

Department of State Development

Leading Practice Mining Acts Review

Mining Act 1971 and Regulations

DISCUSSION PAPER
December 2016

Ensuring future community benefits through a more efficient and transparent regulatory framework in the mineral resources sector.

www.minerals.statedevelopment.sa.gov.au



Department of State Development

Resources and Energy

Department of State Development
Level 7, 101 Grenfell Street, Adelaide
GPO Box 320, Adelaide SA 5001
Phone +61 8 8463 3000
Email DSD.miningactreview@sa.gov.au
www.minerals.statedevelopment.sa.gov.au

Report Book 2016/00034

© **Government of South Australia 2016.** This work is copyright. Apart from any use as permitted under the Copyright Act 1968 (Cth), no part may be reproduced by any process without prior written permission from the Government of South Australia available through the Department of State Development. Requests and inquiries concerning reproduction and rights should be addressed to the Deputy Chief Executive, Resources and Energy, Department of State Development, GPO Box 320, Adelaide SA 5001.

Disclaimer. The information contained in this document has been prepared by the Department of State Development South Australia and originates from a variety of sources. Although all reasonable care has been taken in the preparation and compilation of the information, it has been provided in good faith for general information only and does not purport to be professional advice. No warranty, express or implied, is given as to the completeness, correctness, accuracy, reliability or currency of the materials.

The Department of State Development and the Crown in the right of the state of South Australia do not accept responsibility for and will not be held liable to any recipient of the information for any loss or damage however caused (including negligence) which may be directly or indirectly suffered as a consequence of use of these materials. The Department of State Development reserves the right to update, amend or supplement the information from time to time at its discretion.

Alternative formats. This publication is available in other formats. Direct requests to Resources and Energy (see contact details above).

Preferred way to cite this publication. Department of State Development 2016. *Mining Act 1971* and Regulations Discussion Paper. Report Book 2016/00034, Department of State Development, South Australia, Adelaide.



FOREWORD



For more than 175 years, our mineral resources industry has made an immense contribution to the economic and social development of South Australia.

The benefits of mining and quarrying support us in our daily lives: the construction materials used to build our homes and highways; the steel in our cars, trains and power poles; the fertiliser used by our farmers to grow their crops; and the copper needed for our phones and homes. The minerals sector is a major generator of jobs in our regions, an important employer for Aboriginal communities, and it drives an equipment, processing and supply services sector that leverages activity into new opportunities in the global supply chain markets.

South Australia must maintain a commitment to leading practice regulation of the mineral resources sector, so that we can continue to attract and retain explorers and mining and quarry operators who are leaders in sustainable development, and who are committed to building strong long-term relationships with landowners and communities.

As part of this commitment, the Minister for Mineral Resources and Energy launched the Leading Practice Mining Acts Review of the *Mining Act 1971*, the *Mines and Works Inspection Act 1920* and the *Opal Mining Act 1995* in September 2016.

In support of this important review, a series of Discussion Papers have been published for consideration by all stakeholders. This Discussion Paper considers the role of the *Mining Act 1971* and the

Mining Regulations 2011, and their interaction with other legislation.

The *Mining Act 1971* is the central piece of legislation that regulates exploration, mining and quarrying in South Australia. The Act has not been holistically reviewed since 1971. Since that time, rapid technological advances have meant that the industry practices have become far more modern, safe, sustainable and efficient, and community expectations around mining and quarrying (such as expectations around open community engagement) have vastly changed.

The purpose of this Paper is to initiate a discussion about the objectives and processes of the Mining Act and Regulations so that we can identify ways of updating and improving regulatory processes, without compromising on their effectiveness and efficiency. The Department's *Principles for effective and efficient regulation* are outlined on page 7 of this Paper.

We urge all stakeholders to participate in this important review – a review that will ensure our State remains one of the world's leading-practice, competitive and sustainable mining jurisdictions.

I encourage you to read this Discussion Paper, and the other papers, and I look forward to hearing your views.

Dr Ted Tyne
Executive Director Mineral Resources
Department of State Development



CONTENTS



FOREWORD BY THE EXECUTIVE DIRECTOR	1
CONTENTS.....	3
INTRODUCTION.....	7
OVERVIEW OF MINING AND QUARRYING IN SOUTH AUSTRALIA	11
1. EXPLORATION, MINING, QUARRYING, COMMUNITY AND LAND ACCESS.....	19
1.1 Using simple, accurate terms and language in the Mining Act so it makes sense to everyone.....	24
1.2 Ensuring you have the information you need at the right time, and that our technical assessment processes are more transparent.....	25
1.3 Making sure everyone understands land access processes and expectations.....	28
1.3.1 Entry to land generally.....	28
1.3.2. Entry on to 'exempt land'.....	29
1.3.3. Notices to landowners under the Mining Act	31
1.3.4. Fast and fair court processes and access to justice	33
1.3.5 Ensuring that Aboriginal communities are engaged and well informed.....	37
1.4 Ensuring that payments and fees can be recovered	39
1.5 Ensuring that the community is informed of any changes.....	41
2. SUSTAINABLE FUTURES	43
2.1 Protecting South Australia's environment through Programs for Environment Protection and Rehabilitation.....	45
2.1.1. The scope of preventative regulatory measures.....	46
2.1.2. The scope of compulsive tools.....	49
2.2 Ensuring greater government and industry environmental accountability and transparency.....	50
2.3 Enforcing leading practice mine closure planning, and progressive rehabilitation to promote sustainable mine completion outcomes.....	52

2.4	A modern leading practice financial assurance model and the rehabilitation of former mine sites	52
2.5	The regulation of private mines	56
2.6	The Extractive Areas Rehabilitation Fund.....	58
2.7	Transfer of ownership and responsibility for mine infrastructure, productive assets and mining landforms to third parties.....	60

