of pipelines in this scenario would be limited, because most pipeline operators would still use comprehensive and well established safety and environmental procedures most of the time.

However, in the absence of regulations:

* it would be difficult for Government to determine the likely safety and environmental impacts of an application for or change to a licence;
* there would not be a clear and consistent minimum standard for notifying the public about licence application or an intention to enter land for a survey;
* in the event of an incident the Government would have little information available to manage the response and better understand how to prevent similar incidents in the future; and
* the Government would have no assurance that operators had carefully considered management of safety and environmental risks.

DELWP’s view is also that these regulations are an important preventative measure, given the scale of the potential consequences of unsafe pipeline operations (see Chapter 2) and the possibility that financially challenged operators or inexperienced entrants to the industry might seek to reduce costs in ways that increase risks to safety and the environment.

Key provisions in the Regulations

The table overleaf summarises key requirements in the current and proposed regulations.

As context, the Act is structured in such a way to require regulations for it to practically apply, for example the giving of notices. In addition to these minimum procedural requirements the focus of regulations is to provide the community with confidence that the oversight of the industry is appropriate, and the assurance that industry does what it says. The regulations help to mitigate against the risk of poor management practices, which the Department believes are unlikely, but could possibly occur, with severe consequences. For these reasons the proposed Regulations will not necessarily provide benefits on a day to day basis.

| Action | Requirement of the Act | Current Regulatory Requirement | Benefits of the regulations | Costs to operators | Proposed changes | Reason for the change |
| --- | --- | --- | --- | --- | --- | --- |
| **Licence application**  **Refer 3.4** | Part 5 Division 1 of the Act sets out some very basic information that needs to be included in a licence application, but leaves the detail to be specified in the Regulations. | R8 of the Regulations requires details of the pipeline and its environmental impact to be provided | To be able to decide whether or not to approve a pipeline, Government needs to be able to consider matters including the identity of the proponent, the technical details of the pipeline and its route, properties that will be affected by its construction, and the environmental impacts of the pipeline. The operator is best placed to provide this information. | Operators will already have detailed information about their identity, the technical details of the pipeline and route, affected properties and environmental impact. Hence, providing these details largely involves only the administrative cost of compiling and providing the information in a consistent format. | Provide details of alternative routes and the environmental, social and safety impacts a pipeline may pose. | At present, Government has limited information on alternative routes and the implications of each route, noting that the operator would have complied with this requirement in order to be consistent with AS 2885. Requiring operators to provide this information gives Government a better understanding of the potential risks and impacts and the basis for selecting a proposed pipeline route.  Expanding the description provides that applicants document their considerations of the potential environment, social and safety impacts for the potential life of the pipeline i.e. multi-decades. It ensures that the applicant has reviewed the future environment as to potential impacts on the pipeline and takes into account the mitigation measures required to ensure the integrity of the pipeline once it is operational.  In order to comply with these additional reporting requirements, operators may need to undertake additional activities, which could result in associated administrative costs of $5,800 per applicant. Substantive compliance costs are expected to be minimal. |
| Action | Requirement of the Act | Current Regulatory Requirement | **Benefits of the regulations** | Costs to operators | Proposed changes | Reason for the change |
| **Notifications** | Various parts of the Act require pipeline proponents to provide notice to parties including prior to undertaking surveys (Division 2) and when a pipeline licence is being applied for (S32) | R6 of the Regulations sets out what needs to be included in a notice of intention to enter land for a survey, while S10 sets out the required content of a notice of application for a licence. | Clearly specifying notice requirements ensures the public are notified using a clear and consistent minimum standard, and that pipeline proponents understand what they need to do and the community can come to expect. DELWP believes that pipeline operators are likely to do this in the absence of the regulations, and that it is therefore likely that these regulations have a mostly preventative effect, in reducing procedural risks for the operator and the community. | Given that the Regulations prescribe only the form of notification and relatively limited details (e.g. applicant details, survey details, a map of the pipeline route) this will impose negligible costs on the pipeline proponent above those that would be incurred by a good operator complying with reasonable business practice. Businesses already have a financial incentive to notify and consult with landowners in order to minimise the delay and reputational costs of a poor process. | No change is proposed |  |
| **Safety and incident reporting** | S116 of the Act requires mandatory reporting of incidents where a substance escape from a pipeline | R19 of the Regulations sets out the timing of required incident reports and the content of those reports. | Incident reporting is required to make the government and community aware of when an incident occurs, to help manage the response, and to provide information about what caused the problem, in order to inform the understanding of how to prevent similar incidents in the future. In each of these cases, the operator is best placed to provide this information. | As part of ordinary crisis management operations, in the event of an incident operators will already be obtaining the information prescribed in the regulations. As a result, the costs imposed by the regulations are primarily administrative, and involve the time and effort taken to compile and submit the information. | No change is proposed |  |
| **Action** | **Requirement of the Act** | **Current Regulatory Requirement** | **Benefits of the regulations** | **Costs to operators** | **Proposed changes** | **Reason for the change** |
| **Preparing and executing SMPs and EMPs**  **Refer 3.4** | Part 9 Division 2 requires a Safety Management Plan (SMP) and Environment Management Plan (EMP) to be prepared before pipeline construction and operation | The Regulations provide detail on the required content of a SMP and EMP | Prescribing the detail to be included in safety and environment management plans ensures that operators take an integrated approach to risk management, by having them consider the variety of risks and scenarios in which threats to safety and the environment may arise as part of the operation of pipelines.  These requirements also provide government and the community with the assurance that operators have carefully considered these risks, have clearly outlined their approach to managing these risks, and have had that approach reviewed by government.  The Department believes that most operators would already undertake appropriate risk management activities consistent with AS 2885 and in the context of looking after the long term interests of their business, it is possible that new operators that are not similarly focused on longer term outcomes would not adequately consider risks. | The Department believes that most operators would plan for and take appropriate actions to mitigate risks to safety and the environment as part of their usual business.  The types of information prescribed by the regulations should be provided, and pipelines operated, in a safe and environmentally responsible manner as part of an operator’s usual business. As a result the compliance costs imposed by the regulations are primarily administrative, and largely involve the time and effort take to compile and submit the information.  If businesses did not already undertake these activities to an appropriate level, they would experience greater costs to comply with these requirements, but the Department believes that this is unlikely. | Some additional information is required for EMPs and SMPs including requirements to record and keep information on systems, policies, procedures, performance, incidents and emergency response. Other changes proposed in the description of environmental risks in the EMP are to include minor variance to wording.  For the SMP, the changes focus on a positive risk culture at the systems level, rather than at the level of operational detail. | Changes will enable the government to be satisfied that SMPs and EMPs are comprehensive and appropriately protect safety and the environment. They will also allow resources to be better focused at the systems level. Procedurally they will also remove ambiguity and ensure consistency and better alignment with terminologies used within the industry.  The changes will also harmonise the proposed regulations with the 2012  revision to AS 2885.3.  This revision reflected the uptake by industry  of the management systems approach and the resulting change in the regulatory environment to support this uptake.  In order to comply with these additional requirements, proficient operators may only need to undertake additional reporting activities, which could result in additional administrative costs associated with the proposed changes. Illustrative estimates of these costs are provided in Table 4.3 of Chapter 4. |

| **Action** | **Requirement of the Act** | **Current Regulatory Requirement** | **Benefits of the regulations** | **Costs to operators** | **Proposed changes** | **Reason for the change** |
| --- | --- | --- | --- | --- | --- | --- |
| **Preparing and executing a Part Decommissioning Plan and Decommissioning Plan**  **Refer 3.4** | Part 5 of the Act requires a Part Decommissioning Plan and Decommissioning Plan to be prepared before decommissioning works can commence. | The Regulations provide detail on the required content of a Part Decommissioning Plan and Decommissioning Plan. | Government needs sufficient information in order to ensure that public safety and the environment are not compromised by the decommissioning of a pipeline. | Operators will already have detailed information about the decommissioning of a pipeline. | Provide additional information on the performance objectives and standards for the decommissioning works and a description of the decommissioning works and in the case of part decommissioning, a map showing the part of the pipeline that is proposed for decommissioning. | The proposed regulatory requirements to be included in a decommissioning plan are to ensure that regulators are provided with the necessary information on performance objectives of the decommissioning works and in the case of part decommissioning of a pipeline a map showing the part of the pipeline that is proposed for decommissioning.  The Department believes that most operators already undertake activities that would enable them to meet the expanded requirements, and therefore the additional costs to operators to comply with these are primarily administrative. Illustrative estimates of these costs are provided in Table 4.3 of Chapter 4. |

Costs associated with the current and proposed regulations

To be considered as part of a RIS, costs must be (a) over and above those imposed by the Act and (b) over and above those that would be incurred in the ordinary course of business.

There are broadly three type of costs associated with the current Regulations:

* compliance costs – the substantive costs incurred by pipeline owners in complying with the Regulations. For example, the costs of activities to establish and maintain a safety management system putting into effect a Safety Management Plan
* administrative costs - the direct costs of pipeline companies compiling information and making submissions to government, and the government’s costs in administering the regulations
* delay costs – the cost of delays caused by the regulatory process, including the timeframes associated with pipeline companies compiling information and submitting it to government, and the time taken by government to assess the information.

Compliance costs incurred by businesses have not been quantified, based on the assumption that businesses would already undertake the activities required by regulation as part of their usual business (as discussed above).

The effect of the proposed changes on compliance costs is expected to be minor, because DELWP expects that operators already undertake the activity required to comply with the proposed changes (e.g. by analysing alternate routes in order to be consistent with AS 2885, and by continuing the management systems approach that has already been adopted by industry in preparing SMPs and EMPs), and DELWP expects that the proposed changes will not change the extent or intensity of its engagement with operators during the license approval process.

Administrative costs for businesses have been difficult to quantify in the absence of specific stakeholder feedback. This RIS uses an illustrative estimate of $1.7 million per year in administrative costs (see Chapter 4). DELWP expects the proposed changes to increase the administrative costs to businesses. The RIS provides an illustrative estimate of around $412,000 per annum (see Chapter 4). The total administrative costs to businesses under the proposal would therefore be around $2.1 million per year.

The current costs to Government of administering the regulations are approximately $575,000. DELWP does not expect the proposed regulations to change the cost to Government of administering the regulations.

On the assumption that this cost base will be recovered through fees (see Chapter 6), the total quantified costs associated with the proposed regulations is around $2.7 million.

DELWP’s understanding of the drivers of delay costs is outlined in Chapter 4. Given limited feedback from stakeholders about the nature and scale of these delay costs, these have not been quantified. However, as some stakeholders suggest they may be substantial, DELWP has committed to reviewing how and whether these can be reduced.

DELWP therefore proposes to commence recording and reporting the timeframes by which licence applications, and all other applications provided for under the Regulations, are dealt with. This will provide transparency to industry, enable DELWP to determine whether appropriate resources are being devoted to tasks, and will also provide a guide as to the effectiveness of the Regulations in specifying information requirements for the various regulatory processes, and the interaction with other regulatory requirements.

Details on the assumptions made and the methods used to provide illustrative estimates of the feasible costs of these regulations are included in Chapter 4. In addition to stakeholder feedback on this RIS in general, DELWP invites specific feedback on these assumptions and methods, and on whether these estimates are likely to be an accurate representation of the costs to businesses of these changes.

The options

Four options are considered in this RIS, including:

* Option 1 - The status quo, with the existing Regulations renewed with no change
* Option 2 - Amended Regulations, with minor amendments relating to requirements for licence application requirements, Environment Management Plans, Safety Management Plans, Decommissioning Plans and fees
* Option 3 - Non-binding guidelines. The Regulations would be allowed to lapse, and non-binding guidelines developed by Government or industry for many of the areas that are currently prescribed in the Regulations
* Option 4 - Licence conditions to specify regulatory requirements.

All options assume that the Act remains unchanged. Fee options were considered separately (see below).

Assessment methodology

The options were assessed using Multi-Criteria Analysis (MCA). MCA requires judgement of how the proposed options will contribute to a series of criteria that are chosen to reflect the benefits and costs associated with each option.

The following criteria were used to assess the non-fee element of the options:

* Benefits:
  + protection of public safety and the environment
  + public notification.
* Costs:
  + costs to regulated parties
  + costs to government.

Benefits and costs have been weighted equally. The key policy objective of protecting public safety and the environment is weighted most heavily (45%) as the consequence of failure in these areas can be very significant. The benefits of notification processes are weighted at 5%, with the costs for regulated parties and government each weighted at 25%.

The fee options were assessed against the criteria of cost reflectivity, equity, certainty and administrative cost, with equal weight placed on each criteria.

Preferred option

**Non-fee elements**

The table below shows a summary of the results of the MCA. All options are given a rating from -10 to +10 as compared to the base case where the Regulations are allowed to lapse. The base case is given a 0 rating against all criteria. A summary of the results of this MCA is included in the table below. The analysis of these options and the explanation for these scores is provided in Chapter 6.

Summary of MCA results for non-fee elements of the options

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Criteria** | | **Weight** | **Base case** | **Option 1 Current Regs** | **Option 2 Amended Regs** | **Option 3 Guidelines** | **Option 4 Licence conditions** |
|
| **Benefits** | Public safety and environmental protection | 45% | 0 | 3 | 4 | 2 | 4 |
| Public notification | 5% | 0 | 1 | 1 | 0.5 | 1 |
| **Costs** | Costs – regulated parties | 25% | 0 | -3 | -4 | -2 | -5 |
| Costs – government | 25% | 0 | 1 | 1 | 0.75 | 0.5 |
|  | **Weighted total** | **100%** | 0 | 2.40 | 2.85 | 1.86 | 1.90 |

Based on the MCA of non-fee elements of the options, the preferred option is Option 2: Amended Pipelines Regulations. This conclusion is made on the basis that Option 2:

* will continue, and in fact slightly enhance, the current level of safety and environmental protection afforded to the Victorian community
* provides for adequate public notification and consultation
* keeps the costs to regulated parties and government at acceptable levels.

**Fees**

As noted above, the costs of administering the regulations to be recovered through fees is approximately $575,000. DELWP has considered a broad range of alternative fee structures for the new and existing fees. These are:

* flat fees: a single pre-defined fee for each application
* fees to be based on a standard hourly rate and the number of hours required to review/assess applications
* an activity-based costing system whereby an ‘actual’ cost is calculated for each application
* the proposed arrangements (described in more detail below) which involve a combination of flat fees (typically for the more minor fees) and fees that vary based on pipeline length (for licence applications and more significant fees).

These fee structures have been assessed using a MCA approach with four criteria:

* the level of cost-reflectivity
* equity – the degree to which the parties that give rise to specific costs bear those costs
* certainty – the extent to which applicants will understand in advance
* the administrative costs associated with calculating and levying fees

As with the MCA for the substantive elements of the Regulations, the options have been scored on a range of + 10 to -10. Each criteria has been weighted equally. The results of the MCA are set out in the table below. The analysis of these options and the explanation for these scores is provided in Chapter 7.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Criteria** | **Weight** | **Base case** | **Option 1 Flat fee** | **Option 2 Hourly rate** | **Option 3 Activity-based** | **Option 4  Proposal** |
|
| Cost reflective | 25% | 0 | 2 | 9 | 10 | 6 |
| Equity | 25% | 0 | 3 | 8 | 10 | 6 |
| Certainty | 25% | 0 | 0 | -6 | -7 | -3 |
| Administrative cost | 25% | 0 | -4 | -9 | -10 | -5 |
| **Weighted total** | **100%** | 0 | **0.25** | **0.5** | **0.75** | **1** |
|  |  |  |  |  |  |  |

Summary of MCA results for fee structures

Based on the MCA of fee options, the preferred option is Option 4. This conclusion is made on the basis that the proposed combination of flat fees and fees that vary based on pipeline length best balances objectives of cost reflectivity, equity, certainty and administrative cost.

It is proposed to introduce the following new fees:

* a fee for assessing decommissioning (and part decommissioning) plans as satisfactory;
* a fee for assessing a Construction Environment Management Plan (CEMP) for a new pipeline and minor and significant alterations to authorised route;
* a fee for amending a CEMP; and
* a fee for making alterations to pipeline routes.

It is also proposed to remove fees for access to registered information and issuing licences. The costs covered by these fees and the rationale for introducing or removing them are outlined in Chapter 7.

Given the changes in fee structure, and the introduction of new fees, it is difficult to quantify the impact of the new fee structure and level on individual pipelines. However, in broad terms the impact of the change can be summarised as follows:

* for those pipeline owners and operators that continue to operate their pipelines in the existing manner (with, for example, no change to route or licence conditions) there will be no change in their fees (which are currently nil). In any given year the vast majority of pipeline licence holders will be in this category.
* pipeline owners and operators that seek to change the operation of the pipeline will face increased costs, compared to those at present. For example, under the new fee arrangements a pipeline owner that wishes to make a significant alteration to the authorised route will incur costs of:
  + $19,336.67 for making application to change the route, plus
  + $6,342.43 - $41,767.20 for submitting a CEMP in respect of the changed route.
* at present an application for a significant alteration to the route incurs no fees.
* new licence applicants will face a 20 to 40% ($6,180 to $16,636) reduction (for applications that require an Environment Effects Statement (EES)) or a 7 to 59% ($1,567 to $10,429) increase (for applications that do not require an EES). Applicants would no longer have to pay the existing licence issuance fee, which currently ranges from $23,372 to $119,048.The table below provides a comparison of current and proposed fees.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Fee type** |  | **Proposed fee** | **Current fee** | **% change** |
| **Existing fees** |  |  |  |  |
| Licence application with EES required1 | 0 to 10km | $33,104.38 | $39,284.31 | -19% |
| 10 to 20km | $42,540.67 | $59,176.69 | -39% |
| 20 to 50km | $42,540.67 | $59,176.69 | -39% |
| 50 to 100km | $42,540.67 | $59,176.69 | -39% |
| 100km + | $49,501.87 | $59,176.69 | -20% |
| Licence application no EES required1 | 0 to 10km | $13,226.28 | $7,360.32 | 44% |
| 10 to 20km | $17,789.74 | $7,360.32 | 59% |
| 20 to 50km | $17,789.74 | $13,227.67 | 26% |
| 50 to 100km | $17,789.74 | $13,227.67 | 26% |
| 100km + | $21,657.07 | $20,090.33 | 7% |
| Licence issuance1 | 0 to 10km | $0.00 | $23,371.80 |  |
| 10 to 20km | $0.00 | $51,717.40 |  |
| 20 to 50km | $0.00 | $77,276.39 |  |
| 50 to 100km | $0.00 | $97,167.38 |  |
| 100km + | $0.00 | $119,047.60 |  |
| Application to amend licence condition |  | $2,088.36 | $1,989.24 | 5% |
| Application for consolidation of licences |  | $4,872.84 | $1,989.24 | 59% |
| Lodging notice with registrar |  | $773.47 | $613.36 | 21% |
| Application to convey other substance |  | $2,320.40 | $3,978.48 | -71% |
| Application for Ministerial direction to share pipeline |  | $2,320.40 | $1,989.24 | 14% |
| Application to access easement |  | $2,320.40 | $1,989.24 | 14% |
| **New fees** |  |  |  |  |
| CEMP fee | 0 to 10km | $6,342.43 |  |  |
| 10 to 100km | $20,496.87 |  |  |
| 100km + | $41,767.20 |  |  |
| Minor amendment of CEMP |  | $6,342.43 |  |  |
| Significant amendment of CEMP |  | $20,496.87 |  |  |
| Decommissioning plan | 0 to 10km | $6,342.43 |  |  |
| 10 to 100km | $20,496.87 |  |  |
| 100km + | $41,767.20 |  |  |
| Part decommissioning plan | 0 to 10km | $6,342.43 |  |  |
| 10 to 100km | $20,496.87 |  |  |
| 100km + | $41,767.20 |  |  |
| Minor alteration to authorised route |  | $5,259.57 |  |  |
| Significant alteration to authorised route |  | $19,336.67 |  |  |

1 Note that it is proposed to remove the 10 to 20km, 20km to 50km and 50km to 100km categories for these fees. Existing fees for these categories are shown for comparison purposes only

# Introduction

*This section provides the contextual background to this Regulatory Impact Statement, including an overview of the pipelines industry in Victoria, the legislative framework for the regulation of this industry, the policy context for the project and the purpose and structure of the report.*

## Overview of the pipelines industry in Victoria

Pipelines are essential infrastructure in Victoria’s energy system. Approximately 5,400km of onshore pipelines in Victoria carry at high pressure, energy products including hazardous and highly combustible gaseous and liquid products. Pipelines transport oil and gas to markets, but provide access to secure cheap energy for businesses and domestic consumers alike.

The pipeline industry involves significant potential risks. Regulation of the construction and operation of these pipelines is necessary for reasons of public safety, environmental sustainability and security of supply.

The Victorian pipeline network is made up of both transmission and distribution pipelines transporting gaseous and liquid materials from extraction points to refining and processing plants and from there to residential and industrial consumers.

There are currently 217 pipeline licences in Victoria held by 37 licensees (sometimes a conglomerate of operators). Of its total length of approximately 5400km, 64% of the onshore Victorian Pipeline network is operated by only 4 licensees. Figure 1 shows licensee share of the pipeline network by total kilometres.

Figure 1: Licensee share of the pipeline network (%) by total distance (km).



Source: DELWP 2016, Deloitte Access Economics Analysis

In terms of kilometres, gaseous hydrocarbons are carried in the majority of pipelines (in terms of kilometres, approximately 71% of pipelines). Other significant products carried in Victoria’s pipeline are liquid and gaseous hydrocarbons (around 23%). Other products carried include black oil, white oil, compressed air, ethane, ethanol, nitrogen, oxygen, propylene, and sulphuric acid. While carriage of these products comprise a small proportion of the products carried by pipelines in Victoria, it is important to recognise the importance to Victoria of pipelines that carry products other than natural gas and liquid and gaseous hydrocarbons. For example, pipeline licences 118 and 119 relate to the pipelines that carry jet fuel to supply aeroplanes arriving and departing from Tullamarine airport.

Figures 2 shows share of pipeline use by total kilometres.

Figure 2: Material share of pipeline network use (%) by total distance (km).



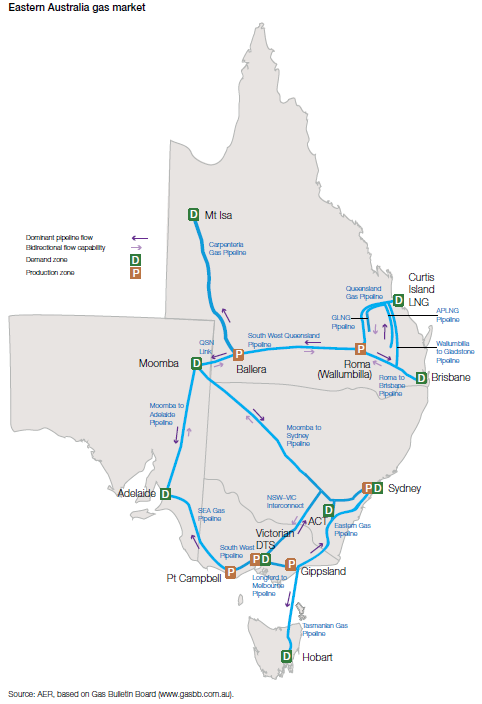
Source: DELWP 2016, Deloitte Access Economics Analysis

### Overview of natural gas

The biggest pipeline transmission system in Victoria is the Victorian Transmission System (VTS) (DTS under the National Gas Rules) which APA Group (Australian Pipeline Trust) acquired upon its purchase of Gasnet Australia in December 2006.[[1]](#footnote-1) The VTS transports natural gas in Victoria supplying both Metropolitan and Rural Victoria with an authorised maximum daily quantity (AMDQ) of natural gas of 990,000 gigajoules (GJ) allocated by the Australian Energy Market Operator (AEMO) (APA Spare Capacity Register). The transmission system links multiple producers, major users and retailers, enabling the total annual consumption of 200.8 PJ (2014-15) of natural gas in the Declared Wholesale Gas Market (DWGM) which AEMO manages.[[2]](#footnote-2)

The majority of Victoria’s natural gas is sourced from the Gippsland and Otway basins offshore and the Bass Coast area offshore. Some gas is also supplied from interstate (South Australia and New South Wales). Pipeline flows are shown in the map of the eastern Australia gas market (Figure 3).

Figure 3: Eastern Australia gas market



Source: AER, based on Gas Bulletin Board

In 2015, the Victorian consumption of natural gas reached 212 petajoules (PJ), roughly 35% of the East Coast’s total consumption that year. Victoria has the highest rate of access to natural gas in Australia, with reticulated natural gas available in most Victorian cities and large towns.

Consumption shares for natural gas by sector in Victoria as at 2014 were 53% for residential and commercial, 33% for industrial use, 11 % for gas generation and the balance of 3% was used in gas production and distribution, transport and the water sector.[[3]](#footnote-3)

The Australian Energy Market Operator (AEMO) forecasts a 1.1% annual decrease in Victorian natural gas consumption by 2020, mainly spearheaded by industrial consumers (-2.6%), a consequence of the restructuring of industry away from gas-intensive manufacturing and projected gas price increases, themselves affected by the ramp up in LNG exports from Queensland.[[4]](#footnote-4)

Victorian gas consumption declined from 210.8 to 206.5PJ during the 2010-14 period, reflecting reduced consumption in residential, commercial and industrial sectors despite increased consumption from gas powered generators.

On the medium to long term, AEMO expects gas use in power generation will increase to respond to increased Victorian demand for electricity. AEMO also forecasts a large consumption increase by industrial users due to growth in food and beverage manufacturing.

The gas supply network is expected to cope with the light demand increase forecast for the period 2020-25 and likely developments as a consequence of Regional Development Victoria’s Regional Gas Infrastructure Program.

To date, the program has completed the Mildura pipeline upgrade, increasing its capacity by 50%, and the connection of Huntly to the gas network via the construction of a 3.5km supply pipeline. 42km of supply pipelines and over 117km of reticulation pipelines remain to be built under that program.[[5]](#footnote-5)

## Legislative framework

Legislation governing the pipelines industry in Victoria was reformed in 2005 with the promulgation of the *Pipelines Act 2005* (the Act). The Act replaced the previous *Pipelines Act 1967* and included a number of changes following a June 2000 Ministerial statement on minerals and petroleum. It also implemented a number of recommendations from the national competition policy review of the *Pipelines Act 1967*.

### The *Pipelines Act 2005*

The Act is intended to facilitate the development of pipelines with a regulatory framework that establishes sound consultative processes and protects the public from environmental, health and safety risks resulting from the construction and operation of pipelines. It is also designed to deliver greater certainty and efficiency to pipeline proponents so that they can access finance and minimise costs.

The objectives of the Act are as follows:

1. to facilitate the development of pipelines for the benefit of Victoria;
2. to create an effective, efficient and flexible regulatory system for the construction and operation of pipelines;
3. to establish sound consultative processes relating to the construction and operation of pipelines;
4. to establish processes to determine the most efficient and suitable route for each pipeline;
5. to protect the public from environmental, health and safety risks resulting from the construction and operation of pipelines; and
6. to ensure that pipelines are constructed and operated in a way that minimises adverse environmental impacts and has regard for the need for sustainable development.

The scope of the Act provides for the regulation of major gas and petroleum pipelines. However provision is made for the Act to apply in future to other potentially hazardous pipelines or exempt particular classes of or individual pipelines.

Key sections of the Act are summarised below:

* a single integrated licence authorising construction and indefinite operation of a pipeline is established in Part 3 of the Act
* early consultation and notification obligations are required of proponents for pipeline projects in Part 4 of the Act
* licence application process and notification requirements are set out in Part 5 of the Act. Rather than requiring renewal of licences, licences currently operate indefinitely until a pipeline is decommissioned. Specific measures apply for future dealings with a licence, including obtaining amendments to licence conditions, altering the authorised route of a pipeline and transferring, surrendering and cancelling a licence
* the process to be followed by a proponent in order to obtain the consent of the responsible Minister to compulsorily acquire an easement for the purpose of a pipeline is set out in Part 6 of the Act
* the construction of a pipeline is dealt with under Part 7 of the Act. This can only take place along an authorised route, and provision is made for interaction with other infrastructure. Licensees are required to comply with standards and conditions; these may be included in the licence and prescribed by regulation
* operators of a pipeline must meet safety and environmental requirements set out in Part 8 of the Act. Pipeline proponents will be required to prepare and have approved Safety Management Plans and Environment Management Plans. Under Part 8, safety and environmental performance during the operation of a pipeline is enforced by ESV
* a pipeline licensee is required under Part 9 of the Act to identify and minimise risks and protect safety and the environment through approved Safety Management Plans and Environment Management Plans before construction and operation can commence.
* rehabilitation of land following construction and decommissioning and removal of a pipeline is required under Part 10
* an enforcement regime for the Act, including the appointment of inspectors and a graduated range of offences and penalties is established in Part 11 of the Act. Regulators can encourage improved performance, deter poor performance and ensure companies do not obtain a commercial advantage through failing to meet safety and environmental requirements.

Compliance with workplace occupational health and safety requirements is overseen by the Victorian WorkCover Authority under the *Occupational Health and Safety Act 2004*. For this reason, the Act does not deal with issues related to the safety of employees.

### Coverage of the *Pipelines Act 2005*

The Act covers all onshore pipelines in Victoria conveying hydrocarbons or other substances in a gaseous state where the pressure of the gas exceeds 1050 kPa and the circumferential stress exceeds 20% of the Specified Minimum Yield Stress (SMYS) and in a liquid state where the operating pressure is greater than 345 kPa.

Pipelines not covered by the Act are listed in Schedule 1 of the Act and include gas and petroleum pipelines that do not meet the pressure and design criteria specified in the Act, water, sewerage and drainage pipelines, any pipelines not declared by the Minister as requiring regulation and pipelines constructed on land that is within the area defined as the offshore area (Section 13).

Exclusions also include pipelines entirely on land owned or leased by a licensee and which is controlled by that licence and pipelines entirely within a petroleum processing plant, refinery, factory, railway yard, airport or port. These pipelines are exempt because they are either conveying non-hazardous materials, regulated under separate Acts such as the *Offshore Petroleum and Greenhouse Gas Storage Act 2010* or the *Water Act 1989*or considered safe or unlikely to adversely impact the environment.

For natural gas, distribution pipelines are regulated under the National Gas Law and Rules framework and are not covered by the Act. [[6]](#footnote-6)

Under the Regulations, the construction and operation of pipelines must comply with Australian Standard (AS) 2885 Pipelines – Gas and petroleum. The standard relates to the design, construction, testing, operations and maintenance of gas and petroleum pipelines that operate at pressures in excess of 1050 kPa (gas) or 345 kPa (liquid) and as developed by a working group from both industry and government.

The latest version of AS 2885 was published in 2012 and comprises six parts:

1. Part 0: General requirements
2. Part 1: Design and construction
3. Part 2: Welding
4. Part 3: Operation and maintenance
5. Part 4: Submarine pipelines
6. Part 5: Field pressure testing

### Amendments to the *Pipelines Act 2005*

A number of amendments have been made to the Act since the Regulations were put in place in 2007. These are outlined in Appendix 1.

### Regulatory overlaps

With one exception, there are no material overlaps or duplication across the Regulations and other statutory instruments.

The overlap occurs in respect of the Gas (Safety Case) Regulations. One stakeholder noted that if the Pipeline Regulations ceased to exist, “decommissioning, incident reporting, risk assessment [and] Safety Management Plan requirements [would] all remain under the Gas Safety (Safety Case) Regulation requirements”.

These overlaps do not apply to non-gas pipeline licence holders.

Under s85 of the Act if a licence is issued for the construction and operation of a pipeline, that pipeline is exempt from the requirement to hold a permit under the *Planning and Environment Act 1987*. This ensures that there is no overlap between the requirements imposed through the licensing process under the Act and the Regulations, and the *Planning and Environment Act 1987*.

Similarly, pipelines are not considered to be Major Hazardous Facilities or Scheduled Premises.

Pipeline operations are required to comply with certain native vegetation and cultural heritage requirements; however there are no overlaps or regulatory duplication between these requirements and those in the Regulations.

## Pipeline Regulations

### Establishment of the Regulations

Section 190(1) of the Act enables the Governor in Council to make Regulations for or with respect to any matter or thing which by the Act is required or permitted to be prescribed or which is necessary to be prescribed for carrying out the purposes of the Act. Section 190(2) of the Act provides some examples of matters upon which the Governor-in-Council may make Regulations, including:

1. the granting and issuing of licences
2. pipeline operations including matters relating to health, safety and the environment
3. consultation plans for proposed pipelines
4. Safety Management Plans and Environment Management Plans, specifying the requirements and standards with which a Plan must comply
5. decommissioning plans for pipelines
6. entry onto land
7. fees and forms for the purposes of the Act.

The Regulations were made under the Act on 27 March 2007. The objectives of the Regulations are:

1. to provide for the reporting of safety and environmental incidents in relation to pipeline operations
2. to prescribe standards for the construction and operation of pipelines
3. to prescribe matters to be contained in Safety Management Plans and Environment Management Plans
4. to prescribe various forms, fees and procedures authorised by the Pipelines Act 2005 (and amendments).

The Regulations contain the following parts:

* Parts 2 to 4 set out requirements for pre-licence (including notification requirements), licensing (including applications, notices and fees) and land access (notices and fees) stages.
* Part 5 sets out provisions for construction and operation of pipelines, including standards, risk assessment and fees.
* Parts 6 and 7 set out matters relating to Safety Management and Environment Management Plans respectively.
* Part 7A prescribes infringement offences and penalties.

The Act itself contains around 40 clauses which refer to or contemplate Regulations being made, however not all references in the Act have corresponding regulations. For example, Section 68K(6)(b) provides for Ministerial consent to enter land for surveying of proposed alternation of a pipeline route, and notes that entry is subject to the Regulations. However the Regulations do not deal with this matter.

### Changes to the Regulations

Alongside amendments to the Act, the Regulations were amended from 1 September 2015. The objective of the amendments was to prescribe new licensee requirements, new infringement notices and penalties, and make other minor and technical changes. Key changes were:

* to clarify that a ‘reportable incident’ includes incidents that have the potential to cause, injury, death, substantial damage or escape from the pipeline (s5)
* to set out the requirements for the form of notice of a proposed alteration to a pipeline (s13A and Schedule 2A)
* to clarify the ability of ESV to seek further information following receipt of an incident report (s19(2A))
* to specify the penalties under infringement notices issued by inspectors for offences against the Act (Part 7A).

The Regulations were previously amended in 2012 to set out the contents of a decommissioning plan. The ability of the Minister to require a decommissioning plan was introduced in the 2011 changes to the Act.

## Gas Safety Act

In addition to the Act, gas pipelines in Victoria are also subject to the *Gas Safety Act 1997* for operational safety purposes. The main purpose of the *Gas Safety Act 1997* is to make provision for the safe conveyance, sale, supply, measurement, control and use of gas and to generally regulate gas safety. Energy Safe Victoria (ESV) is the regulator under this Act. Each gas company is required under the *Gas Safety Act 1997* and in accordance with the *Gas Safety (Safety Case) Regulations 2008*, to submit a plan (safety case) setting out safety management policies and procedures relating to gas safety. It is ESV’s responsibility to assess the plan for approval and to conduct on‐going audits to ensure that each gas company complies with the provisions of its plan.

As noted above, licence holders who own and operate gas pipelines have pointed out overlaps between the obligations imposed by the *Gas Safety (Safety Case) Regulations* and the Pipeline Regulations.

## Role of Regulators

The Act is jointly administered by ESV, the independent technical regulator responsible for electricity, gas and pipeline safety in Victoria and the DELWP.

Licensing, Construction Environment Management Plans (CEMP) and rehabilitation bond assessments are undertaken by DELWP. Construction Safety Management Plans (CSMP), Operations Safety Management Plans (OSMP) and Operations Environment Management Plans (OEMP) are administered by ESV. DELWP is responsible for assessing Part and Full Decommissioning Plans, while ESV provides assistance on technical aspects of these plans.

Responsibility for the Act lies with the Victorian Minister for Energy, Environment and Climate Change. At an agency level regulatory roles are split between ESV and DELWP. In broad terms (see tables below) DELWP has the key regulatory role at the time of pipeline construction and decommission, while ESV regulates the pipeline during its operation.

DELWP’s role includes setting environmental standards, requiring monitoring and ensuring that industry operations meet community expectations. DELWP regulates licensing prior to and other aspects (e.g. rehabilitation) after the operation of the pipeline.

In relation to its responsibilities under the Gas Safety Act, the ESV is responsible to the Minister for Energy, Environment and Climate Change and has responsibilities as described in section 1.4. ESV also has a role in working with other stakeholders to ensure there are appropriate planning systems in place for the protection of pipelines from third party interference.

The two agencies currently undertake their roles consistent with a Memorandum of Understanding (MoU) between the parties which is designed to ensure a consistent and comprehensive safety and environmental regulatory regime under the Act, and one where duplication of regulatory activities is avoided[[7]](#footnote-7). The MoU sets out the following responsibilities. It is noted that the following tables set out responsibilities exactly as they are provided for in Schedule 1 of the MoU document. Footnotes in the table refer to roles undertaken by DELWP and ESV that are not captured in the MoU.

**Tenement Administration**

|  |  |
| --- | --- |
| **Pipeline Act 2005** | |
| **DEDJTR (now DELWP)** | **ESV** |
| **Grants, approvals/acceptances reviews etc:**   * Approve pipeline consultation plans * Grant of pipeline licence * Environment Effects Act 1978 and Planning and Environment Act 1987 processes * Alteration of an authorised route * Amendments to any conditions * Consolidation of any licences * Transfers of any licences * Surrender or cancellation of a licence * Third party use of pipeline * Issues associated with rehabilitation bonds * Instruct insurance to be held | **Reviews:**   * Assess technical details for licence applications * Assess technical details for alteration of authorised route * Assess technical details for amendments to any conditions |
| **Collaborative work**: The department will be the lead agency for tenement administration, but will consult with ESV where required. The operator’s primary point of contact for most purposes should be the department | |

**Pipeline Construction**

|  |  |
| --- | --- |
| **Pipeline Act 2005** | |
| **DEDJTR (now DELWP)** | **ESV** |
| **Reviews, acceptances and approvals**   * Approval of delay to commence construction * Liaison with local communities * Review and acceptance of Construction Environment Management Plans * Audit against Construction Environment Management Plans * Inspections of pipelines for environmental and community issues * Investigation of environmental incidents * Serve notices and directions * Retention of environmental records * Assess rehabilitation plans and set rehabilitation bonds | **Reviews, acceptances and approvals**   * Accept Safety Management Plans * Audits against Safety Management Plans * Safety inspections * Compliance with AS 2885 * Investigation of safety incidents * Retention of safety records |
| **Collaborative work**: Jointly prepare guideline for construction management plans | |

**Pipeline Operations[[8]](#footnote-8):**

|  |  |
| --- | --- |
| **Pipeline Act 2005** | |
| **DEDJTR (now DELWP)** | **ESV** |
| **Reviews and approvals[[9]](#footnote-9)**   * Serve notices/directions * Approve access to a pipeline easement for the construction and operation of another facility, including another pipeline | **Reviews, acceptances and approvals**   * Consent to operate or recommence to operate * Accept Safety and Environment Management Plans and any revisions[[10]](#footnote-10) * Compliance with AS 2885 * Audits against Safety and Environment Management Plans * Safety Inspections * Investigation of safety incidents * Other use of pipeline * Impose safety and environment requirement * Restrict use of pipelines * Serve notices and directions * Retention of safety records |
| **Collaborative work**: Work jointly when reviewing aspects of tenements and environmental activities associated with pipeline operations. The operator’s primary point of contact for most purposes should be ESV.[[11]](#footnote-11) | |

**Decommissioning**

|  |  |
| --- | --- |
| **Pipeline Act 2005** | |
| **DEDJTR (now DELWP)** | **ESV** |
| **Reviews and approvals[[12]](#footnote-12)**   * Environmental aspects of decommissioning plans * Audits and inspections against environmental aspects of decommissioning plans * Assess rehabilitation and set rehabilitation bonds * Investigation of environmental incidents * Retention of environmental records * Consultation with landholders and stakeholders * Accept surrender or cancel licence | **Reviews and approvals**   * Safety aspects of decommissioning plans * Audits and inspections against the safety aspects of decommissioning plans * Investigation of safety incidents * Compliance with AS 2885 * Retention of safety records |
| **Collaborative work**: Work jointly when reviewing aspects of tenements and environmental activities associated with pipeline operations. The operator’s primary point of contact for most purposes should be ESV.[[13]](#footnote-13) | |

## Pipeline regulation in other Australian jurisdictions

The Victorian regime for pipeline regulation (as reflected in both the Act and the Regulations) is generally more specific than those applying in other states. This is in part due to the other major States (with the exception of New South Wales) not having dedicated pipeline regulations and hence not having the ‘one stop shop’ approach provided by the Victorian Regulations i.e. licensing, environmental and safety requirements.