3.	THE BENEFITS OF A STREAMLINED, RIGOROUS AND COMPETITIVE REGULATORY ENVIRONMENT.....	63
3.1	Ensuring our legislation doesn't restrict the adoption of modern, evolving e-commerce and information systems	66
3.1.1	Moving towards a digital by default e-commerce future	66
3.1.2	Using modern methods of mapping.....	67
3.2	A modern, accurate and easy to access Mining Register.....	69
3.2.1	Providing certainty to businesses through the use of caveats.....	71
3.3	The benefits of the timely release of information and transparency of process.....	72
3.4	The benefits of clear and efficient 'one-window-to-government' assessment processes.....	73
3.5	Ensuring that we have a modern, flexible tenement structure	74
3.5.1	Opportunities to modernise ELs and Exploration Licence Applications (ELAs)	75
3.5.2	Opportunities to streamline the EL renewals and subsequent EL grant processes.....	77
3.5.3	Opportunities to improve the Department's administration of competitive processes for Exploration Release Areas (ERAs).....	77
3.5.4	The EL renewals process in specially protected areas	78
3.5.5	Terms of ELs	79
3.5.6	Forfeiture, and other means for ensuring that explorers meet their expenditure and survey obligations	80
3.5.7	The future of mineral claims	82
3.5.8	Opportunities to introduce a more flexible 'generic' mineral lease.....	83
3.5.9	Ensuring that lease terms are referable to the mine life.....	84
3.5.10	Opportunities to clarify the operation of MPLs.....	85
3.5.11	Retention status.....	86
3.5.12	Special Mining Enterprises (SMEs) and indenture operations.....	87

3.6	Decreasing tenement assessment times	88
3.7	Providing appropriate flexibility for necessary changes to operations	89
3.8	Providing secure tenure	90
3.9	Creating consistent processes for the surrender, suspension and cancellation of tenements	91
3.10	Regulating moss rock removal	92
3.11	Making sure that appropriate statutory powers are held by the Director of Mines and the Chief Inspector of Mines	93
3.12	Making sure that the Department's cost recovery is competitive and sufficient	94
3.13	The collection and use of royalties, and their importance to the State	95
3.14	Ensuring we have up-to-date and relevant scientific data	96
3.14.1	The importance of a strong Geological Survey	97
GLOSSARY		99



INTRODUCTION



Review process

The Department is seeking your views on appropriate updates to the *Mining Act 1971* and the Mining Regulations 2011 through an open and transparent consultation process so that we can propose relevant, practical, and evidence-based legislative changes to Parliament.

It is critical that the needs of the community, industry and landowners are heard and well considered so that any amendments are fair and balanced.

To ensure that this happens, the Department is also undertaking targeted engagement with key stakeholders from the minerals sector, the community, and state and local governments throughout the Review.

Why the review?

The Department of State Development has adopted a contemporary framework for regulating mineral exploration, quarrying and mining activities which is consistent with:

- the mining legislation administered by the Department of State Development on behalf of the Minister for Mineral Resources and Energy
- *South Australia's Economic Priorities*
- publications of the former Ministerial Council for Minerals and Petroleum Resources, including the *Principles for Engagement with Communities and Stakeholders*

- our State's commitment to the regulatory solutions, forms and principles set out in *Principles and guidelines for national standard setting and regulatory action by ministerial councils and standard setting bodies, Council of Australian Governments (2004)*; and
- the *Leading Practice Sustainable Development Program for the Mining Industry* published by the Australian Government.

The Department of State Development is also committed to the following *Principles of effective and efficient regulation*:

Effectiveness and efficiency – The Department aims to adopt streamlined, fit-for-purpose regulatory approaches to achieve clearly identifiable outcomes.

Accountability – The Department seeks to ensure that responsibility and accountability are clearly assigned to explorers and operators, and understood by the community.

Enforcement – The Department seeks to ensure that explorers and operators achieve approved outcomes.

Engagement – The Department values the informed involvement of communities and other stakeholders in processes leading to decision-making.

Fairness and equity – The Department is committed to assessing and considering the interests of all stakeholders.

Timeliness – The Department seeks to ensure that decisions are made in the minimum possible time.

Transparency - The Department aims to release information on regulatory processes and decisions in a timely manner, as appropriate.

Predictability – The Department works to ensure that processes are consistent, and lead to clearly identifiable social and economic outcomes.

Practicableness – The Department understands that outcomes must be achievable in a practical sense.

Flexibility – The Department is committed to identifying alternative and innovative approaches that take account of changing circumstances (e.g. in technology and community expectations over the long life of a mine).

Objectiveness – The Department will ensure that decisions are based on sound scientific and technical information.

Inclusive – Stakeholders will be engaged and informed.

The Department is seeking to identify amendments throughout the Review that are consistent with the above *Principles*, and that will:

- bring forward the economic and social benefits of the State's mineral wealth for citizens, landowners, traditional owners, mining communities and miners
- grow South Australian businesses and drive increased investment and employment by abolishing obsolete and cumbersome legislative processes in concert with the Premier's *Simplify* red-tape reduction initiative
- strengthen the South Australian 'one-window-to-government' model for assessment of mineral resource developments
- promote more efficient and innovative mining operations in South Australia by providing clear pathways for mid-project changes to operations
- establish South Australia as a leading e-business practitioner in the world's rapidly evolving digital economy
- further improve transparency and land access engagement, negotiation and court resolution processes
- implement flexible financial assurance models that increase community confidence in mine closure and environmental rehabilitation performance and outcomes
- reinforce the existing leading practice environmental protections offered under the *Mining Act 1971* (SA).

The review of the South Australia's mining laws will seek to:

1



bring forward the economic and social benefits of the State's mineral wealth for citizens, landowners, traditional owners, mining communities and miners

2



grow South Australian businesses and drive increased investment and employment by abolishing obsolete and cumbersome legislative processes in concert with the Premier's *Simplify* red-tape reduction initiative

3



strengthen the South Australian 'one-window-to-government' model for the assessment of mineral resource developments

4



promote more efficient and innovative mining operations in South Australia by providing clear pathways for mid-project changes to operations

5



establish South Australia as a leading e-business practitioner in the world's rapidly evolving digital economy

6



further improve transparency and land access engagement, negotiation and court resolution processes

7



implement flexible financial assurance models that increase community confidence in mine closure and environmental rehabilitation performance and outcomes

8



reinforce the existing leading practise environmental protections offered under the *Mining Act 1971 (SA)*

We invite submissions by all industry participants, traditional and other landowners, regional communities and stakeholders throughout this collaborative consultation process.

DSD.miningactreview@sa.gov.au

■ How do I get involved?

The Department invites all stakeholders to make written submissions on this Discussion Paper during the consultation period so that we can develop a fair and balanced legislative framework that meets community and industry needs and expectations. The Discussion Papers and information on the progress of the Review can be found at: http://minerals.statedevelopment.sa.gov.au/mining/leading_practice_mining_acts_review

The Department also welcomes your thoughts on any matters outlined in the following Chapters, and on any relevant matters that have not been included in this Paper. **In the interests of transparency, all submissions may be published online as part of the Review process.** The Department is committed to this being an open and transparent consultation process and encourages open written submissions, however, if you wish for your submission to be confidential please make that request and include your reasons in your submission.