In addition, pipeline regulation in New South Wales and South Australia is reliant on environmental (NSW only) and safety requirements under standards (such as AS 2885.1) or guidelines compared with the Victorian Pipelines Regulations.

DELWP is the responsible authority for licensing and environmental assessments and ESV is the responsible authority for safety assessments for pipelines in Victoria. In New South Wales, licensing, environmental and safety assessments are undertaken by separate authorities. In South Australia, licensing, environmental and safety assessments are undertaken by the one authority.

A brief comparison of requirements under the corresponding pipelines regulations in New South Wales and South Australia is provided in the table and discussed below.

Overview of Pipelines Regulations in NSW and SA

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Jurisdiction** | **Instrument** | **Applications** | **EMP** | **SMPs** | **Fees** |
| VIC | Pipelines Regulations 2007 |  |  |  |  |
| NSW | Pipelines Regulation 2013 |  | **–** | **–** |  |
| SA | Petroleum and Geothermal Regulations 2013 |  |  | **–** |  |

 required, **–** required under different instrument.

### New South Wales

The NSW Pipelines Regulations 2013 do not detail the matters to be included in an application for a pipeline licence, however they provide for an application fee for a pipeline licence. The Regulations provide that the proposed pipeline is constructed and operated in accord with AS 2885 which provides details of information to be included in an Environment Management Plan and Safety Management Plan.

### South Australia

The South Australian Petroleum and Geothermal Energy Regulations 2013 detail matters to be included in an application for a pipeline licence and provides for an application fee for a pipeline licence. The Pipelines Regulations provides for an Environmental Impact Report detailing the environment impacts for the construction and operation of the pipeline. The Regulations provide that the pipeline must be constructed in accord with AS 2885, however do not make reference to a Safety Management Plan. The Regulations state that the pipeline must be constructed in accordance with the relevant requirements of AS 2885.

Some stakeholders noted in consultation that Victoria’s regulatory framework for pipelines was more costly and time consuming than other jurisdictions. DELWP’s view is that the difference between Victoria and other jurisdictions is largely a difference in matters of administrative detail rather than fundamental differences in ensuring safety and protecting the environment. DELWP’s view is also that Victoria’s ‘one stop shop’ approach based on a single act, the *Pipelines Act 2005,* means that meeting the requirements of and administering the pipelines regulations in this state involves more activity than in other states, where some of those activities may take place under other regulatory frameworks. On this basis, DELWP is confident that the cost base to recover through fees is efficient.

## Fees and cost recovery

A key purpose of the Regulations is to set out the fees payable to government for administration of the Act. The two main categories of fees, which are set out Schedule 2 of the Regulations, are as follows:

* fees for licence applications made under Section 30(e) of the Act. These fees are intended to cover DELWP’s costs to assess licence applications. The quantum of licence application fees are a function of both the extent of environment effects assessment (EES) required (if any), and pipeline length. In 2016-17 fees range from a maximum of $59,176 for a pipeline more than 100km that requires an EES, to $7,360 for a pipeline less than 10km with no EES required
* fees for the issuance of a licence under Section 57(b) of the Act. These fees are intended to cover DELWP’s cost of administering the Act and Regulations in respect of that pipeline, over the life of the pipeline. The quantum of licence granting fees is solely a function of pipeline length. In 2016-17 fees range from $119,048 for a pipeline longer than 100km to $23,372 for a pipeline shorter than 10km.

Section 110 of the Act provides that annual fees may be charged, however s23 of the Regulations provides that this annual fee is zero. The Regulations also provide for a number of other fees as shown below.

Other fees

|  |  |  |  |
| --- | --- | --- | --- |
| **Other fees levied by DELWP under the Pipeline Regulations** | **Fee units** | **$ (2016-2017)** | **Clause in Regulations** |
| Fee for an application to amend the conditions of the licence | 142.7 | $1,989.24 | Clause 13(2) |
| Fee for application for consolidation of licences | 142.7 | $1,989.24 | Clause 14 |
| Fee for lodging notice with the registrar of titles | 44 | $613.36 | Clause 18 |
| Fee for application to use pipeline to convey other thing | 285.4 | $3,978.48 | Clause 25 |
| Fee for application to Ministerial direction under Section 122 | 142.7 | $1,989.24 | Clause 26 |
| Fee for application for approval of access to a pipeline easement | 142.7 | $1,989.24 | Clause 27 |
| Access to registered information fee | 9·4 fee units per hour up to a maximum of 37·6 | Up to $524.14 | Clause 44(1) |
| Fee for each page of information provided from the Pipelines Register | 0·2 fee units for an A4 page and 0·5 fee units for an A2 page |  | Clause 44(2) |

Currently, the quantum of licence application fees are a function of both the extent of environment effects assessment required, and pipeline length. The quantum of licence granting fees is solely a function of pipeline length. Annual fees have been set to zero in the Regulations.

The draft Regulations proposes the introduction of new fees for the assessment of:

* applications for Minor Alterations to Authorised Route of a Pipeline
* applications for Significant Alterations to Authorised Route of a Pipeline
* Construction Environment Management Plans
* Construction Environment Management Plans - Amendment
* Part Decommissioning Plans
* Decommissioning Plans.

## Industry trends and developments

In general, the broad environment for the pipeline industry in Victoria has not changed significantly since the Regulations were enacted in 2007. However, a few trends are worth noting.

* community expectations regarding consultation on pipeline developments have arguably increased since the Regulations were implemented. These expectations have been reflected by changes to the Act and Regulations in relation to consultation plans and the inclusion of a template for notifying landowners of developments
* encroachment on existing pipelines has become more common, with pipelines that were formerly well away from housing and other community facilities now. This increases the potential for incidents to occur
* few new pipeline licences have been granted - since 2007 only 8 new pipeline licences have been issued. At the same time there has been a steady demand from licence holders for minor and significant alterations to routes
* the Regional Gas Infrastructure Program (‘Energy for the Regions’), which will supply reticulated natural gas to communities across regional and rural Victoria, is the largest pipeline development program initiated since the Regulations were implemented in 2007. Works to connect 7 towns to the existing gas network are underway, to be completed by the end of 2017. Further work to connect 11 towns to natural gas through a Compressed Natural Gas (CNG) delivery solution is also underway, to be completed by 2018[[14]](#footnote-14). Transmission pipelines constructed as part of this policy have been licenced under the existing framework
* changes to AS 2885 have occurred over time, improving safety standards across the industry
* there have been a small number of safety and environmental incidents in the Victorian pipelines industry, although they have been of relatively minor consequence (see chapter 2 for further details)
* looking forward, the Victorian Government has announced its intention to introduce legislation to permanently ban exploration and development of unconventional gas in Victoria. The legislation would also extend the moratorium on conventional onshore gas until 2020.[[15]](#footnote-15)
* Increasing attention to designing and constructing infrastructure so that it is resilient to climate change.

As a result the general rationale and justification for the Regulations, as espoused in the 2007 RIS, are largely unchanged since 2007.

## Content of a RIS

The Regulations will sunset (expire) on 27 March 2017. DELWP is required to review and remake the Regulations by this date.

Under the Subordinate Legislation Act 1994 a responsible Minister must ensure that a RIS is prepared for any proposed regulation to ensure regulation best serves the Victorian community.

This RIS has been prepared in accordance with the *Victorian Guide to Regulation*[[16]](#footnote-16), which provides a best practice approach for analysing any proposed regulatory intervention. This RIS describes the current impact of the Regulations and the impact of proposed potential changes on stakeholders’ businesses in Victoria.

The process to remake the proposed Regulations involves the following steps:

1. Initial review
2. Comprehensive review
3. Preparation of a RIS (this document)
4. Public comment on the proposed Regulations
5. Addressing public comment
6. Implementation of new Regulations.

The RIS process requires that the following matters be addressed:

* Identification of the problem to be addressed through regulations. This involved consideration of the nature and extent of the problem, the need for government intervention, the risks of non-intervention and the objectives of intervention.
* Identification of options to achieve the objectives of the proposed regulations. The proposed changes, including alternative options, were developed by DELWP with consideration of stakeholder feedback. An analysis of proposed changes under each of the options was undertaken to determine possible costs and benefits to be included in the cost benefit analysis and explored through stakeholder consultation.
* Stakeholder consultation was undertaken to gather relevant information on the impact of existing and proposed Regulations on key stakeholders. Further detail on stakeholder consultation can be found in section 8.
* Assessment of costs and benefits under all options relative to a base case of no regulation, consistent with requirements outlined in the *Victorian Guide to Regulation*.[[17]](#footnote-17)
* Assessment of other impacts of the preferred option on small business and competition generally.
* Implementation, enforcement and evaluation. This involved an assessment of key implementation and enforcement issues associated with the preferred option and development of an evaluation strategy.
* Fee analysis. A major role of the Regulations is to set licence and related fees. This RIS considers options for structuring those fees, consistent with requirements outlined in the *Victorian* *Cost Recovery Guidelines*.

# The nature and extent of the problem

*This chapter outlines the nature and extent of the problem that may require government intervention.*

## Assessing the need for government intervention where regulations are sunsetting

Best practice regulation aims to address failures pertaining to market outcomes at minimum cost to consumers, stakeholders and industry.

In order to make a case for government intervention, it must first be established what problem the proposed Regulations are seeking to address. Where regulations are sunsetting, the RIS must determine whether there remains a case for government intervention (as represented by the sunsetting regulations) – that is, whether the problem for which the regulations were created or remade still applies. In this context, assessing the nature and extent of the problem should consider the need for regulations on a ‘first principles’ basis (rather than assessing whether the regulations should be amended).

### Risk to public safety

The Act and the Regulations cover pipelines that transport hydrocarbons, oxygen, carbon dioxide, hydrogen, nitrogen, compressed air, sulphuric acid or methanol at high pressure (>1050 kPa for gaseous state, 345 kPa for liquid state) and where the circumferential stress does not exceed 20% of the Specified Minimum Yield Stress (SMYS) as defined by the Pipelines Act 2005.

The hazardous nature of the materials (combustible and corrosive) as well as the high pressure at which they are being transported present a risk to the integrity of the pipelines transporting them and by extension, to public safety. Problems in respect of public safety can arise from:

* compromises to the integrity of the pipeline itself, including through inadequate maintenance, accidental damage (the risk and consequences of which is exacerbated by encroachment), sabotage and land movement
* the leakage of material from pipelines, often as a result of damage to the pipeline, but can also occur from inadequate operation, human error or technical malfunction.

Historically, there has been a view in the industry and observers that there is a high level of compliance with pipeline standards in Australia, and that when compared to some international jurisdictions, Australia has a strong record of pipeline safety. This is likely to be due to the generally high level of compliance with regulatory requirements, the fact that the majority of pipelines are owned or operated by generally large, experienced and reputable firms, as well as other reasons such as locational issues and the age profile of the pipelines.

The table below shows reportable safety incidents in Victoria since 2007. A Reportable Safety Incident is an incident that arises out of a pipeline operation that causes— (a) any person to suffer a serious injury or to die; or (b) substantial damage to, or destruction of, property; or (c) an ignition or a significant escape of anything being conveyed in a pipeline.

This data indicates that since 2007 the frequency of reportable safety incidents in Victoria has been minimal, and the level of severity of the reportable incidents has been low.

Victoria reportable safety incidents since 2007

|  |  |  |  |
| --- | --- | --- | --- |
| Incident Date | Incident Location | Incident Description | Human injuries sustained |
| 20/10/2008 | Pressure Reduction Metering Station | Sudden retraction of Welker probe during maintenance | Maintenance operative suffered soft tissue crush injury requiring surgery. |
| 13/11/2012 | Compressor Station | Unrestrained movement of gas turbine engine during compressor package maintenance | Two injuries suffered by maintenance personnel, one requiring surgery and the other medical treatment at hospital |

Source: Energy Safe Victoria Reportable Incidents data

In contrast since 2007 there have been numerous catastrophic pipeline incidents overseas. There are a range of causes of such incidents, ranging from the operation of pipelines in harsh environments with extreme temperatures such as Canada or some parts of the United States, through to poor maintenance and monitoring (with corrosion a common cause of ruptures and leaks), and in some cases tampering (oil theft in Mexico and Nigeria). Some specific examples of the severe impact that pipeline incidents can have are shown below.

International examples of pipeline safety incidents

|  |  |  |  |
| --- | --- | --- | --- |
| Date of incident | Location | Cause | Impact |
| 19/12/2010 | Puebla, Mexico | Human damage | Dozens dead following the explosion of an oil pipeline. |
| 22/11/2013 | Qingdao, China | Corrosion that led to a leak | Over 60 dead following the ignition and explosion of the oil pipeline.[[18]](#footnote-18) |
| 31/07/2014 | Kaohsiung, Taiwan | Wear or damage | Dozens killed and hundreds injured following a gas leak and resulting explosion. |

Sources: [The Guardian](https://www.theguardian.com/world/2010/dec/20/oil-thieves-mexico-pipeline-blast), [NACE International](http://www.nace.org/CORROSION-FAILURES-Sinopec-Gas-Pipeline-Explosion.aspx) and [ABC News](http://www.abc.net.au/news/2014-08-01/taiwan-pipeline-bursts-causing-fatalities/5639848).

The good record of safety in the Victorian industry historically reinforces the need to continue to maintain adequate safety measures in the pipeline industry. While it is difficult to draw conclusions about the occurrence of such incidents and the extent and nature of regulation in other countries, it is clear that the toll of pipeline incidents on society can be catastrophic.

The Act provides the requirements for licence acquisition and the administrative requirements expected of industry participants when submitting an application, including the requirement for licensees to provide ESV with a Safety Management Plan (SMP). A SMP is the key regulatory requiring for ensuring public safety in relation to pipelines. However, the Act does not specify the requirements of SMPs and the level of detail/coverage expected of these documents. These requirements are set out in the Regulations.

### Risk to the environment

Similar to the safety risks to society posed by the hazardous nature of pipelines, the environment is at risk of fires, spills and contamination resulting from the escape of gases and liquids from pipelines, during both the construction and operation of these pipelines.

Reportable environmental incidents since 2007 are shown in Table 4. A reportable environmental incident is an incident arising out of a pipeline operation— (a) that causes substantial damage to the environment; or (b) that has significant potential impact on the environment.

Victoria reportable environmental incidents since 2007

|  |  |  |  |
| --- | --- | --- | --- |
| Incident Date | Incident Location | Incident Description | Environment /  Property damaged |
| 09/06/2007 | Cnr Hawthorn Rd & Dandenong Rd | Tramway construction crew ripped top of syphon off with blade of dozer - Escape/ Major | Nil |
| 13/12/2008 | Under water in Port Phillip Bay | Ethane pipeline in Port Philip Bay was damaged by a container ship anchor. The pipeline carries ethane from Long Island Point to industrial customers in Melbourne's west. Personnel at Long Island Point acted quickly to shut-in product supply and isolate the damaged section of pipeline. Estimated release of ethane from the pipeline is 60 tonne (volume between valve sites). | Pipeline damaged |
| 21/05/2010 | near Douglas Parade, Williamstown | Crack developed at pipe stop due to crack propagation at weld undercut. Approximately 100L of gasoline was spilled. | Approximately 100L of gasoline was spilled. |
| 28/06/2010 | Pipeline easement 1.8km point downstream from Longford | Pinhole leak in LFD to LIP 700mm Crude Oil Pipeline found during pipeline rehabilitation process. Contained leak and plugged pinhole | 8L uncontained crude to soil |
| 7/08/2013 | Barr's Lane and Traralgon-Maffra Rd valve sites | A minor LPG release to atmosphere from the LPG pipeline valve. Subsequently repaired via approved engineered clamp. | Nil |
| 22/10/2013 | Dig 16, Cnr Hall and Swamp Roads, Bayles | Minor leak on stabilised crude pipeline during blasting. Subsequently repaired via approved welded steel sleeve. | Nil |
| 02/03/2014 | Sunshine | Loss of containment of Jet A1 fuel | Soil contamination |
| 10/07/2014 | Onshore Raw Gas Pipeline | Aerial surveillance picked up land slippage on the Raw Gas Pipeline | Land Slippage and fence line damage. |
| 11/12/2014 | Champion Rd, Williamstown | During lifting of pipeline for maintenance activities a crack developed in an adjacent weld. Approximately 50L of Crude Oil was released. | Approximately 50L of Crude was spilt to open ground. Cleanup began within 1 hour of event and was completed within the day. |
| 22/03/2016 | Dandenong Frankston Pipeline | A gasket failure on the valve resulted in a gas leak | None |
| 24/06/2016 | Churchill St, Altona | Underground escape identified from PL73 on Churchill St. | Approximately 630L of product spilt underground. Impacted soil was managed and mitigated during the clean-up. |

Source: Energy Safe Victoria Reportable Incidents data

Again, compared to other jurisdictions (national and international), Victoria has had very few reported incidents that have resulted in environmental damage. In comparison, the sample of incidents shown in the table below is evidence of the potential for severe impacts to the environment from Pipeline incidents.

International Pipeline incidents with environmental impact, 2007 to 2016

|  |  |  |  |
| --- | --- | --- | --- |
| Date of incident | Location | Cause | Details |
| 11/03/2010 | Oakville, Ontario, CA | Wear or damage | 24,000 gallons of oil (est.) Loss of aquatic life in river, permanent contamination of the water and death/damage to flora and fauna in the area |
| 25/07/2010 | Marshall, Michigan, US | Wear or damage | 840,000 gallons of diluted bitumen (highly toxic) spilt into the Kalamazoo river costing the company over a billion US$ in clean-up costs |
| 26/04/2011 | Peace River, Alberta, CA | Wear or damage | [28,000 barrels of crude spilt, contaminating more than 3 hectares of ponds](http://www.cbc.ca/news/canada/edmonton/2nd-largest-pipeline-spill-in-alberta-history-leads-to-charges-1.1311723) |

Sources: [insideHalton.com](http://www.insidehalton.com/news-story/4052635-bronte-creek-gas-spill-cleanup-may-take-years-to-complete/), [EPA](https://www.epa.gov/enbridge-spill-michigan) and [CBCnews](http://www.cbc.ca/news/canada/edmonton/2nd-largest-pipeline-spill-in-alberta-history-leads-to-charges-1.1311723)

Division 3 of the Act sets out the broad environmental requirements of a pipeline, including the Minister’s authority to impose requirements on the licensee, restrict the use of the pipeline and the immediate notification of the relevant authorities of pipeline incidents. Section 133 of the Act requires that prior to commencing pipeline construction, licensees provide DELWP with a Construction Environment Management Plan identifying risks and specifying controls to minimise them. Similarly, an Operations Environment Management Plan is required prior to the operation of a pipeline. The Act provides some detail on the required content of an Environment Management Plan.