A copy of the current Mining Act and Regulations can be accessed via www.legislation.sa.gov.au

If you have any queries about the process, or matters outside the scope of this Discussion Paper, they can be directed to the Review Team at any time.

Written submissions and important dates

Comments and submissions on this Discussion Paper will be accepted up until **5:00pm on 24 February 2017.**

All written submissions should be marked to the attention of the **Executive Director, Mineral Resources Division** and lodged via **DSD.miningactreview@sa.gov.au** or delivered to:
Department of State Development,
Level 7, 101 Grenfell Street
ADELAIDE SA 5001.

We want to hear from you.
If you require further time in order to make a submission, or have any queries in relation to the Review, you can contact the Review Team on 08 8463 3317 or via e-mail at:
DSD.miningactreview@sa.gov.au

OVERVIEW OF MINING AND QUARRYING IN SOUTH AUSTRALIA

All minerals in Australia are owned and regulated by the State and Territory governments. In South Australia mineral exploration, extraction and sales are regulated under the *Mining Act 1971* and the Mining Regulations 2011.

The Mining Act and Regulations are administered by the **Minister for Mineral Resources and Energy**, Hon Tom Koutsantonis MP, and through statutory officers (such as the Director of Mines and the Mining Registrar) that are appointed under the Mining Act.

Most of the day-to-day regulation and administration of the Mining Act and Regulations in South Australia is delegated from the Minister, Director of Mines and Mining Registrar to qualified officers employed across various branches within the Mineral Resources Division of the Department of State Development. Collectively, the Minister, the Director of Mines, the Mining Registrar, Authorised Officers and any of their delegates in the Mining Regulation, Mineral Tenements and Exploration Branches are '**the Regulator**'. All other states administer their Acts in a similar way.

The officers who have been delegated powers under the Mining Act and Regulations are experienced and competent specialists. For example, the assessment of mining lease application proposals is undertaken by **teams of qualified environmental scientists, geologists, mining engineers, environmental engineers, geomechanics, and geophysical engineers**.

Over the life of a mine a project moves through many stages: exploration, development, construction, production, mine closure and rehabilitation, and monitoring and evaluation. Under the South Australian Mining Act and Regulations this is split into **two main stages: exploration and production**.

The Mining Act regulates the exploration, extraction and sale of **two classes of minerals**:

- **Minerals** – which includes metal or metalliferous ore, precious stones, copper, iron ore, gold, silver, graphite etc.
- **Extractive Minerals** – which includes sand, gravel, stone, shell, shale and clay but does not include minerals used for 'prescribed purposes' or fire clay, bentonite or kaolin.

An explorer or operator **cannot commence exploration for, or production of**, a mineral or extractive mineral in South Australia unless they have complied with the Act and have secured:

- A right over the minerals under a claim, lease or licence granted by the Regulator (claims, leases and licences etc. are all '**tenements**').

OVERVIEW

- An **operational approval**, such as a Program for Environment Protection and Rehabilitation (PEPR), which authorises the specific exploration or production activities.
- All **land access rights** required under the Mining Act, including any access rights over land subject to native title.

The **most common tenements** granted or registered under the Mining Act for exploration, extraction and sale are:

- **Exploration licence (EL)** – a tenement for exploring for minerals
- **Mineral claim (MC)** – a tenement for pegging out a smaller area around a resource to further explore it and begin the transition from exploration to production.
- Two types of production lease:
 - **Mineral lease (ML)** – a tenement that can allow for exploration, extraction and sale of minerals, depending on its terms and conditions.
 - **Extractive minerals lease (EML)** – a tenement that can allow for exploration, extraction and sale of extractive minerals, depending on its terms and conditions.
- **Retention lease (RL)** – a tenement for prospecting for minerals or extractive minerals and other such operations approved by the Regulator, in circumstances where mining may not be viable or economically feasible at that particular time.
- **Miscellaneous purpose licence (MPL)** – a tenement for activities ancillary to extracting and selling minerals or extractive minerals, such as building processing plants and building water or electricity infrastructure corridors.

The **usual progression to mining** in South Australia starts with an explorer applying for an EL. If granted, an EL gives the explorer an exclusive right to explore for specific minerals within a certain area for a maximum of 5 years (which includes renewal). An EL holder may be granted a subsequent EL for the same area in some circumstances. Exploration under an EL cannot commence without an **approved exploration PEPR** and the necessary **land access rights**. Importantly, an explorer seeking extractive minerals commences their exploration operations with the grant of a mineral claim (not an EL).

If an explorer discovers a mineral or extractive resource during the exploration stage the explorer may **'peg' a mineral claim** around a smaller area to mark out where they intend to explore or mine in the future. Once a mineral claim is registered by the Mining Registrar, the explorer has the **exclusive right to apply for a production tenement** within 12 months. Production tenements include mineral leases (MLs), extractive minerals leases (EMLs) and some retention leases (RLs).

OVERVIEW

If the explorer is seeking to mine or quarry the resource straight away, they can apply for an ML or EML. The Minister, or delegate, cannot grant a lease unless the applicant demonstrates that the resource can be 'effectively and efficiently mined.' The mining lease proposal (MLP) accompanying a lease application must **outline plans for the development and mine construction stages**, production, and the **rehabilitation and mine closure stages**. During the lease assessment phase the Regulator undertakes a **detailed and complex environmental impact assessment (EIA) of the proposed operations**, in collaboration with several other agencies/co-regulators, and determines if any changes to the proposed operations are required, and the conditions that will ensure that they operate within particular limits (e.g. any dust, noise, water pollutants etc.). The EIA processes under the Act are recognised as one of the most rigorous environmental assessment processes in Australia. For more information on our environmental assessment process, see Chapter 2.

If the mining lease is granted, the operator will have **exclusive rights to extract and sell specific minerals/extractive minerals removed from the lease area** for a maximum of 21 years (plus any renewals), if it obtains a PEPR and all necessary land access rights. The lease will be conditioned to ensure that an operator complies with all relevant 'environmental outcomes' outlined in their MLP, and a PEPR will not be approved unless those construction, rehabilitation and closure obligations are addressed in detail.

If the explorer does not intend to mine the resource straight away, they may apply for a **retention lease**. The grant of a retention lease gives the operator an exclusive right to prospect for minerals and apply for a mining lease, and any other rights to conduct operations as determined by the Minister.

A retention lease can be granted and renewed for a maximum of 5 years, subject to providing justification for the purpose of the retention lease. An operator cannot commence operations on a retention lease until they have obtained a PEPR and all required land access rights.

For more information on assessment processes and tenements, see Chapters 2 and 3.

Any minerals or extractive minerals that an operator uses or sells from a tenement, incur a royalty payable to the South Australian Government. Royalty payments are the monies operators pay to the Government for the right to access the Crown owned minerals. Just like a personal tax return with the Australian Tax Office, operators submit a self-assessment of how much royalty they owe to the Government for utilising the minerals every six months. Royalty payments are calculated by applying a per tonne rate to the quantity of minerals sold or used, or by applying a percentage (ad valorem) to the purchase price of the minerals, less deductions.

OVERVIEW

Land access rights

The Mining Act and the Regulations impose various **land access restrictions** on explorers and operators, and outline the processes for lifting those restrictions.

At a minimum, an explorer or an operator cannot enter onto any land in South Australia without **giving any notices of the proposed operations to the landowner** that are required under Part 9 of the Mining Act (and the Regulations) and/or by agreement. A landowner with an exclusive right of possession (e.g. freehold owners) can object to the 'Notice of Entry' by filing an objection in the Warden's Court. The Warden's Court is South Australia's specialised, low cost, mining court, and has been in operation for over 145 years.

Various **other restrictions and protections** are placed on some land under the Mining Act and Regulations and other legislation, including on:

- **Exempt land** (such as a residence, cultivated field, vineyard, etc.) – exploration or mining is prohibited on this land (and sometimes additional surrounding land) unless the landowner or a court 'waives' the 'exemption' (see Chapter 1 of this Paper, or Part 1 of the Mining Act);
- **Native title land** - exploration or mining is prohibited unless the native title holders or claimants agree, or a court orders an agreement (see Part 9B of the Mining Act);
- **Reserved or proclaimed areas** (e.g. conservation areas, etc.) – exploration or mining is restricted or prevented in accordance with the reservation or proclamation, unless it is amended or revoked by the Governor, Cabinet or changes to law (as applicable);
- **Special declared areas** (e.g. Woomera Prohibited Defence Area) – exploration or mining may be restricted or prohibited under the terms of the Gazettal, unless the Gazettal is revoked by the Minister.

Obtaining appropriate land access rights is a necessary prerequisite before commencing operations, and they are usually secured as a result of open and genuine engagement. For more information on land access restrictions, see Chapter 1.

OVERVIEW

The importance of early and ongoing stakeholder/ community engagement

An explorer should plan and commence engagement from when it is first granted a right to explore. All directly affected landowners, nearby landowners, local governments, state governments, community groups, and any other impacted groups, should be **fully informed and engaged from an early stage**. Ideally, engagement should commence well before any notices are provided to landowners, or public notices are published, depending on the circumstances.

Early engagement assists in **establishing good relationships**: relationships based on mutual respect, open and ongoing communication, honesty and transparency.

Engaging with the community in the early stages can also **add value to the exploration or development project** because landowners and local residents often have **unique expertise and knowledge** about the history of an area, the community, and future developments, etc.

Most often, **the companies that gain community acceptance for a development** are those that pursued genuine open engagement with the community at an early stage. This makes sense, because we all want to know what is happening in our area.

Long term relationships of trust with landowners and the community result in less conflict (which can lead to delays, loss of time and money and uncertainty for all) and add to the value of the project being developed.

The dual roles of Government

At the bedrock of South Australia's diverse economy is a range of industries, including our primary industries (grain production, viticulture, horticulture, pastoral etc), tourism, mineral development, manufacturing and education and training (to name just a few).

The Department of State Development regulates and manages the mineral resources industry, as well as a range of other industries including skills and employment, petroleum, innovation, manufacturing, Aboriginal affairs, arts, trade resources, and energy markets.

OVERVIEW

Other Australian governments similarly both **regulate and promote** all of these industries in their jurisdictions. Any conflicts between these dual roles of promoter and regulator in South Australia are **managed through the ordinary governance and transparency processes** used by Governments and large corporations.

In South Australia, the officers that are delegated statutory powers under the Mining Act within the **Mineral Resources Division** of the Department of State Development act as the Regulator in most circumstances.

This Division of the **Department of State Development is one of the three main environmental regulatory agencies in the State** (along with the Department of Environment, Water and Natural Resources (DEWNR), and the Environment Protection Authority South Australia (EPA): collectively the '**co-regulators**').

The Mineral Resources Division does not compromise on diligently performing this important regulatory role. In fact, their **commitment and adherence to national standards of environmental regulation has been recognised** by the Commonwealth, which has authorised the South Australian Regulator to undertake stringent Commonwealth EIA assessments under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Division employs specialist teams of **highly qualified environmental scientists** and officers, geologists, mining engineers, environmental engineers, geomechanics, and geophysical engineers to assess applications. Those teams **work collaboratively with experts and co-regulators** throughout the assessment phase, as necessary. The Regulator's role under the Mining Act is to ensure that mineral resources are developed in a way that delivers balanced economic, social and environmental outcomes, and our rigorous and transparent assessment system is recognised as being best practice.

The Government also actively promotes **economic development across all sectors**, and is responsible for implementing investment attraction programs that lead to new mineral discoveries, developments and long-term employment opportunities. Programs to attract investment to the State are undertaken by Divisions within the Government **that do not act as Regulator**, such as the Resource Infrastructure and Investment Taskforce.

There are **strict practices and processes in place to quarantine the investment attraction activities** from the regulatory Divisions, as is common in all Australian jurisdictions where governments also perform these dual roles.

OVERVIEW

The Leading Practice Mining Acts Review Team

The Leading Practice Mining Acts Review is being undertaken by the Review Team, which is located within the policy and legislative area of the Mineral Resources Division of the Department of State Development.

The Review Team has, and will continue to, comprehensively consult with the Regulator, co-regulators and other relevant agencies throughout the course of the Review. As we are engaging with industry directly, the Review Team **will not engage with any investment attraction Divisions of the Department as part of the Review.**

The Review Team is comprised of various **legal, environmental, native title, heritage, community engagement, tenement, and policy experts** who have full access to the Regulator, and who have decades of government and industry experience in the practical operation of the Mining Act.