To minimise risks to the environment, and to provide guidance to licensees, there is a need to specify the minimum contents of Environment Management Plans, either by regulation or other approaches.

### Inadequate public notification

Some Victorian pipelines are more than 100 kilometres long and many traverse land that is owned by a wide range of parties. The Act mandates that prior to carrying out surveys on land owned by other landowners and applying to acquire a licence, the applicant must give notice to landowners of the intention to enter land for the purpose of any survey for a proposed pipeline and later the corridor of land in which the pipeline is to be constructed (Sections 19 and 27). Notice must also be given under Section 68(3)(b) of the Act to affected owners and occupiers of land of the proposed alteration to the authorised route.

The Act requires the prescribed forms of Schedules 1 and 2A (added in the form of an amendment in 2015) of the Regulations be used by the applicant to give notice to Landowners of the proposed pipeline corridor (Section 27 of the Act) or the proposed alteration to the pipeline route (Section 68 of the Act). Approved consultation information prepared in accordance with the Act is also required to be provided by the applicant to the landowner(s).

Problems could arise for both landowners and applicants if poor, limited or inconsistent notification occurs. Landowners could have concerns about the possible impacts of the proposed pipeline. If not properly addressed, this could lead to a less cooperative relationship between the landowner and the pipeline applicant, which in turn could lead to costs for the pipeline applicant such as construction delays if access is hindered. It seems reasonable to argue that the pipeline applicant has financial incentives to provide adequate notification to landowners to minimise the risk of such costs. On the other hand, the absence of regulations could lead to notification processes being designed over and over again (particularly in the case where the pipeline applicants are not the large industry participants), which is costly for businesses and DELWP if businesses seek departmental advice. It could also lead to quite different notification processes being undertaken by different applicants. This could undermine community confidence in the regulatory framework.

### Inability to recover costs

As outlined in the *Victorian Guide to Regulation*[[19]](#footnote-19), general government policy is that regulatory fees and user charges should be set on a **full cost recovery basis** because it ensures that both efficiency and equity objectives are met:

* full cost recovery promotes the efficient allocation of resources by sending the appropriate price signals about the value of all the resources being used in the provision of government goods, services and/or regulatory activity
* from a horizontal equity point of view, full cost recovery ensures that those that have benefited from government‑provided goods and services, or those that give rise to the need for government regulation, pay the associated cost. Those parties that do not benefit or take part in a regulated activity should not and do not have to bear the costs.

If licence and other related fees were not prescribed in the Regulations then these costs would be recovered from general revenue.

As a result, there would be no signals for proponents as to the relative costs imposed by different applications and activities, which would result in less efficient allocation of resources. However the significant cost of establishing and altering a pipeline would likely mute the price signals created by the fees.

Government could be required to negotiate with each licence holder to determine an appropriate fee. This could potentially lead to a lack of transparency in cost setting.

## Objectives of government intervention

As a result of the problems described above, the Act places a range of restrictions, controls and requirements on the owners and operators of pipelines. These include requirements to:

* apply for and hold a licence to own and operate a pipeline
* prepare a consultation plan for a proposed pipeline (and, where the minister requires it, significant alterations to a pipeline)
* manage any pipeline operation so as to minimise hazards and risks to the safety of the public and to the environment as far as is reasonably practicable
* prepare, and submit to ESV for acceptance, a Safety Management Plan prior to undertaking any pipeline operations
* prepare and submit to the Minister for acceptance, an Environment Management Plan prior to undertaking any pipeline operations
* comply with the accepted Safety Management Plan and Environment Management Plan
* comply with any standards, specifications and conditions that are prescribed; and
* report any incidents to relevant authorities
* provide a rehabilitation bond prior to commencing construction of a pipeline.

Several stakeholders have commented that many of the obligations set out in the Act and Regulations relate to requirements that they would fulfil in their ordinary course of business, and in the absence of the Regulations. As noted above, pipeline ownership in Victoria is highly concentrated with a small number of pipeline owners being responsible for most of the pipeline length. These owners are typically large national or international entities that have comprehensive and well established safety and environmental procedures.

At the same time, because the potential consequences of unsafe pipeline operations are large, it is essential that the obligations set out in the Act and Regulations are met by **all** industry participants, and the nature of the obligations is clear and unequivocal.

Further, it is important to note that there are few restrictions on parties acquiring pipelines through normal commercial processes. Therefore there is some risk that new players could enter the pipeline industry that do not have the same commitment to safety and environmental outcomes that current pipeline licensees do. The Act and Regulations therefore provide a safeguard to ensure that new and/or financially challenged operators cannot operate in a risky manner.

The objective of the proposed Regulations is therefore to ensure that, through the efficient and effective application of the Act, including the requirements identified above, industry participants can construct and operate pipelines in a way that is compatible with the economic, social and environmental objectives of Victoria.

In particular, the primary objectives of government intervention are to:

* minimise risks to the health and safety of Victorians
* minimise risks of damage to the environment
* ensure that pipeline operations are conducted with public consultation and community involvement that is consistent with modern expectations

The proposed regulations aim to meet these objectives while also:

* minimising the cost of compliance for businesses
* minimising the cost of administration for government
* enabling government to recover the cost of efficiently carrying out regulatory activities under the Act.

# Options that may achieve the objectives

*This chapter outlines the different options that have been considered to address the problem as defined in the previous chapter and achieve the government objectives.*

## Introduction

As part of the RIS process, it is necessary to consider different options that could also achieve the government’s objectives. The Subordinate Legislation Act 1994, the Subordinate Legislation Act Guidelines, and the *Victorian Guide to Regulation* recommend that this includes considering a range of approaches, including co-regulation and non-regulatory approaches, and those that reduce the burden imposed on business and/or the community.

To that end, four options have been considered in addition to the base case of allowing the Regulations to lapse. They are:

* Option 1 - The status quo – the existing *Pipelines Regulations 2007* (Option 1) are renewed for 2017-2027
* Option 2 - Amended Regulations (Option 2) including minor amendments relating to licence application requirements, Environment Management Plans, Safety Management Plans, Decommissioning Plans (including part) and fees
* Option 3 - Non-binding guidelines
* Option 4 - Licence conditions to specify requirements.

All options assume that the Act remains unchanged.

Options 3 and 4 do not consider any variation on minor matters that are required under the Act to be prescribed in regulation (e.g. forms). They instead provide illustrative examples of alternative ways that risks to safety and the environment could be managed.

Currently, compliance with AS 2885[[20]](#footnote-20) is a requisite for all Victorian pipeline constructors and operators as set out in clause 21 of the Regulations. Effectively, therefore, AS 2885 is made law through the regulations. For the options analysis in this RIS, Options 1 and 2 include mandatory compliance with AS 2885, while the base case, Option 3 and Option 4 assume that proponents generally desire to comply with AS 2885 as part of good practice.

Each of these options is described in more detail below. Note that consideration of fee arrangements is discussed separately in chapter 6.

## Base case – No regulations

Under the base case the Regulations would not be remade and the Act would remain in its current form but without any supporting instruments. Businesses would still be required to comply with the Act, in particular, they would be required to:

* apply for a licence in a written application which must contain details on the applicant, the proposed use of the pipeline, a map of not less than the prescribed scale showing the pipeline corridor (S.30)
* prepare a consultation plan and obtain the Minister’s approval of that plan before giving notice of either the proponent’s intention to enter land or of a pipeline corridor (S.16)
* apply to the Minister to make a minor alteration to the route of an authorised pipeline (defined as one which would not affect the rights or interests of any other person), which must be in the form of a written application with a plan showing the proposed route (S.66)
* manage any pipeline operation so as to minimise hazards and risks to the safety of the public and to the environment as far as is reasonably practicable (S.124), in regards to the likelihood of the hazard or risk eventuating and the degree of harm that would ensue
* to manage these risks and ensure that applicants fully gauge them, they are required to hold accepted copies of both a Safety Management Plan (SMP) approved by ESV and an Construction Environment Management Plan (CEMP) approved by DELWP for the construction phase (S.127 and S.134 respectively)
* comply with any standards, specifications and conditions that are prescribed for operation (S.109) and construction (S. 100)
* obtain a rehabilitation bond acceptable to the Minister for an amount specified by the Minister (Section 141).

However, in the absence of the Regulations the following information and requirements would not be specified:

* the content required of a notice of intention to enter land for a survey (Clause 6)
* the form and timeframes for giving notice to owners and occupiers of land in a pipeline corridor (Clause 7, Schedule 1)
* the content of an application for a licence to construct and operate a pipeline (Clause 8), for example, the proposed maximum operating pressure of the pipeline;
* the content of a notice of application for a licence (Clause 10)
* the requirements for plan lodgement and reporting under Section 53(1) of the Act (Clause 11)
* the required content of an application to amend a licence application (Clause 13)
* the form for notice of a significant alteration of a pipeline route (Clause 13A, Schedule 2A)
* the form of application for consolidation of licences (Clause 14)
* the contents of a decommissioning plan for all or part of a pipeline (Clause 16, 16A))
* the form of notice for Registrar of Titles (Clause 17)
* the contents of an incident report, and the processes that report (Clause 19)
* standards for construction and operation of pipelines (Clause 21)
* the requirements of a safety and environmental risk assessment (Clause 24)
* the contents of Safety Management Plans (Part 6)
* the contents of an Environment Management Plan (Part 7)
* fees for a range of licensing matters, as well as administrative tasks and penalties for infringements.

The implication of the lack of detail on these requirements is set out in section 4.2.1.

## Option 1 – The status quo

Under this option the Regulations would be renewed in their current form. They would continue to make provisions in relation to:

* licensing
* notifications on access to land
* incident reporting requirements
* pipeline construction and operation standards
* Safety Management Plans and Environment Management Plans
* infringements and associated penalties
* cost recovery (fees)
* other matters contained in the Regulations.

## Option 2 – Amended Regulations

Under Option 2, there would be a number of changes made to the existing Regulations. The material amendments relate to:

* licence application requirements
* Environment Management Plans
* Safety Management Plans
* Part Decommissioning Plans and Decommissioning Plans
* Fees (discussed separately in Chapter 6).

These changes are outlined below.

Licence application requirement

The Regulations currently require certain information in a pipeline licence application. This includes information on environmental impacts, and measures proposed to eliminate or minimise those impacts.

The Regulations do not however specifically require assessment of the environmental, social and safety impacts that a proposed pipeline may pose, nor any consideration of alternative routes. The result is that, in determining whether or not to grant a licence, the Minister does not have information on potential risks and impacts and the basis for selecting the proposed pipeline route. This compromises the Minister’s ability to assess the relative impacts of the proposed pipeline and its environmental, social, economic and safety impacts, as the Minister is required to do under Section 49 of the Act. Further, Section 53 of the Act makes clear that the Minister may approve a licence but with a pipeline route as varied by the Minister in granting the licence. By providing information about alternative routes the Minister will be better informed as to the viability of any alternative routes.

It is proposed to introduce a requirement for licence applications to contain details of the alternative pipeline routes that were considered by the applicant, and provide a comparison of the environmental, social and safety impacts arising from each alternative route, and the reasons for selecting the proposed route [[21]](#footnote-21). The requirements to provide this information, would not by itself lead to requests for further detail on alternatives considered, or that new alternatives be considered as this power already resides in the Act. DELWP does not expect that the provision of this information as a minimum requirement of lodging an application will increase the number of cases in which DEWLP exercises the power under the Act to request further detail or new alternatives. This is because at present decision to do so is driven by factors specific to a particular application (e.g. application in areas where encroachment risks or the threat to the environment are particularly large), and DELWP would have asked for further information in these cases anyway.

AS 2885.1 requires route alternatives to be considered as part the route selection process. The implication being that an assessment of alternatives is the first step in achieving an optimal outcome for public safety, pipeline integrity and environmental impacts.

Encroachment through changes in land use is an increasing issue for pipeline operators and the community especially for public safety. Likewise, risks to pipelines from changes in the incidence and severity of climate related events have growing implications for pipeline integrity and security of supply. It is reasonable to expect the industry and regulator to demonstrate that systematic attention has been given to these issues, especially given the long operational life of pipelines. This systematic attention is also consistent with ISO 31000 the risk management standard adopted by AS 2885.1. The selection of the route for the pipeline is the first action that can be made to control risk in the long term.

Apart from where a pipeline is constructed alongside an existing pipeline, applications for new pipelines are relatively infrequent. Most well established business would be expected to continue to adhere to the minimum standards of AS 2885 and associated risk standards. DELWP expects that the work undertaken to meet the minimum standards of AS 2885.1 in considered alternative routes would be sufficient to meet the proposed regulatory requirement to provide a comparison of the environmental, social and safety impacts arising from each alternative route, and the reasons for selecting the proposed route.

DELWP therefore expects that any additional costs as a result of the proposed changes will be solely administrative in nature, and will arise from providing this information as part of an application. There is risk that financially challenged or new and inexperience operators may not assess alternative options or may select options based on the lowest short term outlay to themselves.

As with the illustrative estimates of the potential administrative costs of the current and proposed regulations, DELWP invites specific feedback from stakeholders on the above assumptions made about the compliance costs associated with the proposed changes.

Environment Management Plan

The proposed regulations will require fees for lodging and amending Environmental Management Plans. Further analysis of the proposed fees are detailed in Section 6.

Other changes are proposed to the contents of an Environment Management Plan, including the following:

* expanding the records to be kept including information about the systems, practices and procedures that the licensee has adopted to meet the obligations in the Environment Management Plan
* information about the licensee's performance in relation to compliance with regulation 11(2) which will require an annual report on the licensee’s performance in protecting the environment from the pipeline operation
* details of all reportable and non-reportable environmental incidents, including emergency situations
* details of the emergency response testing undertaken in accordance with the requirements of the Regulations in the case of any emergency situation, information on the effectiveness of the emergency response plan in eliminating or minimising as far as reasonably practicable any harm to the environment
* the description of environmental risks to remove the term ‘impact’
* other minor variance to wording including change from ‘evaluate’ and ‘assess’ environmental risks.

These changes will largely clarify requirements, simplify language and will not require substantial increased effort from operators in comparison to the existing Regulations. DELWP’s approach to the assessment of plans will be unchanged.

Safety Management Plan

In 2012, AS 2885.3 was revised to reflect the significant changes that have taken place in industry and the regulatory environment, in response to a management system philosophy. To harmonise the Regulation with AS 2885 several changes are proposed for the contents of Safety Management Plan. They have generally been proposed by ESV to ‘fine tune’ wording, removing potential ambiguity and ensuring consistency and better alignment with terminologies used within the industry, including AS 2885. They include the following:

* requiring that the Safety Management Plan’s formal safety assessment describe the systems, practices and procedures proposed to be undertaken to eliminate or minimise safety risks
* clarifying that the Safety Management Plan must include an emergency response plan (this was previously referred to as a response plan), and setting out the required content of this emergency response plan
* requiring procedures to ensure the response arrangements in the emergency management manual are tested
* requiring the preparation of a safety management system followed or to be followed in relation to the pipeline operation, and setting out some of the required content of the safety management system including:
  + the responsibilities accountabilities and authority levels of personnel
  + the means of recording and investigating reportable and non-reportable safety incidents
  + management systems to be used for reviewing and taking action on the information so recorded or arising from investigations; provision for the implementation and review of the safety management system and the provision for incident recording, investigation and review of the safety management system
  + specifying procedures for analysing data to identify trends in pipeline operation and performance
  + specifying procedures for planning and implementing audits of the safety management system
  + specifying procedures for review of the safety management system
  + specifying procedures for managing changes to the safety management system
* requiring the Safety Management Plan to contain details of arrangements for recording information about the licensee’s performance in ensuring the safety of the public, employees and contractors; details of all reportable and non-reportable safety incidents, including emergency incidents, details of emergency response testing undertaken and how the emergency response manual will eliminate or minimise as far as practicable risks to the safety of the public, employees and contractors
* requiring the Safety Management Plan to contain details of arrangements for reporting on the licensee’s performance.

In addition to the above other minor proposed changes to the Regulations are as follows:

* clarification that the report on performance of the licensee in protecting the environment from the pipeline operation must be provided within 28 days of the end of the financial year
* in the case of an application to amend a licence condition, a requirement for the licensee to demonstrate that the pipeline will be fit to operate under the licence as proposed
* minor additional requirements around reporting of environmental or safety incidents.

To harmonise the Regulations with AS 2885.3 minor changes are proposed for Safety Management Plans (SMPs). These changes, will allow regulators to improve the efficiency and effectiveness of regulatory review by moving its effort from operational detail to system level evaluation. This change is also expected to reduce the time required by industry to provide administrative advice on its compliance.

Part Decommissioning Plans and Decommissioning Plans

During the last decade, the frequency of decommissioning works in Victoria has kept pace with the overall increase in pipeline activities as more pipelines are added to Victoria’s pipeline network. Decommissioning may either remove the entire pipeline or leave parts of the pipeline in situ. Where the latter occurs the community would expect the regulator to require documentation on the abandoned pipeline and its condition at abandonment.

AS 2885 provides general guidance for decommissioning and abandoning of a pipeline that industry would in the normal cause of events comply with.

The proposed regulatory requirements to be included in a decommissioning plan are to ensure that regulators are provided with the necessary information on performance objectives of the decommissioning works and in the case of part decommissioning of a pipeline a map showing the part of the pipeline that is proposed for decommissioning.

Changes have been proposed to the information requirements for a Decommissioning Plan or Part Decommissioning Plan on surrender or cancellation of licence to now include:

• the performance objectives and standards for the decommissioning works

• a description of the decommissioning works, and in the case of part decommissioning, a map showing the part of the pipeline that is proposed for decommissioning.

## Option 3 – Non-binding guidelines to replace regulations

Under this option the Regulations would be allowed to lapse, and non-binding guidelines established for many of the areas that are currently prescribed in the Regulations.

Non-binding guidelines could be developed by Government (DELWP), or alternatively by industry in the form of a code of practice on public safety and environmental protection. We expect the outcomes in terms compliance with the objectives of both the Government and industry guidelines would be similar, although the costs of developing the guidelines would be borne by different parties, an aspect we accounted for in the assessment of the options.

This scenario reduces regulatory requirements and allows for greater representation from industry participants and associations and a greater inflow of their combined expertise and experience regarding the protection of public safety and the environment.

Similarly to the base case, this scenario faces the dilemma of variable interpretations and the consequent risk of under or overly worked applications, adding unnecessary regulatory burden to applicants in the former instance and exposing the public and the environment to uncontrolled risks in the latter.

The accessibility and reach of such guidelines and codes of practice could act as barriers to entry and grant unfair advantages to existing industry participants if they are not substantially based on the requirements of the Act and only shared between the members of exclusive industry associations, although this is likely to be a minor impact.

An alternative approach to providing guidelines could involve the online publication and referencing of many relevant conditions and details. This approach might result in a more flexible regulatory regime, with requirements more easily able to be changed across all pipeline licences than currently where the formal regulatory change process needs to be followed. However, it would not necessarily provide the formal protections and opportunities for input that the existing regulatory process does, nor would it provide for licence specific arrangements.

## Option 4 – Licence conditions

Under Option 4, the requirements of the constructor and/or operator of the pipeline are set out directly in their respective licences. Section 58 of the Act stipulates a licence authorises the construction of a pipeline subject to the conditions of that licence and compliance with those conditions is therefore mandatory. The impacts of this approach ultimately depends on the form and nature of the licensing regime.