The Review Team is also working in **collaboration with leading national and international academics, experts and expert bodies** throughout the Review.

Some useful tips for reading this Discussion Paper

This Overview is intended to give you a general outline of the mineral regulation framework in South Australia, and some key concepts.

The regulatory framework is outlined in more detail in the following Chapters.

Throughout the Paper, you will find references to various parties, including the **Review Team**, the **Department**, the **Regulator**, the **Mining Registrar**, or simply the collective pronoun “we” (which should be taken to mean community members of South Australia). For your assistance, definitions of parties and terms are outlined in the **GLOSSARY**, appearing at the end of this Paper. A reference to **the Minister** in the Paper should also be read as a reference to his delegate.

A copy of the *Mining Act 1971* (SA) and *Mining Regulations 2011* (SA) is available at www.legislation.sa.gov.au

Department of State Development policies and guidelines on mineral resources can be found at: www.minerals.statedevelopment.sa.gov.au/knowledge_centre/regulatory_guidelines

If you have any questions, queries or feedback on this Paper **feel free to contact the Review Team on 08 8463 3317** or via e-mail at: DSD.miningactreview@sa.gov.au



1

EXPLORATION, MINING, QUARRYING, COMMUNITY AND LAND ACCESS

In all Australian jurisdictions, mineral rights are held by the State or Territory for the benefit of all citizens and communities.

By keeping the rights to South Australian minerals in the hands of South Australians, we can be confident we have access to affordable mineral resources that we need to live our daily lives and build our communities and businesses for the future.

South Australia contains some of the best ore bodies in the world. For over 175 years the development of our natural resources has made an immense contribution to the economic and social development of South Australia, especially in our regions.

We see the benefits of mining and quarrying in the world around us each day in the:



cement and aggregate we use to build our homes and highways



steel in our cars, planes, trains and power poles



fertiliser used by our farmers to feed the State



copper needed to build our phones, and power our homes

“South Australian minerals are one of the State’s leading exports and play an important role in the State’s economic and community development.”

Mines and quarries located close to regional centres provide those communities with the affordable building materials that they need to grow. The mineral resources industry also creates jobs in regional communities to ensure that new generations have access to secure jobs so that they can stay in the community.



The South Australian Government collects monies from the mineral resources industry for various reasons, including royalties, rents, fees and charges.

Royalties form the main income stream for the Department of State Development, and are a major contributor to the economy of the State. A small portion of these royalties are used to cover some of the costs of mine rehabilitation (via the EARF, see Chapter 2¹), and to equip the Regulator to ensure that we maintain our robust regulatory system. The rest of the revenue is then used to fund and build South Australia, and has been an income stream for our community for approximately 175 years.

To ensure the correct balance is struck between the rights to extract minerals and landowner and conservation interests, a robust land access regime is currently in place.

¹ The EARF is the Extractive Areas Rehabilitation Fund. The Department's proposal for a broader and more comprehensive mine rehabilitation scheme is outlined in Chapter 2.

The quarrying sector played a key role in the Adelaide Oval re-development by providing

48,000 m³
CONCRETE

8,300 m
PRECAST PANELS

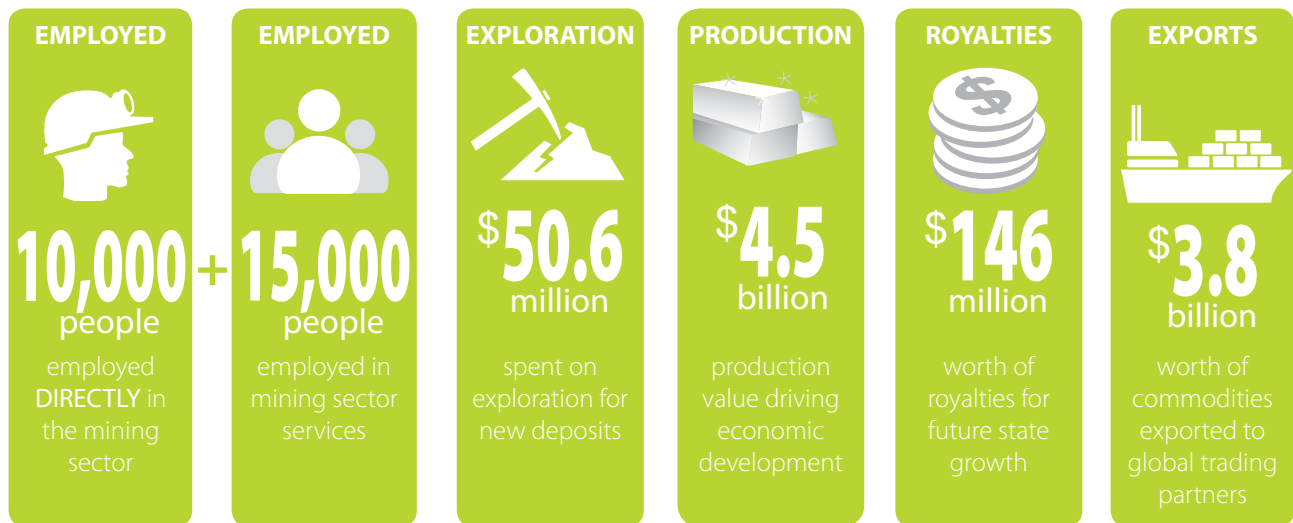
from

8

QUARRIES

surrounding the
Greater Adelaide region
and Yorke Peninsula during
construction

2015-16 Mineral Indicators



Under the Mining Act, all of the State is available for mining operations except areas that have not been declared mineral lands under the Act, or areas that are restricted from access under the Mining Act or another Act.

For example, the Mining Act does not apply to certain protected areas (such as unique coastal zones and other conservation areas) and particular types of land are exempt from mining (exempt land) and have additional layers of protection. Examples of exempt land include the land under and around your house or business, schools, parks, water sources, and cultivated land.

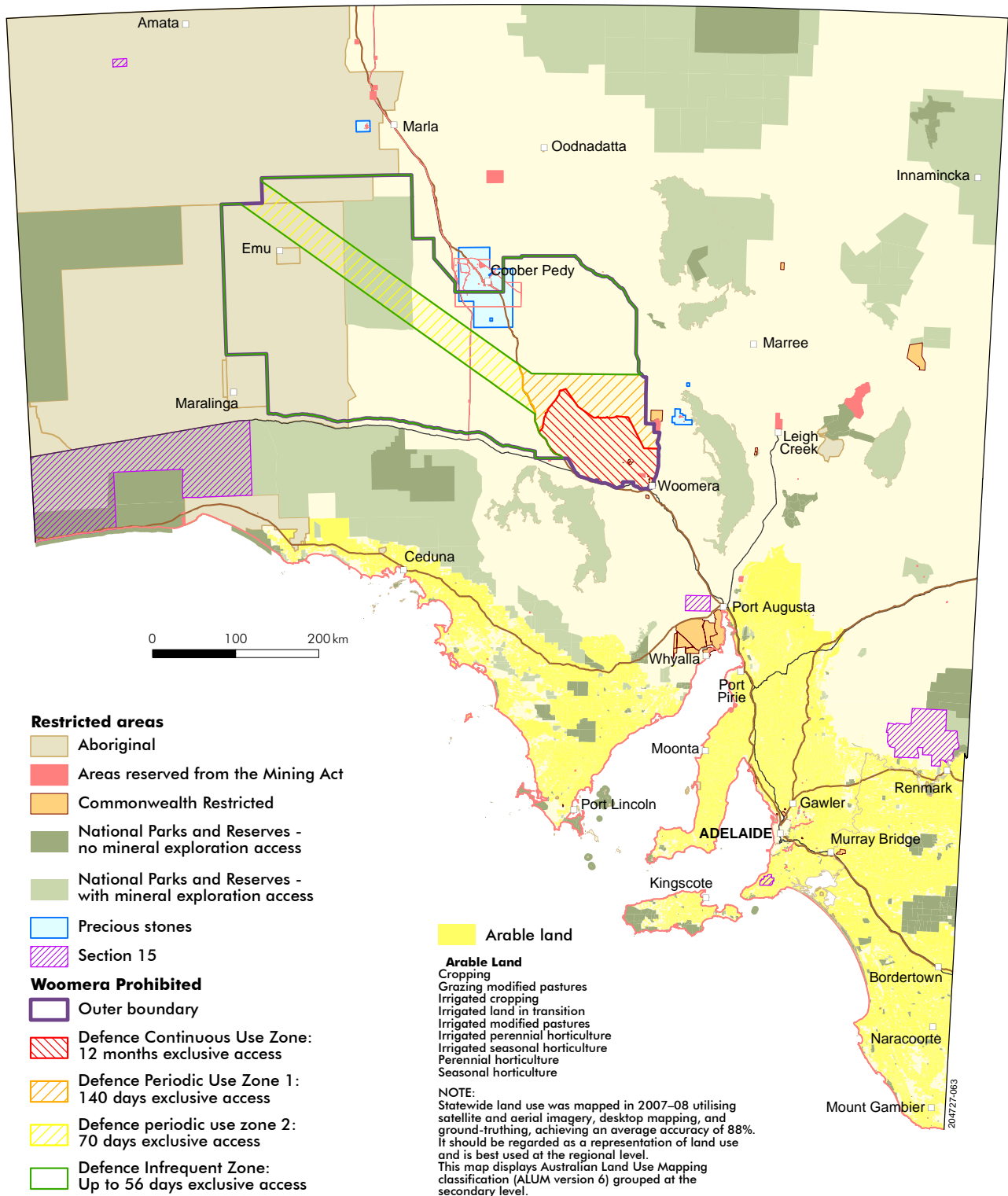
Exempt land can only be subject to mining operations if the exemption is waived (for more information on exempt land and waivers see paragraph 1.3.2).

Another limitation or condition placed on extracting minerals in South Australia is that, since the late 1800s, farmers and other land owners have had an exclusive right to use extractive minerals (sand, fill, stone, rocks) on their property for their own reasonable personal use, making those minerals unavailable to miners (for more information on personal use see: paragraph 1.1).



In the late 1800s SA was internationally known as the 'copper kingdom' because it supplied 10% of the world's copper from the Burra 'Monster' Mine. The public revenue from the Burra 'Monster Mine' funded the major precincts in the Adelaide CBD. Today South Australia hosts 68 per cent of Australia's known copper resources.

RESTRICTED EXPLORATION AND MINING AREAS



This is the system of mineral land access we have in South Australia. It is recognised as one of the best access regimes in the world because it tries to strike a fair balance between the rights of landowners and our collective rights as South Australians to the minerals that build our towns and regions and create tens of thousands of jobs.

One of the roles of the Department is to ensure that we continually improve our legislative scheme so that it remains robust and modern, and engenders community confidence.

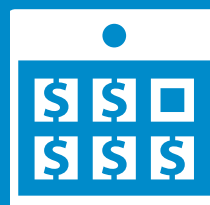
To achieve this, South Australia needs a leading practice, open and transparent land access regime that promotes early engagement with communities for all projects, or any change to operations.

Landowners, communities and the Department all agree: there can be no compromise on early and open discussions with communities on the impacts and benefits of a mining project in their area.

The Department and the Minister must be able to ensure that mineral resources companies seeking to operate in metropolitan or regional areas adhere to these basic, but essential, standards.

If landowners and operators are not in agreement about access for a project (or the appropriate requirements for land access) there must also be fast, cheap and clear court processes available to landowners to resolve any issues.

According to the CSIRO
the cost of land access conflict in
the mining sector can be up to
\$50 000 PER DAY
during advanced exploration



Farmers, landowners, communities and operators must be able to plan for their future with certainty.

The Department's and the Minister's commitment to these basic principles is one of the reasons why the Department has commenced this Review. Each day we see, first hand, that there are more benefits for everyone when exploration and mining companies and communities work collaboratively together from early on.

The following are the main issues that the Department has identified to start the community discussion. We welcome your comments on these issues, and any others important to you.

1.1 Using simple, accurate terms and language in the Mining Act so it makes sense to everyone

It should be easy for communities and landowners to understand what rights are being granted over their land or region, and what rights they have under the Mining Act.