Under one approach each licence would have its own particular conditions, and licences would be individual updated on an as-needs basis. This would mean different approaches for different pipelines, which may reduce costs for smaller operations. However, it is possible that there would be less transparency about the regulations that apply to each licensee and a less rigorous consultation and review process on the appropriateness of conditions. It is possible that this approach could increase costs, or compromise outcomes over time.

# Determining the preferred option

*This chapter outlines the methodology for assessing the various options and weighing up the different options according to common criteria.*

## Assessment methodology

### Method of assessment

The non-fee objectives have been assessed using Multi-Criteria Analysis (MCA). MCA requires judgement of how the proposed options will contribute to a series of criteria that are chosen to reflect the benefits and costs associated with each option.

The MCA technique is outlined in Box 4.1.

Box 4.1: Multi Criteria Analysis

MCA refers to a range of techniques to assess policy options against decision criteria. MCA enables options to be compared in a way that utilises quantitative and qualitative evidence fully. The approach enables the inclusion of a wider range of criteria — including social and environmental considerations for example — than used in a typical financial analysis. In addition, the approach is transparent — necessarily subjective judgements and assumptions made to determine options and criteria, and to assign scores and weights are made explicitly. The preferences of the decision maker reflected in these judgements and assumptions can be readily changed in a sensitivity analysis or to incorporate more robust indicators of community preferences.

* + 1. Criteria

Consistent with the objectives of Government intervention, the following criteria are used to assess the non-fee element of the options:

* Benefits:
  + the protection of public safety and the environment
  + public notification
* Costs:
  + Costs to regulated parties
  + Costs to government

For the purpose of this assessment benefits and costs have been weighted equally. The key policy objective of protecting public safety and the environment is weighted most heavily (45%) as the consequence of failure in these areas can be very significant. The benefits of notification processes are weighted at 5%, with the costs for regulated parties and government each weighted at 25%.

* + 1. Scale

The criterion rating scale has a range of –10 to +10, where a score of zero represents no change from the base case.

MCA scale

| **Score** | **Description** |
| --- | --- |
| -10 | Much worse than the base case |
| -5 | Somewhat worse than the base case |
| 0 | No change from the base case |
| +5 | Somewhat better than the base case |
| +10 | Much better than the base case |

## Costs

Before undertaking the MCA analysis it is useful to consider the nature of the costs associated with the current regulations, compared to the base case. There are broadly three types of costs that will be incurred by relevant parties:

* compliance costs – the substantive costs incurred by pipeline owners in complying with the Regulations. For example, the costs of putting into effect a Safety Management Plan.
* delay costs – the cost of delays caused by the regulatory process, including the timeframes associated with pipeline companies compiling information and submitting it to government, and the time taken by government to assess the information.
* administrative costs - the direct costs of pipeline companies compiling information and making submissions to government, and the government’s costs in assessing submissions.

To be considered as part of a RIS, costs must be (a) over and above those imposed by the Act and (b) over and above those that would be incurred in the ordinary course of business.

### Compliance costs

While it is difficult to be certain, it is the government’s view, supported by stakeholder consultation, that the significant majority of the requirements set out in the existing Regulations would be met by a responsible pipeline owner, operating in accordance with community expectations and complying with nationally (and internationally) accepted operational and construction standards.

For example, these include obligations to:

* comply with AS 2885 (as set out in S. 21 of the Regulations)
* include an appropriate level of detail in Safety Management Plans and Environment Management Plans, and operate in accordance with those plans (as required by Part 6 and Part 7 of the Regulations respectively).

Thus the Department believes that the incremental compliance costs under the current Regulations (i.e. the costs over and above those associated with complying with the Act and generally operating a pipeline) are conservatively estimated to be low and minor. No information was received through the consultation process to date, on whether operators undertake additional activities because of the regulations, outside of documenting their activities and analysis, but the Department welcomes further input through the consultation on this RIS.

### Delay costs

Delay costs occur where resources are tied up due to:

* the time taken to prepare applications
* the time it takes for government to assess applications, including any time to provide additional information.

Delay costs can include the cost of capital that is tied up in projects, the lack of opportunity to earn revenue, contractual penalties and additional operational costs. The quantum of the delay costs usually depends on the size of the project, and the extent that participants proceed with procurement in advance of obtaining all approvals. Further delays can also occur where applicable legislative decisions must be taken in sequence as if often the case with long pipelines. Scheduling and potential delays may also occur where the Act specifies minimum time periods.

Delay costs will occur where:

* the information required to be contained in a licence or other application is particularly onerous or difficult to collect
* the information that is required to be included is not clear or unspecified. This can lead to requirements to resubmit information
* government does not respond to applications in a timely manner, for example due to competing priorities, a lack of resources, or a desire to review or assess applications in a more detailed or forensic manner than is necessary.

Delay costs will be more significant where businesses face unexpected delays associated with an approval process, thus exposing them to penalties or blowing out critical timelines associated with their overall project plan.

Feedback from pipeline proponents was that delay costs associated with government assessing applications, were the most significant costs associated with the Regulations.

One stakeholder gave the example of having to pay for workers to be on site, with no work for them to do, while waiting for a regulatory approval.

It is difficult to estimate the size of delay costs, but these can be significant. As an illustrative estimate, an unexpected delay, where costs cannot be reduced by putting resources to alternative uses, could be $23,000 per day for a 10km pipeline project.[[22]](#footnote-22) It is clear that delay costs are a material impact.

It is unclear to what extent delay costs are due to the regulations themselves as compared with the regulatory regime more broadly. The regulations can have some impact, by providing clarity to the regulator and regulated parties as to the grounds upon which applications are granted, and by providing resources for efficient administration of the regulations through fees.

The Department has committed to reviewing the extent and causes of delay costs, and opportunities to reduce them.

In the absence of a more detailed understanding of the delay costs, the analysis of options below does not focus on delay costs.

In general, however, DELWP’s view is that there is a trade-off between:

* delays associated with the time taken for operators to perform the administrative tasks of preparing and submitting information as required by regulations; and
* delays associated with the time taken for government to assess and process submissions.

For example, in order to determine the risks to the environment in the process of approving a licence application, government requires specific information which operators are best placed to provide. While the administrative task of doing so is not costless for operators, the alternative would be that government would expend time and effort trying to determine this information for itself. Given the expertise and knowledge of operators, this alternative would be more costly. Ultimately, given that the costs of administering regulations are recovered from operators through fees, in cases where operators can provide information more quickly or accurately it is more efficient for them to do so, provided that the information that a regulator requests is reasonable and necessary to meet the objectives.

### Administration costs

Administration costs are the direct costs of pipeline companies compiling information that they may not otherwise compile and submit to government, and the government’s costs in assessing submitted material.

For example, in the case of the requirement to prepare an Environment Management Plan, it would include the cost to the operator preparing and submitting the Construction Environment Management Plan and the cost to DELWP of assessing and accepting the plan.

In terms of estimating the current administrative costs incurred by industry, it is difficult to separate:

* the administrative costs associated with the Act/Regulations from those that would be incurred in the ordinary cost of business
* the administrative costs associated with complying with the Regulations from the administrative costs associated with complying with the Act.

Most of the administration costs triggered by the Regulations impact only those licensees or prospective licensees who are proposing to make changes to their current arrangements – such as applying for a new licence, changing a route, or decommissioning a pipeline, and assessing the associated impacts of these changes.

The majority of licensees will incur minimal administration costs associated with the Regulations in any given year. The main annual costs that licensees incur are:

* the requirement in Section 11 of the Regulations for all licensees to provide a report each year on the performance of the licensee in protecting the environment
* the requirement to provide a report on safety incidents when they occur.

For the purposes of providing an approximate estimate of the administrative costs associated with the Regulations each year, it has been assumed that:

* 30% of licences (65 out of 217) will undertake additional administrative activities associated with changes to their arrangements
* these activities may involve up to 158.8 hours’ work, based on 20 days at 7.94 hours per day for a single employee (the most recent estimate of hours worked per day in the Australian labour market)[[23]](#footnote-23)
* the employee doing the work is paid $52.09 per hour (the average hourly wage rate for the energy sector)[[24]](#footnote-24)
* overheads and oncosts in the pipelines industry are around 1.5 and 1.17 times the labour cost respectively[[25]](#footnote-25)
* the remaining 152 licensees incur a flat $5,000 administrative costs each year associated with minor administrative tasks (equivalent to around 54 hours of work at $52.09 per hour, plus overheads and on-costs).

Based on these assumptions, DELWP estimates that the total administrative costs attributable to the current regulations are $1.7 million, as shown below.

Administrative costs to business of current regulations

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **No of licensees** | **Hours** | **Hourly wage** | **Overheads** | **Oncosts** | **Per licensee** | **Cost** |
| Licensees with changes | 65 | 158.8 | $52.09 | 1.5 | 1.17 | $14,517.17 | $945,067 |
| Other licensees | 152 |  |  |  |  | $5,000 | $759,500 |
| **Total** |  |  |  |  |  |  | $1,704,567 |

In addition to stakeholder feedback on this RIS in general, DELWP invites specific feedback on these assumptions and methods, including whether these estimates are likely to be an accurate representation of the costs to businesses of these changes.

In the case of the Government’s costs, again it is difficult to separate the costs associated with administering the Regulations from those that would be incurred in administering the Act.

However, on the assumption that all DELWP’s costs are associated with the Regulations, the total cost to Government is estimated at $575,000 per annum (see section 6.3.1)

## Assessment of the options

The assessment of each of the options is set out below. Under the MCA approach described in section 4.1, the base case scenario is given a 0 rating against all criteria. For the purposes of comparing options against the base case, we have set out a qualitative discussion of the potential costs and benefits of the base case.

As discussed further below, the scores under each of the options are relatively low, reflecting that the benefits and costs, when compared to the situation where the Regulations did not exist, are relatively low. This is because the significant majority of the requirements set out in the existing Regulations would be met by a responsible pipeline owner, operating in accordance with community expectations and complying with nationally (and internationally) accepted operational and construction standards.

* + 1. Base case - No Regulations

The base case scenario of allowing the Regulations to lapse is considered against each of the criteria as follows:

**Policy objectives (Safety and Environment)**

In the absence of the Regulations pipeline owners will still need to meet the requirements of the Act and will therefore continue to undertake many of the activities previously required under the Regulations.

Measures separate from the Regulations will remain in place and not be impacted by the sunsetting of the Regulations. These include AS 2885, which has been adopted nationally as the construction and operation standard for pipelines used in the transmission of the hazardous materials and pressures identified in the Act. One submitter noted that:

*AS 2885 is the minimum standard and is used as the bible to the industry. We strongly support compliance to AS 2885 and we undertake additional mitigation measures undertaken where the risk profile requires it. AS 2885 is very comprehensive and regularly under review.*

The question to be considered is whether, in the absence of the Regulations, the risk to public safety and the environmental will increase. In this scenario, compliance with the Act will be driven by industry participants and will be reliant on stewardship by industry participants.

During a consultation working group discussion, industry participants noted that the larger businesses would be likely to continue risk-based operations and due diligence.

However industry also observed that having Regulations in place helps to guide businesses and those standards may deteriorate over time if there were no Regulations. Some licenses may view guidelines as optional and choose not to adopt these. There may be some risk that safety and environmental standards would fall over time, with a potential increase in incidents. There is some risk that pipeline owners facing financial challenges or new entrants might not follow as rigorous standards as those of larger businesses.

In summary, the Department believes that in the absence of the Regulations, it is likely that the response of industry participants will vary depending on the particular business. Most businesses may continue to adhere to the minimum standards of AS 2885 and other existing requirements, while financially challenged or new and inexperience operators may not. This will increase the risks of public safety and the environment being compromised. As discussed in Chapter 2, the consequences of a pipeline incident on public safety and the environment could be severe. The risks under the base case are greater than the status quo.

**Notification**

Pipeline operators expressed a view during consultation for these regulations that the public notification and consultation processes set out via the Act and Regulations are reasonable. Further, pipeline applicants have financial incentives to consult adequately with landowners to minimise the delay and reputational costs of a poor consultation process - for example construction delays as a result of land access being impeded by landowners. It is in the interests of pipeline applicants to have a cooperative working relationship with landowners and the community, and this provides a good outcome for the community.

In the absence of a regulation prescribing a specific form of notification, then, DELWP assumes that operators would still be likely to provide notification, but that there would not necessarily be a basic minimum standard of detail provided.

**Costs - regulated parties**

As noted above, DELWP assumes that businesses would already undertake the activities required by regulation in the interest of managing risks to safety and the environment as part of their usual business, even in the absence of the regulations. Therefore, in the base case there is no or a negligible difference in compliance costs compared to the status quo.

In the base case businesses would not be required to submit information to the Government beyond that required by the Act, and therefore would not incur the $1.7 million associated with the current regulations (section 4.2.3).

**Costs - government**

Under the no regulation scenario costs to government are likely to increase as government would need to undertake additional work to determine whether or not it was appropriate to, for example, approve a new application for a licence or a variation to an existing licence.

* + 1. Option 1 - status quo

Under this option the existing Regulations would be renewed in their current form.

**Policy objectives (Safety and Environment)**

As noted previously, industry standards for public safety and the environment in Victoria are considered to have been good. This is demonstrated by the reportable incidents data. There also seems to be a generally accepted view that the industry is performing well on public safety and the environment. We note feedback from consultation includes the following:

* licensees have commented that the Regulations generally provide good process for safety and environment protection
* one submitter noted that it recognises that maintaining systems to protect public safety and the environment is very important and that it “dedicates significant resources towards operating pipelines safely and responsibly”.

However, given the general view that most safety and environmental requirements set out in the existing Regulations would be met by a responsible pipeline owner in any case, then the score is +3.

**Notification**

It was observed by industry participants during the working group consultation process that the notification and consultation provisions in the Regulations provide a clear and consistent framework for interacting with landowners.

At the same time, notification and consultation arrangements are unlikely to be substantially different from a situation where no Regulations exist.

The status quo option is therefore rated +1 compared to the base case.

**Costs - regulated parties**

DELWP assumes that there would be no or negligible compliance costs as businesses would already undertake the activities required by regulation as part of their usual business (as discussed above).

The illustrative estimate above of administrative costs under the current regulations suggests that under this option these costs could feasibly be around $1.7 million per year (section 4.2.3).

This option is therefore given a score for this criteria of -3, reflecting that there are greater administrative costs under this option than under the base case.

**Costs – government**

The administrative costs to government will be less than under the base case, as the information required by the Regulations makes it easier for government to assess applications. This option is therefore rated +1.

* + 1. Option 2 – Amended Pipelines Regulations

As noted above, key changes proposed to the Regulations are:

* Licence application - licence applications to contain details of the alternative pipeline routes that were considered by the applicant, and provide a comparison of the environmental, social and safety impacts arising from each alternative route, and the reasons for selecting the proposed route.
* Expanded requirements for Environment Management Plans:
  + expanding the records to be kept including information about the systems, practices and procedures that the licensee has adopted to meet the obligations in the Environment Management Plan; information about the licensee's performance in relation to compliance with regulation 11(1)(b); details of all reportable and non-reportable environmental incidents, including emergency situations: details of the emergency response testing undertaken in accordance with the requirements of the Regulations in the case of any emergency situation, information on the effectiveness of the emergency response plan in eliminating or minimising as far as reasonably practicable any harm to the environment.
* Expanded and refined requirements for Safety Management Plans:
  + requiring that the Safety Management Plan’s formal safety assessment describe the systems, practices and procedures proposed to be undertaken to eliminate or minimise safety risks
  + clarifying that the Safety Management Plan must include an emergency response plan (and setting out the required content of this emergency response plan)
  + requiring procedures to ensure the response arrangements in the emergency management manual are tested
  + requiring the preparation of a safety management system followed or to be followed in relation to the pipeline operation, and setting out some of the required content of the safety management system
  + requiring the Safety Management Plan to contain details of arrangements for recording and reporting information about the licensee’s performance.

**Policy objectives (Safety and Environment)**

As noted previously in this RIS, industry standards for public safety and the environment in Victoria are considered to have been good. There also seems to be a generally accepted view that the industry is performing well on public safety and the environment.

The proposed changes are relatively minor and focused on providing additional information as part of licence applications and Environment and Safety Management Plans that is already prepared and held by the businesses. For example in relation to the licence application amendment, one submitter noted that:

*Route options are already closely considered and impacted by many issues prior to being presented for executive and board approval prior to project acceptance. Easement is a complicated process that already considers environmental and landowner impacts based on a risk assessment method.*

The proposed amendments relating to Safety and Environment Management Plans are also not expected to require the businesses to prepare significant new systems or information: they largely codify into regulation some practices that are already undertaken. This may bring additional focus to these areas and lead to improved standards.

It will also provide better information to the regulators (DELWP and ESV) than under the status quo, enabling them to better fulfil their regulatory functions. For example, currently no information is provided in licence applications on alternative routes considered, a necessary consideration when considering longer term risks from encroachment or increasingly severe climate events.

Further, the change in focus to regulating systems rather than operational detail provides greater value for effort for both licensees and the regulator.

In summary, it is expected that the proposed amendments will support the policy objectives, although the proposed amendments and additional benefits will be small compared to Option 1 (the status quo). Therefore Option 2 is rated +4 compared with the base case.

**Notification**

There is no difference in the requirements for public consultation between Option 1 (the status quo) and Option 2 (proposed Regulations). Option 2 is therefore rated +1.

**Costs - regulated parties**

As discussed in section 3.4, the effect of the proposed changes on compliance costs is expected to be minor, because DELWP expects that operators already undertake the activity required to comply with the proposed changes (e.g. by analysing alternate routes in order to be consistent with AS 2885, and by continuing the management systems approach that has already been adopted by industry in preparing SMPs and EMPs). DELWP invites specific feedback from stakeholders on the above assumptions made about the compliance costs associated with the proposed changes.

One of the aims of this option is to slightly increase regulatory certainty for regulated entities around existing obligations and therefore reduce delay costs. For example, the requirement to provide information on pipeline routes should result in ESV and DELWP having access to better information to perform their regulatory functions under the Act.

On the other hand, adding more requirements may increase delay costs for businesses. There is a view held by some industry participants that the delay (and administrative) costs associated with licence applications are already high. One submitter noted that:

*The … cost is far more in Victoria because of the volume of information required and time taken for processing of applications. It is estimated the cost of compliance in Victoria is as much as twice to three times more in Victoria than in other States.*

It was also noted that, in respect of compliance costs for additional route information required for licence applications:

*Route options are already closely considered and impacted by many issues prior to being presented for executive and board approval prior to project acceptance. Easement is a complicated process that already considers environmental and landowner impacts based on a risk assessment method. It would add an increased burden in satisfying specific requirements if this was required in legislation.*

In the consultation working group round table, industry participants noted that Victoria is more prescriptive than other States in terms of requiring information to accompany licence applications. Prescribing more detailed information requirements in licence applications and safety and environment management plans will increase compliance and administration costs.

No information on the additional costs for compliance or administration associated with the preferred option was provided by businesses. However feedback from a small number of stakeholders suggests the compliance cost increases are likely to be low.

The table below provides DELWP’s conservative estimate of the additional administrative costs that are likely to be incurred, assuming that:

* hours worked per day and the labour costs are the same as those used in illustrative estimate of administrative costs under the status quo;
* preparing and submitting the additional information required under this option would involve up to an additional two days’ work for two staff members at each firm;
* up to 2 operators per year would apply for a new licence; and
* up to 20 operators per year might apply to change the conditions of their licence.

Under these assumptions, only a proportion of the licensees are expected to be impacted by the changes each year as the changes only impact businesses that make application for licences or changes to pipeline routes, plans or licences.