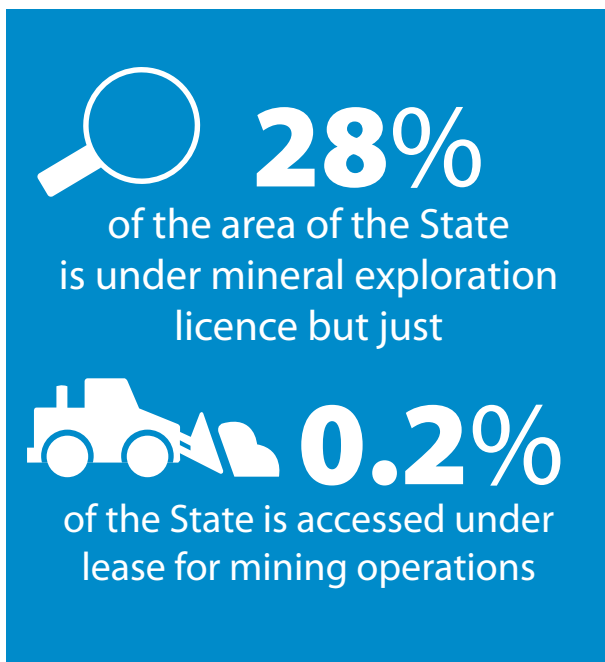
We often receive feedback from the community that the use of the term 'mining tenement' in the Mining Act to describe everything from an exploration licence to a mining lease causes confusion. Practically speaking, these are quite different tenements.

For example, a particular exploration licence holder could be granted a right (subject to operational approval) to do minor activities like geological mapping using a hand held detector (at a particular location), while a lease holder could be granted a right to construct (subject to further approvals and access agreements) a multi-million dollar mineral production facility.

Similarly, the Mining Act only refers to 'mining operators' (even if the operator is only an explorer) and the cross-over of the definitions of 'mining operations' and 'exploration operations' is not clear.

When a landowner receives a Notice of Entry from an explorer about proposed operations, and the related documentation refers to them as a 'mining operator', a landowner may be unnecessarily distressed if they assume that the operator is a 'miner' with a right to 'mine' in their area (for further discussion of notices of entry see paragraph 1.3.3).





Other important definitions are also unclear or missing. For example, a landowner can use extractive minerals on their land for their own 'personal use' without needing permission from the Regulator. But because that term is not defined, it can be confusing for a farmer or another landowner (such as a council) to work out what they can or cannot use extractive minerals (sand, fill, stone, rocks) on their property for.

For these reasons, the Department is considering clarifying or introducing these, and other, definitions into the Mining Act so that landowners, operators and the community are clear about their rights, obligations and expectations.

We will also be considering opportunities to update the language used in the Mining Act so that it is concise and easier to read.

DISCUSSION

- What terms in the **Mining Act** and **Regulations** need clarifying?
- What are appropriate 'personal uses' for extractive minerals?
- What opportunities are there to define new terms?

Cross reference: section 6 *Mining Act 1971*; section 75 *Mining Act 1971*; reg. 3 *Mining Regulations 2011*

1.2 Ensuring you have the information you need at the right time, and that our technical assessment processes are transparent

In some cases, early community concerns about a project could be addressed if the Department could readily publish relevant information that it had available relating to a proposed project (or if it could direct the company to release such information).

What we see in the Department is that, once a community is given reasonable access to key information about a project in their area, community members who were feeling shut out often reach a more balanced view on the community risks and benefits of the potential mineral development project.

This makes sense, because we all want to be informed about projects in our area.

The Minister, the Department and the Chief Inspector of Mines only have limited powers to release information about upcoming projects and applications under the Mining Act and Regulations. These restrictions do not line up with the current commitment of this Government to fulsome, early and open transparency and engagement.

Community members that speak to Department officers at town meetings often ask for greater transparency and accountability in assessment processes because the Minister (or his delegates) and Departmental officers make decisions under the Mining Act that directly affect the State and its citizens. It is important to those community members that they are not only consulted during the decision making process, but that they also have access to relevant and detailed information at appropriate times in the assessment process so that they can weigh up the benefits of a project.

For all mining lease applications, the Department is required under the Mining Act to release the application for public consultation. For lease applications, the Department proactively publishes and releases all submissions received from the public consultation (or a summary of submissions), and the terms and conditions of any lease (if granted). The Regulator is of the view that there should be clear powers in the Mining Act for the Minister (or his delegate) to release this kind of information for all projects, (at appropriate times), so that community

members do not have to commence lengthy *Freedom of Information* processes to try to obtain relevant documents. For further discussions on the proposed reforms to the Mining Register see paragraph 3.2, and for further discussion on the importance of transparency see paragraphs 2.2 and 3.3.

Moving towards a more transparent regulatory system will ensure that you are well informed of the breadth of any upcoming decisions, and the decision-making processes, so that you can provide informed feedback to the Minister.

The Department also intends to propose measured amendments to the Mining Act that will facilitate greater open access to relevant documents in accordance with the Government's commitment to the *Better Together* principles and the *Digital by Default* declaration, provided those rights would not unnecessarily impose on an operator's need for commercial confidentiality.

It is important to community members that they are not only consulted during the decision-making process, but that they also have access to relevant and detailed information at appropriate times during the assessment process.

The Department seeks your thoughts on whether, at a minimum, there should be open, free, and online access to the following documents at appropriate times:

- all licence and lease applications (at appropriate times given commercial sensitivities);
- public submissions (and/or summaries of those submissions);
- the terms and conditions of grant of a licence or lease;
- approved programs for environment protection and rehabilitation (PEPRs); and
- compliance and incident reports submitted to the Regulator by explorers and operators.

Explorers, landowners and traditional owners have also said to the Department that it would help them if they could obtain some of the geological information obtained by the State during or shortly after an exploration program is complete, or an explorer has relinquished their rights. Currently, this information is released after 5 years.

For explorers, this information is useful because it helps explorers who return to an area to save costs by targeting more prospective areas. For traditional owners, it helps them to gain a better understanding of the history and geology of their land at an earlier stage, rather than waiting 5 years. The Department is considering amendments that would allow for earlier disclosure of this information (for the benefit of the public) at appropriate times, if that information was no longer commercially sensitive.

We look forward to hearing your thoughts on what other information could be disclosed to improve the transparency of the mining assessment, and other, processes.

For further discussion on documents that should appear on the Mining Register, see Chapter 3.2.

DISCUSSION

- Should there be, at a minimum, open, free, and online access to the documents listed above, at appropriate times?
- Should operators be required to disclose geological information for the benefit of the public at appropriate times (if that information is no longer deemed commercially sensitive)?
- What other information do you think should be disclosed, and at what times?
- What restrictions should be placed on disclosure, and should different types of information be restricted in different ways?

Cross reference: section 77D *Mining Act 1971*; reg. 88 *Mining Regulations 2011*

1.3 Making sure everyone understands land access processes and expectations

1.3.1 Entry to land generally

Unless there is some other agreement or right to access, an explorer or operator intending to enter land must provide an owner of land with a notice of entry outlining the nature of operations proposed on the land at least 21 days before entering.