Administrative costs associated with changes to application processes and the contents of SMPs and EMPs

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Requirement** | **No. staff** | **Days** | **Hours** | **Hourly wage** | **Overheads** | **Oncosts** | **Per firm** | **No. firms** | **Cost** |
| Licence application - alternative routes | 2 | 2 | 15.88 | $52.09 | 1.5 | 1.17 | $2,903.43 | 2 | $5,806.86 |
| EMP Changes | 2 | 2 | 15.88 | $52.09 | 1.5 | 1.17 | $2,903.43 | 20 | $58,068.68 |
| SMP expanded description | 2 | 2 | 15.88 | $52.09 | 1.5 | 1.17 | $2,903.43 | 20 | $58,068.68 |
| SMP emergency response manual | 2 | 2 | 15.88 | $52.09 | 1.5 | 1.17 | $2,903.43 | 20 | $58,068.68 |
| SMP safety management system | 2 | 2 | 15.88 | $52.09 | 1.5 | 1.17 | $2,903.43 | 20 | $58,068.68 |
| SMP additional SMP contents | 2 | 2 | 15.88 | $52.09 | 1.5 | 1.17 | $2,903.43 | 20 | $58,068.68 |
| SMP performance reporting arrangements | 2 | 2 | 15.88 | $52.09 | 1.5 | 1.17 | $2,903.43 | 20 | $58,068.68 |
| Decommissioning Plan Changes (inc. Part) | 2 | 2 | 15.88 | $52.09 | 1.5 | 1.17 | $2,903.43 | 20 | $58,068.68 |
| **Total** |  |  |  |  |  |  |  |  | $412,287.62 |

In addition to stakeholder feedback on this RIS in general, DELWP invites specific feedback on these assumptions and methods, and on whether these estimates are likely to be an accurate representation of the costs to businesses of these changes.

This option has been rated -4, to reflect that the administrative costs under the proposed option are marginally higher than those under Option 1 (the status quo).

**Costs - government**

Administrative costs to government should not be significantly different under the proposed changes to the Regulations, as Government does not currently undertake any analysis of alternative routes, or substantial additional work related to the EMP and SMP plans. Hence this this option rated the same as Option 1 (the status quo), which is +1.

* + 1. Option 3 – Non-binding guidelines to replace Regulations

**Policy objectives (Safety and Environment)**

Non-binding (voluntary) guidelines could be developed by the Victorian Government or alternatively by industry in the form of a code of practice on public safety and environmental protection.

The Regulations set out various requirements which are aimed at supporting the policy objectives of the Act, for example relating to the contents of licence applications, Safety Management Plans and Environment Management Plans. Non-binding guidelines could be as comprehensive as the existing Regulations or much less so. Non-binding guidelines would rely heavily on continued industry best practice and stewardship to see that industry participants fulfil requirements mandated by the Act. In the case of industry developed guidelines, the guidelines would need to be developed and maintained at a broader industry level, which would require strong industry commitment and coordination.

The guidelines would need to be voluntarily adopted at the individual business level. Even if the non-binding guidelines are as comprehensive as the Regulations, it is likely that adherence to the guidelines will be more inconsistent than if the Regulations were in place. Although businesses do have incentives to maintain their reputation and also to maintain certain standards for financial and legal reasons, there may be reasons why businesses do not maintain standards to what is currently the level required under the Regulations. For example they may have insufficient information or knowledge, or the penalties for not adhering to the Act may not be sufficient to drive compliance.

It is likely that this would vary across individual businesses. For example one submitter indicated in its written consultation submission that standards would be maintained regardless of the existence of the Regulations or the introduction of a non-binding guidelines:

*The Pipeline Regulations 2007 require compliance with AS 2885, so the Regulations have not had a great effect themselves but the improvement in the Standards has had a positive effect.*

The submitter also observed that compliance with AS 2885 is driven by normal industry practice and provides a consistent approach that can be followed nationally, whereas regulations vary within each State.

However, not all businesses in the business may have the same level of commitment and industry understanding. This is particularly the case for smaller industry participants. There is a risk that public safety and environmental standards may decline over time in certain parts of the industry if guidelines are non-binding. A practical example is the requirements in the Act in relation to ‘reportable safety incidents’. If the non-binding guidelines do not prescribe what are ‘reportable events’, then it might be more difficult to enforce the requirements under the Act. If an operator does not report an event adequately as required under the Regulations, there is no way for the regulator to ascertain whether adequate risk management procedures are being implemented to minimise the impact of the event or to reduce the likelihood of reoccurrence, and to provide the community with peace of mind or assurance that its broader interests are being addressed.

In terms of responsiveness to industry change, non-binding guidelines developed by industry or government may be more responsive to the need for change as no legislative process is required. For industry developed guidelines, this benefit might be larger because industry is able to drive change in response to everyday issues being faced. This benefit depends largely on the level of commitment and coordination in the industry.

This option is given a rating of +2 compared to the base case.

**Notification**

The Regulations set out various requirements in relation to public consultation. In assessing non-binding guidelines against the public consultation criteria, the same principles apply as per the discussion on public safety and environmental outcomes. Non-binding guidelines could be as comprehensive as the Regulations or much less so. The outcome will rely heavily on industry best practice and stewardship, and self-interest, to see that industry participants fulfil requirements mandated by the Act. Under this option, some businesses will continue operating at current standards in relation to the level of public notification and consultation undertaken. Without mandatory requirements, other businesses may undertake less public consultation.

This option is therefore given a rating of +0.5 compared to the base case, as it is likely to be marginally less effective at ensuring a consistent minimum standard of notification than Option 1 (the status quo).

**Costs – regulated parties**

Depending on the nature of the guidelines there may be some reduction in compliance costs to regulated businesses compared with the status quo. While the majority of businesses are not expected to have any substantive change in costs, particularly in the short term, those businesses that find particular elements of the regulatory regime difficult or costly to comply with may not do so, thereby reducing costs.

This option is therefore given a score of -2, to reflect that costs to operators under this option may be marginally lower than under Option 1 (the status quo).

**Costs – government**

This option is likely to increase government’s cost compared to existing arrangements. There will be a minor cost associated with establishing the non-binding guidelines compared with a base case of no regulations.

More importantly, if regulated businesses choose not to follow the guidelines, the costs of assessing applications under the Act are likely to increase compared with the base case. This option is therefore rated as +0.75 – slightly worse than the status quo, but better than the base case.

### Option 4 – Licence conditions

**Policy objectives (Safety and Environment)**

It seems reasonable to assume that, for the most part, the same requirements that are currently included in the Regulations to further the policy objectives of public safety and environment will also be included in any new licence conditions that are negotiated. Exceptions to this might arise as a result of unique features of a particular pipeline application or licence conditions being made to reflect changing industry characteristics.

Depending upon how the licensing regime is implemented, this could lead to benefits if government is able to apply the most relevant and up to date requirements on the licensees at a particular point in time. However, this regulatory approach could be more costly to implement as it would require separate negotiation with each proponent. It could also be less transparent.

For the purpose of this RIS, it is assumed that the policy objectives of safety and environment can be largely maintained at the standard achieved under regulations. Assuming that the licence conditions involved the same requirements as the proposed regulations, a rating of +4 is therefore given, the same as under Option 2.

**Notification**

As per the discussion on public safety and the environment, it seems reasonable to assume that the same requirements for notification will be included in the licence conditions that are currently included in the Regulations. This option is therefore given a rating of +1, the same as Options 1 and 2.

**Costs – regulated parties**

If the licence conditions required operators to provide the same information required under the proposal, then the costs to operators would be the same Option 2. As noted in section 3.6, however, it is possible that using licencing conditions could result in an increase in costs over time, as there would be less transparency and scrutiny that the regulatory requirements were reasonable and the minimum necessary to meet the Government’s objectives. This option is given a score of -5, to reflect that it is slightly more costly than the status quo (Option 1) and Option 2.

**Costs – government**

A licensing regime is anticipated to result in the same general administration and assessment costs as occur under the existing arrangements, but there are likely to be slightly higher costs associated with managing licences and changes to licences compared to the status quo.

Depending on the approach taken, amending all licences to ensure they are up to date and consistent would be a challenging and time consuming task. Experience with licences issued by other regulators – for example, electricity licences issued by the Essential Services Commission - demonstrates that licences can quickly become out of date and inconsistent across businesses.

This option is therefore rated +0.5.

### Summary

A summary of the results of the MCA is provided below. Based on the analysis of non-fee elements of the options, the preferred option is Option 2 Amended Pipelines Regulations.

Summary of MCA results for non-fee elements of the options

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Criteria** | | **Weight** | **Base case** | **Option 1 Current Regs** | **Option 2 Amended Regs** | **Option 3 Guidelines** | **Option 4 Licence conditions** |
|
| **Benefits** | Public safety and environmental protection | 45% | 0 | 3 | 4 | 2 | 4 |
| Public notification | 5% | 0 | 1 | 1 | 0.5 | 1 |
| **Costs** | Costs – regulated parties | 25% | 0 | -3 | -4 | -2 | -5 |
| Costs – government | 25% | 0 | 1 | 1 | 0.75 | 0.5 |
|  | **Weighted total** | **100%** | 0 | 0.90 | 1.10 | 0.61 | 0.73 |

# Preferred option

*This chapter provides a summary of the preferred option including implementation issues and the evaluation strategy.*

## Summary of the preferred option

Based on the analysis in Chapter 4 of this RIS, the preferred option is Option 2 – the amended Regulations. In summary, the proposed Regulations would remake the Regulations with amendments to:

* licence application requirements
* additional information to be included in Environment Management Plans
* additional information to be included in Safety Management Plans
* additional information to be included in Decommissioning Plans
* new fees for Construction Environment Management Plans, Decommissioning Plans (including Part) and applications for minor and significant alterations to the authorised route.

This conclusion is made on the basis that Option 2:

* will continue, and in fact enhance, the current level of safety and environmental protection afforded to the Victorian community
* provides a high level of regulatory certainty for licensees
* keeps the cost of compliance for businesses, and costs to government, at acceptable levels
* provides for adequate public consultation, and
* is designed to achieve 100% cost recovery (see chapter 6).

## Enforcement considerations

Part 11 of the Act sets out enforcement arrangements for the Act. Amongst other things it provides for:

* the appointment of inspectors who may carry out inspections including entering property and seizing documents and other things
* inspectors may issue an improvement or prohibition notices where he/she considers the Act is being contravened
* inspectors may also issue infringement notices, which carry penalties, in the case of certain infringement offences.

In the event that improvement notices, prohibition notices or financial penalties fail to ensure satisfactory compliance with the Act, the Minister has the power to cancel a licence.

Schedule 5 of the Regulations sets out the infringement offences and the penalties that apply. The infringement offences include offences against 14 separate sections of the Act, as well as regulation 19(3) of the Regulations (which require licensees to provide a written report within 7 days after the occurrence of a reportable environmental incident).

No changes are proposed in respect of Schedule 5 of the Regulations (which was only introduced in 2015).

Since the Regulations were made in 2007 no improvement or prohibition notices have been made, no infringement notices or penalties have been issued, and the Minister has not cancelled any licences. It is likely that this is due to a very high level of compliance with the Act and the Regulations (although we note that no specific evidence or data is available to support this assertion). Possible reasons for the apparently high level of compliance include:

* licence holders are typically large international businesses with a strong compliance culture and sound processes and systems
* the importance of safety and the potential severe consequences
* the reputational damage that would occur where compliance failures led to adverse outcomes for the community
* the effectiveness of the Act and Regulations.

Given the high level of existing compliance and the relatively minor proposed changes, the re-made Regulations are not expected to generate a material change in the level of enforcement action. Nor are they expected to require any changes to the existing enforcement arrangements.

## Implementation plan

Step 6 of the *Victorian Guide to Regulation* requires that a RIS must include a plan for implementing the preferred regulatory option.

Following finalisation of the Regulations, and before they come into effect, DELWP will provide extensive information to licence holders regarding the changes. This will include:

* DELWP and ESV will organise a workshop with all licence holders and other interested stakeholders and follow up discussion as required for the purpose of communicating the regulatory changes, the timing of the changes, and any action that needs to be taken by the licence holders
* A guideline to the changes will also be prepared. This guideline will be provided directly to each licence holder and posted on the DELWP web site
* Notice of the changes will also be communicated to industry associations and journals and web sites. This includes the Australian Pipelines and Gas Association and the Petroleum Production & Exploration Association.

## Evaluation strategy

Step 7 of the Victorian Guide to Regulation requires ex-post evaluations of regulatory activities with a view to enhancing the efficiency and effectiveness of meeting government objectives.

*Evaluation involves conducting an objective analysis of the context, design, implementation and outcomes of a regulatory intervention to determine its performance in terms of effectiveness and efficiency.*

A clear outcome of this review of the Regulations has been an understanding of the importance to pipeline owners of efficient and timely processing of applications by government.

DELWP therefore proposes to commence recording and reporting the timeframes by which licence applications, and all other applications provided for under the Regulations, are dealt with. This will provide transparency to industry, enable DELWP to determine whether appropriate resources are being devoted to tasks, and will also provide a guide as to the effectiveness of the Regulations in specifying information requirements for the various regulatory processes.

Other elements of the proposed evaluation strategy include:

* DELWP will undertake an evaluation of the Regulations at or before the mid-point of their life span – in five years time. Details of the review will be developed at the time but it will include extensive industry consultation. The outcomes of the evaluation will be reported to industry
* ESV will continue reporting and recording reportable incident data in line with the industry requirements set out in the Regulations (S190(2) of the Act)).

Given that it has been difficult for DELWP to quantify the effect of the proposed changes to fees on the total fee revenue, the evaluation will also consider whether the fee revenue raised is sufficient to cover the costs of regulating pipelines.

# Fees

*This chapter discusses the existing and proposed fees levied on the industry.*

## Background

A key purpose of the existing Regulations is to set fees for the range of regulatory functions carried out by DELWP pursuant to the Act and Regulations.

Prior to the 2007 Regulations fees, including those paid by licence applicants and upon issue of a licence, were relatively modest. The 2007 Regulations generally increased fees, and introduced a range of new fees for a range of services, in order to improve cost reflectivity and recovery.

* + 1. Government policy on cost recovery

Cost recovery through fees occurs on the basis of a user-pays system, whereby those who utilise services are obliged to pay for the cost of those services, rather than having them funded by others e.g. from the workers compensation premium. Under full cost recovery, premium payers in general are not subsidising those who use the service for which costs are being recovered.

Cost recovery has the potential of advancing both equity and efficiency objectives, although in some cases these objectives may need to be balanced against each other. A requirement outlined in the *Victorian Guide to Regulation* and general government policy is that regulatory fees and user charges should be set on a full cost recovery basis to ensure that both efficiency and equity objectives are met.[[26]](#footnote-26) Full cost represents the value of all the resources used or consumed in the provision of an output or activity. In particular:

* full cost recovery promotes the efficient allocation of resources by sending the appropriate price signals about the value of all the resources being used in the provision of government goods, services and/or regulatory activity
* full cost recovery ensures that those that have benefited from government-provided goods and services, or those that give rise to the need for government regulation, pay the associated cost. Those parties that do not benefit or take part in a regulated activity do not have to bear the costs.

The principle of fully internalising the costs of regulation is supported by the Department of Treasury and Finance’s *Cost Recovery Guidelines*, which states that costs should be recovered directly where possible, “from those that benefit from, or whose actions give rise to the need for, the government good/service/activity”.*[[27]](#footnote-27)*

At the same time, the *Cost Recovery Guidelines* recognises that there are situations where it may be desirable to recover at less than full cost, or not to recover costs at all.

Examples include circumstances where:

* practical implementation issues make cost recovery infeasible
* there are benefits to unrelated third parties (sometimes referred to as ‘positive externalities’)
* social policy or vertical equity considerations are considered to outweigh the efficiency objectives associated with full cost recovery
* full cost‑recovery might adversely affect the achievement of other government policy objectives.

The *Victorian Guide to Regulation* requires that, where Regulations impose fees or charges, analysis of these Regulations is aligned with the principles set out in the *Cost Recovery Guidelines*. The guideline identifies five key steps to cost recovery for fees RIS:

|  |  |
| --- | --- |
| Step 1 | Identify the problem or issue |
| Step 2 | Specify desired objectives |
| Step 3 | Identify viable options to achieve the objectives |
| Step 4 | Assess the costs and benefits of the options |
| Step 5 | Identify the preferred option and describe its effect |

## Current fees

Section 190 of the Act provides a broad power for Regulations to be made for ‘fees and forms for the purposes of this Act’. In addition, different sections of the Act specifically provide for fees for certain services. For example, Section 30 of the Act provides that licence applications must ‘be accompanied by the prescribed application fee’.

The Regulations currently provide for a number of fees to be charged by DELWP. The Regulations do not address fees payable to ESV. Rather, ESV fees are established through the Act, and determinations made by the Minister[[28]](#footnote-28). Hence ESV fees are not discussed here further.

The fees that are currently set in the Regulations are described in the table below:

Existing fees under the Pipeline Regulations

| Category | Activities undertaken | Variation in effort b/w cases | Current fee structure | No of fees paid 2015 |
| --- | --- | --- | --- | --- |
| Licence application fee (Schedule 2 Table A of the Regulations) | DELWP is required to undertake a range of activities when a licence application is received, including:   * Assessment of application to determine if application complies with the requirements of the Act * Referral of application to ESV and DELWP (Manager Pipeline Regulation) * Assess technical aspects of the application * Assessment of application under the *Native Title Act 1993* * Referral of application to Native Title Coordinator for assessment * Meetings with licence applicants and ESV * Briefings of DELWP senior management and Minister * Receive and co-ordinate comments on the licence application * If the application raises significant environment, social or safety risks, prepare brief for Minister and seek approval to form Panel. Arrange formation of Panel | High | Fee varies based on length of pipeline and whether EES or licence conditions are required | 6 |
| Licence issuance  (Schedule 2 Table B) | * Finalise assessment of application i.e. ensure that all requirements under the Act have been met. * Prepare Licence documentation. * Prepare brief for the Minister (including recommendations of Panel report (if Panel formed). * Send notification to authors of submissions that Licence has been granted. * Send notification to ESV that Licence has been granted. * Send Licence document to licensee. | Medium | Fee varies based on length of pipeline | 3 |
| Application for licence amendment  Clause 13(2) | * Receipt of application * Assessment of application to determine if application complies with the requirements of the Act * Referral of application to ESV and DELWP (Manager Pipeline Regulation) * Assess technical aspects of the application * Provide comments to applicant on any additional requirements. * Prepare amendment to Licence document. * Prepare brief to Delegate with recommendation * Send notification to applicant that Variation to Licence has been approved. | Medium | Fixed fee | 0 |
| Application for licence consolidation  Clause 15 | * Receipt of application * Assessment of application to determine if application complies with the requirements of the Act * Referral of application to ESV and DELWP (Manager Pipeline Regulation) * Provide comments to applicant on any additional requirements. * Prepare Consolidation of Licence document; prepare cancellation/consolidation document. * Prepare brief to Delegate with recommendation * Send notification to applicant that Consolidation of Licence Document and cancellation/consolidation documents has been approved. | Low | Fixed fee | 0 |
| Lodging notice with registrar of titles  Clause 46 | * Proponent, applicant or licensee lodges notice with Registrar of Titles. | Low | Fixed fee | 0 |
| Application to use pipeline to convey other things  Clause 25 | * Receipt of application * Assessment of application to determine if application complies with the requirements of the Act * Referral of application to ESV and DELWP (Manager Pipeline Regulation) * Provide comments to applicant on any additional requirements. * Prepare Variation of Instrument document. * Prepare brief to Delegate with recommendation * Send notification to applicant that Variation of Instrument Document has been approved. | Medium/Low | Fixed fee | 0 |
| Application for approval of access to easement  Clause 27 | * Receipt of application * Referral of application to Energy Safe Victoria (ESV) and DELWP technical Services * Provide comments to applicant on any additional requirements. * Prepare brief to Delegate and letter for Delegate to sign with recommendation * On receipt of signed brief and letter send notification to applicant that access to easement has been approved or not approved. | Low | Fixed fee | 0 |
| Fee for access to registered information  Clause 44 | * Receipt of application * Check register to ensure all entries are contained within RRAM. [in full] * Check register to ensure all electronic records are contained in E-Register. * Send e-register to client and advice on fee. * Processing of fee * Send documents to client. * Record email in Access to Registered Information folder. | Medium | Hourly fee with cap | 0 |
| Fee for information from pipelines register  Clause 44 | As per above process. | Medium | Per page fee | 0 |

For most of the fee types listed in the table above the number of transactions undertaken in any year is low. In fact for several fees only a handful of transactions have taken place since the fees were put in place in 2007. One example is the consolidation of licence fee where only one consolidation has occurred (in 2013).

In addition to the fees in the table above, Section 110 of the Act provides that an annual licence fee may be imposed on licensees. However clause 23 of the Regulations currently provides that the annual licence fee shall be nil.

DELWP also undertakes a number of activities in relation to the Act and Regulations for which there is no direct cost recovery. These include activities related to:

* transfer of a Pipeline Licence
* processing applications for surrender of a Pipeline Licence
* processing recommendations for cancellation of a Pipeline Licence
* registration of a dealing
* creating and maintaining pipeline register
* assessment of applications to enter land for survey
* assessment of requests for third party access
* assessment of requests to share pipeline
* assessment of Rehabilitation Bond – Construction
* assessment of Rehabilitation Bond - Return
* applications to survey land (where owners consent cannot be obtained)
* assessment of applications for compulsory acquisition
* general administration including interaction with licensees, ESV and other stakeholders
* assessment of Construction Environment Management Plans
* assessment of Part Decommissioning Plans and Decommissioning Plans
* alterations to authorised route.
  + 1. Historic level of cost recovery

Historically, it is likely that DEDJTR did not recover the costs it incurred in administering the Act and Regulations. However, while the functions were being undertaken within DEDJTR, no calculation of the cost of providing services was undertaken. Further, with a different staffing structure now in place following the transfer of functions to DELWP, no attempt has been made to estimate historic levels of cost recovery.

* + 1. Limitations of the existing fee structure

Throughout the consultation process a number of limitations and issues were identified with the existing fee structure. These are summarised in the table below.

Limitations associated with current fees

| Fee | Limitation/Issue |
| --- | --- |
| Licence issuance fee | The actual cost to DELWP of issuing a licence is relatively low, and the fee charged significantly exceeds these costs. Instead the licence issuance fee is broadly intended to cover the costs of administering the Regulations, including minor tasks associated with a pipeline over its lifetime. However, more than 200 pipelines that were issued with licences prior to 2007 do not contribute to these costs. |
| Licence application fee | The structure of the licence application fee is quite complex. Although the costs of assessing applications in respect of lengthy pipelines (more than 100km long) is greater than that of smaller pipelines, there is limited justification for having 4 separate categories of pipelines that are less than 100km long. |
| Licence application fee | The current category of pipelines that do not require an EES but may have environmental conditions attached is superfluous. Pipelines that do not require an EES, even if they do require conditions, incur similar costs within DELWP and should attract the same fee as all pipelines that do not require an EES. |
| Access to registered information  Fee for information from pipelines register | DELWP receives approximately 12 requests a year for access to the Pipelines Register. The costs of arranging access, and then for identifying and charging fees are burdensome. A more transparent, cheaper and faster approach, except for commercially sensitive information, is for DELWP to place the Pipelines Register on the DELWP website and abolish the fees. |
| Application fee for minor alteration to the authorised route. | There is currently no application fee for minor alternations to the authorised route. It can take approximately 7 days to assess each application. |
| Application fee for significant alteration to the authorised route. | There is currently no application fee for significant alternations to the authorised route. It can take approximately 24 days to assess each application. |
| Application fee for Construction & Environment Management Plan (CEMP) | There is currently no application fee for a CEMP. DELWP processes many CEMPs annually in support of minor and significant alterations to the authorised route of a pipeline |
| Application fee for decommissioning plan and part decommissioning plan | There is currently no application fee for decommissioning plans, or for amendments to such plans. It is estimated to take 54 days to consider an application for decommissioning a pipeline which is longer than 100km |

## Proposed fees

DELWP has considered fee arrangements in light of the limitations and issues identified with the existing fee arrangements outlined above.

The analysis has considered:

* different and new fees, in order to better link fees to the costs imposed by industry participants
* different types of fee structures, and
* different levels of cost recovery.

DELWP has also had regard to the framework outlined in the *Cost Recovery Guidelines*.[[29]](#footnote-29) This framework requires consideration of five key questions to determine the overall appropriateness of cost recovery, as follows:

* is the provision of the output or level of regulation the minimum required to meet the objective?
* what is the nature of the output or regulation?
* who could be charged?
* is charging feasible, practical and legal?
* is full cost recovery appropriate?
  + 1. Efficient cost base

Before considering the fees in detail, it is important to ensure that the level and standard of provision of government goods and services, and the nature of any regulation imposed by government, are the minimum necessary to meet the needs of the community and achieve the Government’s objectives. That is, cost recovery should be based on ‘efficient costs’ of the activity and should avoid:

* gold plating – where unnecessarily high standards of facilities are adopted in the provision of goods and services, with government agencies imposing their own preferred levels of service, rather than the lower levels that would be sufficient to meet stakeholder needs or achieve government objectives
* cost padding – where costs are inflated above efficient levels, motivated by the knowledge that all costs can be recovered
* regulatory creep or over-regulation – where additional or unnecessary regulation is imposed without adequate scrutiny. Regulatory creep or over-regulation can impose significant additional costs that are recovered from affected parties.

It is difficult to directly assess the efficiency of pipeline regulation in Victoria. However, the move of pipeline regulatory functions to DELWP has generated cost efficiencies. Cost estimates set out below are based on a total of 3.2 employees involved in administering the Act and Regulations. This is a reduction from the assumption of 5.45 employees which was adopted in the 2007 RIS and which underpins the current fee structure.

The total cost of government administration of the Regulations, based on 3.2 employees (1x VPS4, 1X VPS5, 1xVPS6, 0.2xVPS6.1) and using standard assumptions about overheads and on-costs, results in an annual cost of approximately $575,000, as shown in the table below.

DELWP administrative costs

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **VPS4** | **VPS5** | **VPS6** | **0.2xVPS6.1** | **Total** |
| Salary (midpoint of grade range) | $84,074 | $100,430 | $120,911 | $24,182 |  |
| On cost multiplier | 1.75 | 1.75 | 1.75 | 1.75 |  |
| Total cost | $147,130 | $175,752 | $211,593 | $42,319 | $576,793 |

### Consultation

The range of possible new fee types was discusses at a consultation meeting on 20 September 2016. This includes discussion on the possibility of introducing annual licence fees. However the level of the new fees was not discussed at the meeting.

A range of comments was also provided in written feedback to the discussion paper that was provided:

* fees paid to DELWP are currently minimal and represent less than 1% of the cost of pipeline operations. At current levels they do not influence decisions about whether to invest or undertake operations in the pipelines industry
* the introduction of new fees arrangements would be supported where DELWP can demonstrate efficiencies and where improvements or greater certainty in processing time could be delivered
* some parties preferred a single annual fee whereby broad DELWP costs are ‘smeared’ across all licensees, rather than a separate fee for each time a modification or submission is made
* however, others parties supported more of a user-pays approach, whereby parties seeking licence alterations or route modifications paid for the costs imposed on government
* the administrative burden required to process multiple small fees was also raised. The potential to raise a single invoice (in arrears) to cover all fees for the previous year was raised.

## New, amended and deleted fees

It is proposed that a range of changes to the fee structure be made to address the issues identified above and more generally better allocate DELWP’s costs across the licence base.

The most significant change proposed is the removal of the licence issuance fee.

**Licence issuance fee**

At present the once-off licence issuance fee effectively replaces the annual operating fee, with a licensee paying a once-off fee to cover DELWP’s costs of administering a licence over the lifetime of the pipeline.

Although the once-off fee is not sufficiently large as to present a barrier to the construction of pipelines, the current structure has the following problems:

* of the 217 existing licences, only 8 have paid the once-off licence issuance fee that has been in place since 2007. Before this time the fees associated with obtaining a licence were minimal. Most licensees pay no fees at present (unless they seek certain changes to their licence or associated documents)
* at present DELWP’s revenue is largely determined by the number of licence applications and particularly licences issued in an individual year. If the number of applications and licences issued is low, revenue can be significantly less than costs. Conversely, a high number of issued licences would mean revenue significantly exceeds costs
* should DELWP’s costs of administering licences increase or decrease significantly over time, there is limited capacity to reflect these cost changes in fees
* the cost of administering a pipeline over its lifetime is very difficult to estimate; hence it is difficult to set the licence fee at a cost reflective level.

DELWP’s view is therefore that the once-off licence issuance fee should be removed, and instead cost-reflective fees should be set for a range of tasks which are currently not charged for but are carried out by DELWP in relation to specific pipelines. This will strengthen the user-pays nature of the fee and reduce revenue volatility.

**Annual licence fee**

DELWP also considered whether an annual licence fee should be introduced, and contemplated a range of options for the structure of such a fee, including:

* a fixed fee per licence
* a fixed fee plus variable fee per km
* a fee based on categories of pipeline length (0-10km, 10-100km, 100+km).

The potential introduction of an annual licence fee was also discussed at the consultation session.

On balance, DELWP’s view is that there would be limited benefit in introducing an annual licence fee, for reasons including:

* with more than 200 licences, in order for DELWP not to over-recover its costs of administering the Act, and taking into account the revenue from the other fees, the annual licence fee would be quite low – and certainly less than $1000.
* alternatively, if annual licence fees were to replace all other fees (which would result in an annual fee of around $2,500) this would not be consistent with the Victorian Cost Recovery Guidelines as those licensees imposing costs on government would not face those costs.
* it would impose additional administration costs on DELWP, as well as licensees
* cost recovery will be improved by the addition of the fees set out below

It is therefore proposed not to proceed with an annual licence fee.

**New fees**

In order to promote greater cost reflectivity and the user-pays approach, it is proposed to introduce the following new fees:

* a fee for assessing decommissioning (and part decommissioning) plans as satisfactory. This will cover DELWP’s costs in consultation, review and approval of decommissioning plans. It is proposed that the fee vary according to pipeline length, as the longer the pipeline the more numerous and complex the decommissioning is likely to be.
* a fee for assessing a CEMP for a new pipeline, minor and significant alterations to authorised route. This fee will cover DELWP’s costs in meeting with the proponent/licensee, reviewing the application, consultation and decision making. It is proposed that the fee vary according to pipeline length, as the longer the pipeline the more complex the CEMP is likely to be.
* a fee for amending a CEMP. This fee will cover DELWP’s costs in meeting with the proponent/licensee, consultation, review of the proposed CEMP and making a decision on the application. There will be a separate fee for a minor and major amendment. A significant is one where the CEMP is replaced in its entirety or majority.
* a fee for making alterations to pipeline routes. This will cover DELWP’s costs in meeting with the proponent, making site visits, consultation with agencies, undertaking a native title assessment and making a decision on the application. The fee will vary according to whether the alteration is ‘minor’ or ‘significant’. A ‘significant’ alteration is one where the rights and interests of another person (other than licensee) are affected i.e. additional or new interests are required as to the proposed alteration. As an alteration to a pipeline route will either require a CEMP or decommissioning (and part decommissioning) plan, there will also be a fee associated with CEMP and decommissioning (and part decommissioning) plans applications for minor and significant alterations.

**Fees to be removed**

It is proposed to remove the following fees:

* the fees for access to registered information. It is intended that this information will be made publicly available on the DELWP website
* the licence issuance fee.

**Cost recovery**

In terms of the overall level of cost recovery, there are no reasons why the current policy of full cost recovery should not be maintained. DELWP notes that

* there are no practical reasons why zero or partial cost recovery is infeasible
* there would appear to be no social policy or vertical equity considerations supporting zero or partial cost recovery
* full cost‑recovery will not adversely affect the achievement of other government policy objectives.

While there are clearly externality benefits to the public from the safe operation of pipelines, there is no reason why full cost recovery would jeopardise these benefits.

Although the comments from some pipeline owners regarding the advantages of ‘smearing’ costs across have been noted, DELWP’s view is that it is more efficient and equitable to charge those pipeline owners who impose costs on government rather than allocate costs across all owners.

## Fee structures

DELWP has considered a broad range of alternative fee structures for the new and existing fees. These are:

* flat fees: a single pre-defined fee for each application
* fees to be based on a standard hourly rate and the number of hours required to review/assess applications
* an activity-based costing system whereby an ‘actual’ cost is calculated for each application - under this approach DELWP would be able to recoup additional costs associated with any necessary of ramping up of resources to deal with peak periods or to obtain specialist input
* the proposed arrangements (described in more detail below) which involve a combination of flat fees (typically for the more minor fees) and fees that vary based on pipeline length (for licence applications and more significant fees).

These fee structures have been assessed using a MCA approach with four criteria:

* the level of cost-reflectivity
* equity – the degree to which the parties that give rise to specific costs bear those costs
* certainty – the extent to which applicants will understand in advance
* the administrative costs associated with calculating and levying fees

As with the MCA for the substantive elements of the Regulations, the options have been scored on a range of + 10 to -10. Each criteria has been weighted equally.

The results of the MCA are set out in the table below. DELWP believes that the proposed combination of flat fees and fees that vary based on pipeline length best balances the objectives of cost reflectivity, equity, certainty and administrative cost.

### Option 1 – flat fee

**Cost-reflectivity**

Compared to a base with no fees at all (which would not reflect costs at all) a fee based on a simple average of the attributable staff costs across all licence holders would be more reflective of costs, but would not account for any variation over time in the actual costs of regulatory activities. This option is therefore given a rating of +2.

**Equity**

Compared to a base case (in which all the regulation of pipelines would be funded by all taxpayers via consolidated revenue) charging a flat fee is more equitable. Some license holders would pay far more, when the actual regulatory cost of their application was relatively low, and vice versa. Under a flat fee based on a simple average, however, there would be substantial cross-subsidisation between pipeline operators. The score for equity is therefore better than the base case, but low, and this option is given a rating of +3.

**Certainty**

In a base case with no fees being charged, operators have complete certainty about what they will pay – nothing. In this scenario, every operator would have complete certainty that they would be charged the simple average cost. This option is therefore no different from the base case in terms of certainty, and is given a rating of 0.

**Administrative costs**

In the base case there would be no fees charged, and so there would be no costs associated with administering the collection of fee revenue. This option would impose some administrative costs, and so is given a rating of -4 to reflect that would be more costly than the base case.

### Option 2 – fees charged at an hourly rate

**Cost-reflectivity**

To the extent that the costs of regulatory activity undertaken by DELWP are driven mostly by staff time, this would be a good proxy for the actual costs of regulating pipelines, and would be able to account approximately for variation over time in the actual costs of regulatory activities. This option is therefore given a rating of +9.

**Equity**

This option would be much more equitable than Option 1, because those giving rise to the regulatory activity are making a payment much more proportionate to the cost of that activity. This option is therefore given a rating of +8.

**Certainty**

This option would create some uncertainty because operators can never know for sure how many hours of labour it will take to process an application or submission. This option is therefore given a rating of -6.

**Administrative costs**

Charging each operator based on the specific hours spent working on a submission would require systematically tracking all hours spent and invoicing each operator based on these. This would be a particularly costly system to implement, and one which would be inefficient given the relatively small total cost of the regulatory activity. This option is therefore given a rating of -9.

### Option 3 – fees charged based on activity-based cost

**Cost-reflectivity**

Undertaking full activity-based costing and charging for each regulatory activity on this basis would be perfectly cost reflective, and would account perfectly for variation over time in the actual costs of regulatory activities. This option is therefore given a rating of +10.

**Equity**

Perfectly reflective charges mean that pipeline operators are in effect being invoiced directly for the specific costs that they gave rise to. Under this option there is no cross-subsidisation between operators and each operator bears the actual costs of the regulatory activity they give rise to. This option is therefore given a rating of +10.

**Certainty**

As with Option 2, this option would make it difficult for operators to predict in advance what the cost of their applications or submissions were likely to be. Option 3 may introduce slightly more uncertainty because it could also vary based on other inputs to the regulatory activity, rather than smoothing all the costs over a single hourly rate. This option is therefore given a rating of -7.

**Administrative costs**

This option would be more costly than Option 2, because it would require a full activity-based costing to be undertaken for each activity. This option is therefore given a score of -10 (which also reflects that this would be the most costly way to set and collect a fee).

### Option 4 – the proposed fees

**Cost-reflectivity**

The proposed fees estimate the average cost of specific types of activities. This is not as cost-reflective as Options 2 or 3, but is still much better than simple average for all activities, because it reflects a wide variation in the estimated average cost of specific activities (ranging from around $700 to around $40,000 – see Table 6.5 below). This option is therefore given a rating of +6.

**Equity**

This option is not as effective at reducing cross-subsidisation as Options 2 or 3, because by setting a fee based on the average costs of a specific activity there may still be cross-subsidisation between different operators who each give rise to that activity. It is still more equitable than the base case, because operators bear the costs of the regulatory activity, and it is better than Option 1, because there is less cross-subsidisation than under a single flat fee. This option is therefore given a rating of +6.

**Certainty**

This option does not provide as much certainty as the base case (in which there is no fee) or Option 1 (in which there is a single fee), as operators will need to anticipate the type of application or submission they are making. However, DELWP expects that under this option, the likely cost of applications or submissions will be quite clear to operators in advance, compared with Options 2 or 3.

**Administrative costs**

DELWP expects that administering a system to collect revenue for a range of different fees would only be marginally more costly than doing so for a system with a single flat fee. This option is therefore given a rating of -5.

Summary of MCA results for fee structures

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Criteria** | **Weight** | **Base case** | **Option 1 Flat fee** | **Option 2 Hourly rate** | **Option 3 Activity-based** | **Option 4  Proposal** |
|
| Cost reflective | 25% | 0 | 2 | 9 | 10 | 6 |
| Equity | 25% | 0 | 3 | 8 | 10 | 6 |
| Certainty | 25% | 0 | 0 | -6 | -7 | -3 |
| Administrative cost | 25% | 0 | -4 | -9 | -10 | -5 |
| **Weighted total** | **100%** | 0 | **0.25** | **0.5** | **0.75** | **1** |
|  |  |  |  |  |  |  |

## Fee levels

DELWP has prepared a detailed estimate of the number of days associated with each fee type (except the annual licence fee, which is discussed below). This estimate has been based on historical experience with most fee types, and estimates for those fees which are to be introduced or for which there have been few recent examples. The table below shows the estimate for each of the proposed fee types:

Number of days effort associated with each fee type

| **Fee type** |  | **Number of days effort** |
| --- | --- | --- |
| **Existing fees** |  |  |
| Licence application with EES required | 0 to 10km | 42.8 |
| 10 to 100km | 55 |
| 100km + | 64 |
| Licence application no EES required | 0 to 10km | 17.1 |
| 10 to 100km | 23 |
| 100km + | 28 |
| Application to amend licence condition |  | 2.7 |
| Application for consolidation of licences |  | 6.3 |
| Lodging notice with registrar |  | 1 |
| Application to convey other substance |  | 3 |
| Application for Ministerial direction to share pipeline |  | 3 |
| Application to access easement |  | 3 |
|  |  |  |
| **New fees** |  |  |
| CEMP fee | 0 to 10km | 8.2 |
| 10 to 100km | 26.5 |
| 100km + | 54 |
| Minor amendment of CEMP fee |  | 8.2 |
| Significant amendment of CEMP fee |  | 26.5 |
| Decommissioning plan | 0 to 10km | 8.2 |
| 10 to 100km | 26.5 |
| 100km + | 54 |
| Part decommissioning plan | 0 to 10km | 8.2 |
| 10 to 100km | 26.5 |
| 100km + | 54 |
| Minor alteration to authorised route |  | 6.8 |
| Significant alteration to authorised route |  | 25 |

The number of days effort in the table above results in the following fees:

Proposed fees, including comparison with existing fees

| **Fee type** |  | **Proposed fee** | **Current fee** | **% change** |
| --- | --- | --- | --- | --- |
| **Existing fees** |  |  |  |  |
| Licence application with EES required1 | 0 to 10km | $33,104.38 | $39,284.31 | -19% |
| 10 to 20km | $42,540.67 | $59,176.69 | -39% |
| 20 to 50km | $42,540.67 | $59,176.69 | -39% |
| 50 to 100km | $42,540.67 | $59,176.69 | -39% |
| 100km + | $49,501.87 | $59,176.69 | -20% |
| Licence application no EES required1 | 0 to 10km | $13,226.28 | $7,360.32 | 44% |
| 10 to 20km | $17,789.74 | $7,360.32 | 59% |
| 20 to 50km | $17,789.74 | $13,227.67 | 26% |
| 50 to 100km | $17,789.74 | $13,227.67 | 26% |
| 100km + | $21,657.07 | $20,090.33 | 7% |
| Licence issuance1 | 0 to 10km | $0.00 | $23,371.80 |  |
| 10 to 20km | $0.00 | $51,717.40 |  |
| 20 to 50km | $0.00 | $77,276.39 |  |
| 50 to 100km | $0.00 | $97,167.38 |  |
| 100km + | $0.00 | $119,047.60 |  |
| Application to amend licence condition |  | $2,088.36 | $1,989.24 | 5% |
| Application for consolidation of licences |  | $4,872.84 | $1,989.24 | 59% |
| Lodging notice with registrar |  | $773.47 | $613.36 | 21% |
| Application to convey other substance |  | $2,320.40 | $3,978.48 | -71% |
| Application for Ministerial direction to share pipeline |  | $2,320.40 | $1,989.24 | 14% |
| Application to access easement |  | $2,320.40 | $1,989.24 | 14% |
|  |  |  |  |  |
| **New fees** |  |  |  |  |
| CEMP fee | 0 to 10km | $6,342.43 |  |  |
| 10 to 100km | $20,496.87 |  |  |
| 100km + | $41,767.20 |  |  |
| Minor amendment of CEMP |  | $6,342.43 |  |  |
| Significant amendment of CEMP |  | $20,496.87 |  |  |
| Decommissioning plan | 0 to 10km | $6,342.43 |  |  |
| 10 to 100km | $20,496.87 |  |  |
| 100km + | $41,767.20 |  |  |
| Part decommissioning plan | 0 to 10km | $6,342.43 |  |  |
| 10 to 100km | $20,496.87 |  |  |
| 100km + | $41,767.20 |  |  |
| Minor alteration to authorised route |  | $5,259.57 |  |  |
| Significant alteration to authorised route |  | $19,336.67 |  |  |

1 Note that it is proposed to remove the 10 to 20km, 20km to 50km and 50km to 100km categories for these fees. Existing fees for these categories are shown for comparison purposes only

The following assumptions and inputs were made when calculating fees:

* DELWP has 3.2 staff focussed on administering the Act and Regulations: one VPS-4, one VPS-5, one VPS-6 and 20% of a VPS6.1
* A simplifying assumption was adopted that the time input for VPS level for each fee type would be the same, and would reflect the average for the team
* A multiplier of 1.75 has been used to covert annual salary costs to total costs, reflecting on-costs and overheads. This is the default multiplier suggested in the *Cost Recovery Guidelines*. This results in an average daily cost of $773.47 and a total cost to DELWP of $562,000 per annum
* The forecast number of fees each year will be equal to the average number incurred in calendar years 2013 to 2015
* All fees were calculated based on current ($2016/17) costs. The calculations therefore implicitly assume that any productivity savings will be offset by increases in real wages
* Fees will automatically escalate each year in accordance with changes to fee units.

### Pipeline owner/operator and customer impacts

Given the changes in fee structure, and the introduction of new fees, it is not possible to quantitatively estimate the impact of the new fee structure and level on individual pipelines. However, in broad terms the impact can be summarised as follows:

* For those pipeline owners and operators that continue to operate their pipelines in the existing manner (with, for example, no change to route or licence conditions) there will be no change in their fees (which are currently nil). In any given year the vast majority of pipeline licence holders will be in this category.
* Pipeline owners and operators that seek to change the operation of the pipeline will face increased costs compared to those at present. For example, under the new fee arrangements a pipeline owner that wishes to make a significant alteration to the authorised route will incur costs of:
  + $19,337 for making application to change the route, plus
  + $20,497 for submitting a revised CEMP in respect of the changed route.
* At present an application to make a significant alteration to the authorised route incurs no fees
* New licence applicants will face a 20 to 40% ($6,180 to $16,636) reduction (for applications that require an EES) or a 7 to 59% ($1,567 to $10,429) increase (for applications that do not require an EES). All applicants will not have to pay the existing licence fee, which currently ranges from $23,372 to $119,048

Overall the changes in fee levels, both positive and negative, are unlikely to materially impact the price paid by customers of the pipelines. This is because the fees are immaterial compared to the overall cost of owning and operating pipelines.

* + 1. Implementation process

It is proposed that with the exception of the annual licence fee, the new fees will take effect immediately upon promulgation of the new Regulations. Fees will be defined in fee units and indexed each year in accordance with the general change in fee units, which is set by the Treasurer.

# Impact on small business and competition

## Impact on small business

It is Victorian Government policy to specifically consider the impact of proposed amendments to legislative proposals on small business in RISs. Where the costs of compliance with Regulations comprise a significant proportion of business costs, small business may be affected disproportionately by such costs compared to large businesses.

An assessment of the small business impacts must consider matters such as:

* variation in the compliance burden
* whether any compliance flexibility options have been considered that will assist small businesses to meet the requirements of the proposed measure
* the likely extent of compliance by small versus large business
* the distribution of benefits arising from the proposed measure
* the relative impacts of penalties and fines for non-compliance.

It is worth noting that with very few exceptions, all the holders of licences under the Act are large businesses. This includes many well-known national and international gas, oil and petrochemical companies. The Department was only able to identify a maximum of two licences that are held by entities that could be small businesses (based on the ABS definition of one that employs less than 20 full time employees).

Any new entrants into the pipeline industry are likely to be large businesses. The capital costs and technical expertise required to construct and operate pipelines are such that small businesses are unlikely to enter the industry. It is not considered that the Regulations provide a barrier to entry.

The Regulations do not make any distinction between small and large businesses (except to the extent that licence application fees and proposed CEMP fees and decommissioning fees are based on the length of the pipeline). Hence the compliance burden will be proportionately higher for smaller businesses than large. However, given the relatively small impact of the Regulations on business costs, including fees, as well as the very small (if any) number of licenced small businesses, it is not considered that any specific allowances need to be made in the Regulations to cater for small businesses.

## Competition assessment

It is Victorian Government policy that legislation which restricts competition will not be passed unless it can be demonstrated that:

* the benefits of the restriction, as a whole, outweighs the costs
* the objectives of the legislation can only be achieved by restricting competition.

In order to assess whether the proposed fee structure will restrict competition, the following ‘competition test’ has been applied. A legislative amendment is considered to have an impact on competition if any of the following questions in the table below can be answered in the affirmative.

Impacts of the Regulations on competition

|  |  |
| --- | --- |
| **Question** | **Assessment** |
| Is the proposed measure likely to affect the market structure of the affected sector(s) – i.e. will it reduce the number of participants in the market, or increase the size of incumbent firms? | No |
| Will it be more difficult for new firms or individuals to enter the industry after the imposition of the proposed measure? | No |
| Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (e.g. small firms, part-time participants in occupations etc.)? | No |
| Will the proposed measure restrict the ability of businesses to choose the price, quality, range or location of their products? | No |
| Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet? | No |
| Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure? | No |

It is not anticipated that the changes to the Regulations will have any material impacts on competition. Although some industry participants have noted that the licensing and oversight regime established under the Regulations is more detailed and onerous that in other States, it is not likely that this has any measurable impact on competition.

# Consultation

*This section details the consultation process that was undertaken in preparation for this RIS.*

## Consultation undertaken

The following targeted industry stakeholder consultation has been undertaken by DELWP for the purposes of the proposed Regulations and RIS. This is in addition to ongoing discussions with the industry and key stakeholders -

* an initial meeting was held between DEDJTR and industry stakeholders to discuss the Regulations and potential changes issues and developments. Stakeholder views from this meeting were considered as DEDJTR (subsequently DELWP) and ESV worked to develop proposals for amendments to the Regulations.
* a second consultation session was held with industry stakeholders to discuss their concerns and priorities with the proposed changes to the Regulations (20 September 2016). A description of the proposed changes to the Regulations was circulated prior to the meeting, in addition to questions about the current operation of the Regulations and details on the options to be considered in the RIS. Stakeholders were also requested to provide written comments, and three responses were received.

Industry stakeholder consultation timeframe

|  |  |  |
| --- | --- | --- |
| **Date** | **Purpose** | **Participants** |
| **13/05/2016** | First round of consultation with industry stakeholders to explain the purpose of the RIS | DEDJTR, ESV, VicTrack, APGA, DELWP, VFF, EPA |
|
|
|
|
| **20/09/2016** | Second round of consultation with industry stakeholders | DELWP, Deloitte Access Economics, VFF, APA, Esso Australia, Mobil Oil Australia, Viva Energy, ESV |
|
|
|
| **23/09/2016** | Submissions from industry | Esso Australia |
| Mobil Oil Australia |
| Viva Energy |
|  |  | APA Group |
| **11/11/2016** | Further discussions | APA Group |

## Consultation outcomes

The responses received by industry stakeholders, both through submissions and also through other forms of consultation, are summarised below.

### General

Key industry stakeholders were generally not opposed the proposed changes to the Regulations, although some stakeholders considered they were unnecessary.

Although they considered existing fees were not material enough to impact decision making, licence holders expressed, through the consultation process and later the submissions, that any added cost from the new Regulations should be accompanied by efficiency gains within DELWP.

Delays to licensing submissions and external interference by third parties to pipelines and their buffer corridors with drilling and digging equipment were identified as the principal issues faced by licence holders.

One criticism of the proposed Regulations included the use of broad language leaving too much room for interpretation by both the Department and the applicants as well as the recovery method used for costs incurred to the department through the review of applications for minor and significant alterations and the lack of guidance around other proposed changes to the Regulations.

### Delays to licensing submissions and red tape

There was a general view that the substantive requirements imposed by the existing Regulations was not unreasonable. There was broad agreement that the obligations set out in the current Regulations would be met by an efficient pipeline owner, acting in accordance with good business practice, the requirements established in AS 2885, and consistent with national and international standards in the pipeline industry.

However, licence holders expressed concern about the delay costs associated with complying with the Regulations. Comments included:

* that while Government was generally responsive to queries, delays in the processing of applications submitted to the Department and ESV were too frequent, unnecessarily long and often led to project cost overruns. The cost of these overruns could far exceed the fees they are required to pay under the Regulations. As a consequence, industry sought greater certainty regarding timeframes for approval processes.
* processing times had increased since the start of 2016
* there was insufficient co-ordination between DELWP and ESV
* there was unnecessarily rechecking work undertaken by the licensees’ experts
* there was inconsistency regarding the circumstances in which rehabilitation bonds would be required
* in other States processes had been established to streamline approvals processes. This included finite and predictable timelines for reviewing applications, and in the case of South Australia, processes by which certain proponents can commence construction as long as documentation is approved prior to commissioning.

One submitter expressed a negative view of the Victorian regulatory framework, labelling it the “most prescriptive, least efficient and most time consuming system of all the State based regulators within Australia.”

### Land encroachments

Another mainstay of the consultation was the encroachment by urban developments on pipelines that were previously in open space rural environments. Participants in the consultation noted a number of near misses that occurred in the past twelve months due to such encroachment.

It was noted that the Regulations function well to regulate the actions of licence holders around pipelines, but not necessarily developers and other third parties operating in vicinity of pipeline corridors.

### Cost recovery

While some participants seemed happy with the introduction of fees for services that do not currently have fees, some indicated that it would be administratively more efficient for these costs to be “smeared” across all industry participants.

### Alternative routes

Participants raised their concern with the language used in the draft of the proposed Regulations and particularly with regard to the “possible routes.” Further clarity was sought on what is expected in applications on exploring “all possible” routes for pipelines.

Licence applicants indicated they would be more comfortable with a set number of required routes to be considered. Participants also questioned the point of that amendment to the Regulations, stressing that a lot of thought and planning goes into designing an adequate pipeline route.

# Appendix 1 – Amendments to the Pipelines Act 2005

A number of amendments have been made to the Act since the Regulations were put in place in 2007. The more material changes are outlined in the table below:

Amendments to the Act since 2005

|  |  |
| --- | --- |
| **Source (Act or subordinate instrument)** | **Change(s)** |
| Statute Law (Further Revision) Act 2006, No. 29/2006 | In Section 194(2), after "deemed to" insert "be". |
| Energy Legislation (Hardship, Metering and Other Matters) Act 2006, No. 60/2006 | New Section 132A inserted into Pipelines Act 2005 (Funding) Require licensees under that Act to pay an annual amount to Energy Safe Victoria, and to make a consequential amendment to the Energy Safe Victoria Act 2005. |
| National Gas (Victoria) Act 2008, No. 30/2008 | Reference to Gas Pipelines Access (Victoria) Act 1998 - substitute term |
| Transport Integration Act 2010, No. 6/2010 | Section 5 for the definition of Victorian Rail Track - substitute term |
| Offshore Petroleum and Gas Storage Act 2010, No. 10/2010 | Section 13, for "adjacent area in the Petroleum (Submerged Lands) Act 1982" - substitute terms (x 5) |
| Energy and Resources Legislation Amendment Act 2010, No. 55/2010 | Heading to Section 51 amended Pipelines Register New Section 186A (Other documents to be registered) |
| Resources Legislation Amendment Act 2011, No. 53/2011 | New Section 18A inserted (Compliance with approved consultation plan) Consent to entry onto Crown land Referral of submission to panel Application to alter authorised route - significant alterations |
| Resources Legislation Amendment (BTEX Prohibition and Other Matters) Act 2014, No. 68/2014 | Definitions When must a consultation plan be prepared Application where agreement for entry to land cannot be reached Effect of consent Notice of pipeline corridor What must application contain? Minister may ask for further information  Notice of application  Further references to proponent in licensing provisions  Request for decision on application  New Section 38 substituted  Panel to consider submissions  When must an application be determined?  Decision on application  What does the licence authorise?  Licence to remain in force indefinitely  Alteration of authorised route  Application to alter authorised route—significant alterations  New Sections 68A to 68K inserted  New Section 73 substituted  New Section 77 substituted  When does the ongoing licence take effect?  Purchase or acquisition of easements  Decision of Minister on acquisition of easements  Construction to be along authorised route  Restriction on building on land near pipeline  New Division 4 inserted in Part 11  Pipelines Register  New section 186B inserted  Panel hearings |

The most significant change to the Act was made in 2014 and provided for, amongst other things, the submission of a consultation plan as a requirement for significant alterations to pipelines.

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1. Australian Energy Market Commission, VIC: Victorian Transmission System, 2016 - <http://www.aemc.gov.au/Energy-Rules/National-gas-rules/Gas-scheme-register/VIC-Principal-Transmission-System> [↑](#footnote-ref-1)
2. Australian Energy Market Operator (AEMO), Declared Wholesale Gas Market, 2016 - <https://www.aemo.com.au/Gas/Declared-Wholesale-Gas-Market-DWGM> [↑](#footnote-ref-2)
3. [AEMO,](http://www.energyandresources.vic.gov.au/energy/gas/about-the-gas-sector) *2015 Gas Statement of Opportunities*, Deloitte Access Economics Analysis [↑](#footnote-ref-3)
4. AEMO, 2015 National gas forecasting report V2.0 [↑](#footnote-ref-4)
5. [Regional Development Victoria (RDV), April 2016](http://www.rdv.vic.gov.au/regional-projects/regional-gas-infrastructure) [↑](#footnote-ref-5)
6. [AEMC 2016](http://www.aemc.gov.au/Australias-Energy-Market/Gas/Gas-distribution) [↑](#footnote-ref-6)
7. Memorandum of Understanding Department of State Development, Business and Innovation - Earth Resources and Energy Safe Victoria, [↑](#footnote-ref-7)
8. A term defined in the Act to cover both the ‘construction phase’ and ‘operation phase’ [↑](#footnote-ref-8)
9. In practice DELWP also accepts the CEMP and investigates environmental incidents during pipeline construction phase [↑](#footnote-ref-9)
10. ESV accepts the CSMP, the OSMP and OEMP. [↑](#footnote-ref-10)
11. ESV is the primary point of contact for the operations phase only. [↑](#footnote-ref-11)
12. DELWP role also includes administration of alteration to the licence. [↑](#footnote-ref-12)
13. As DELWP has the ministerial delegation for this function, DELWP is the primary point of contact. [↑](#footnote-ref-13)
14. It is noted that the works for the 11 towns under the CNG solution is not licenced under the *Pipelines Act 2005*. [↑](#footnote-ref-14)
15. ABC News (30 August 2016), *Victorian unconventional gas exploration ban to end fracking and CSG extraction.* [↑](#footnote-ref-15)
16. Government of Victoria, (2016), *Victorian Guide to Regulation*, Department of Treasury and Finance, Melbourne. [↑](#footnote-ref-16)
17. Government of Victoria, (2016), *Victorian Guide to Regulation*, Department of Treasury and Finance, Melbourne. [↑](#footnote-ref-17)
18. Note that the explosion occurred during clean-up after the oil was ignited, pointing towards ineffective incident response procedures. It is noted that AS 2885provides no guidance on safe practices for cleanup. [↑](#footnote-ref-18)
19. See Section 3.2.13 of the *Victorian Guide to Regulation*. [↑](#footnote-ref-19)
20. AS 2885 is a family of individual standards that collectively covers matters relating to design and construction of pipelines, safety engineering design, materials, testing, inspection and operation. [↑](#footnote-ref-20)
21. As with all information provided as part of a licence application, the Minister may ask the applicant for any further information necessary or expedient to enable the Minister to consider and decide on the application. [↑](#footnote-ref-21)
22. Key assumptions used to obtain these figures – 6% business loan interest rate, USD to AUD exchange rate 1.33 (Google, December 8 2106 , 1:45pm), average cost of a pipeline project (USD$6.57million/mile), <http://www.ogj.com/articles/print/volume-112/issue-9/special-report-pipeline-economics/crude-oil-pipeline-growth-revenues-surge-construction-costs-mount.html> [↑](#footnote-ref-22)
23. ABS Catalogue 6306.0 – Employee Earnings and Hours, Australia, May 2014. Available at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6306.0/>. Accessed 29/11/2016. [↑](#footnote-ref-23)
24. ABS Catalogue 6302.0 – Average Weekly Earnings, Australia, May 2015. Available at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6302.0Main+Features1May%202015?OpenDocument>. Accessed 29/11/2016. [↑](#footnote-ref-24)
25. These values are those recommended for us by DTF’s RCM Toolkit 2 (available at <http://www.dtf.vic.gov.au/Publications/Victoria-Economy-publications/Regulatory-change-measurement-manual)> in cases where no specific data on overheads or on costs in the relevant industry are available. [↑](#footnote-ref-25)
26. Government of Victoria, 2014, *Victorian Guide to Regulation,* Department of Treasury and Finance, Melbourne. [↑](#footnote-ref-26)
27. Department of Treasury and Finance, 2013, *Cost Recovery Guidelines*, January. [↑](#footnote-ref-27)
28. *Pipelines Act 2005*, s 132A. [↑](#footnote-ref-28)
29. Ibid. [↑](#footnote-ref-29)