Landowners who hold a right of 'exclusive possession' (other than pastoral lessees or petroleum or geothermal licence holders) have the right to formally object to entry in an 'appropriate court' after a notice of entry is served.

DISCUSSION

- What opportunities are there to improve the entry to land processes?

Cross reference: section 57-58A *Mining Act 1971*





1.3.2 Entry on to 'exempt land'

'Exempt land' has been afforded special protection in South Australia for over 145 years.

These areas of land are given greater protection because they are the places where we live, or rely on, from day to day.

Various amendments have been made to strengthen and broaden the types of exempt land protected under the Mining Act over the last 100 years. Some amendments have created confusion, particularly where some of the description of things have become outdated or duplicated (e.g. a 'commercial building worth over \$200').

Also, landowners and operators have had some difficulty understanding the exempt land descriptions when they are not defined, and have had to resort to (sometimes) lengthy court processes to seek the Court's assistance with clarification, for example, the definition of a 'spring.'

There are varied opinions in the community about what is the appropriate balance between land rights and land access for the development of the State's minerals. Some say that there should be compulsory acquisition rights over private land in order to develop mineral resources, while others say that landowners should have a right of veto to stop mining projects going ahead.

The Department's view is that the 'exempt land' framework under the Mining Act has been working well at striking the right balance around land access for over a century, and that it is fairer than the frameworks used in other jurisdictions².

² As the Productivity Commission noted in its recent draft Report on the Regulation of Agriculture "a right of veto by agricultural landholders over resource development would arbitrarily transfer property rights from the community as a whole to individual landholders."

Exempt land is:**a) land that is lawfully and genuinely used—**

- a. as a yard, garden, cultivated field, plantation, orchard or vineyard;
- b. as an airfield, railway or tramway;
- c. as the grounds of a church, chapel, school, hospital or institution; *or*

b) land that constitutes any parklands or recreation grounds under the control of a council; *or***c) land—**

- a. that is dedicated or reserved, pursuant to statute, for the purpose of waterworks; *or*
- b. that is vested in the Minister for Water and the River Murray for the purpose of waterworks; *or*

- c. that is comprised within an easement in favour of the Minister for Water and the River Murray; *or*

d) land that constitutes a forest reserve under the *Forestry Act 1950*; *or***e) any separate parcel of land of less than 2 000 square metres within any city, town or township; *or*****f) land that is situated—**

- a. within 400 metres of a building or structure used as a place of residence (except a building or structure of a class excluded by regulation from the ambit of this paragraph); *or*
- b. within 150 metres of—
 - a building or structure, with a value of \$200 or more, used for an industrial or commercial purpose; *or*
 - a spring, well, reservoir or dam.

Sensible, sustainable development for the benefit of the State and communities should be everyone's goal. For this reason, the Department does not propose changing the foundations of this framework or the special protections afforded to landowners, aside from seeking to grant landowners some further rights to faster, cheaper and less-formal agreement making and court processes to resolve any 'exempt land' issues that may arise³.

For further discussion on the proposed reforms to court processes, see paragraph 1.3.4.

³ The Department is of the view that these additional protections for landowners should be granted as soon as practicable.

DISCUSSION

- What terms need to be better defined to better clarify what is 'exempt land'?
- What opportunities are there to clarify or amend the exempt land provisions in the Mining Act?

Cross reference: section 9-9A *Mining Act 1971*

“Explorers and operators should recognise, understand and involve communities and stakeholders early and throughout the process”

Principles for Engagement with Communities and Stakeholders
Ministerial Council on Mineral and Petroleum Resources (MCMPPR)

1.3.3 Notices to landowners under the Mining Act

Under the Mining Act, there are numerous requirements on explorers and operators to serve notices on landowners about their:

- proposed access to land (form 21 – Notice of Entry on Land);
- intention to start negotiations to seek ‘waivers of exemption’ over exempt land (form 23A – Request: Waiver of Exemption and form 23B – Agreement: Waiver of Exemption); and
- use of ‘declared equipment’ such as drill rigs, excavators, loaders, graders and dozers (form 22 – Notice of use of declared equipment).

Sending a notice of entry is the first legislated time that an explorer or operator has to contact a landowner if they want to enter the land (unless they have some other right of access, like an existing agreement with the landowner)⁴.

The landowner (not pastoral lessees, or holders of a petroleum or geothermal energy tenement) has the right to formally object to any proposed activities after a notice of entry is served.

⁴ Modern technologies have meant that physical entry on to land may no longer be required in the first stages of exploration: tenements can be pegged by alternate means without entering the land and can be granted online, and aerial vehicles can be used to undertake high altitude exploration studies.

The Department is of the view that, for practical reasons, this is the earliest time that an explorer or operator should be required (under legislation) to contact an owner of land. However, the Department continues to encourage explorers and operators to meet with landowners prior to sending the notice of entry⁵.

Similarly, landowners, explorers and operators can, and are encouraged to, approach each other as soon as possible to commence negotiations in relation to any waivers of exemption (for further information on ‘exempt land’ paragraph see 1.3.1).

⁵ The Department is currently updating all policy documents and guidelines to encourage this leading practice behaviour.

The image shows three overlapping forms from the Mining Act 1971. The top form is Form 21, 'Notice of Entry on Land', which includes sections for 'For the attention of the C' and 'For the attention of the O'. The middle form is Form 22, 'Notice of Use of Declared Equipment', which includes sections for 'For the attention of the C' and 'For the attention of the O'. The bottom form is Form 23A, 'Request: Waiver of Exemption', which includes sections for 'For the attention of the O' and 'For the attention of the C'. The forms are filled out with handwritten information, including names, addresses, and dates.



Under the current Mining Act, explorers and operators have a statutory right to commence negotiations in relation to exempt land by issuing a notice under section 9AA(1) of the Mining Act. Landowners have never had that same right to commence negotiations.

Community members and groups have indicated that landowners should be provided with a similar right to send a notice commencing statutory negotiations, and outline any conditions on which they would consider a waiver (if they are happy to try to progress negotiations at an early stage).

The Review Team is seeking your thoughts on a landowner right to commence negotiations, and the time at which that right should arise. This right would provide the landowner with a statutory mechanism to indicate the terms on which they would be willing to negotiate a waiver (if any). This right should be available after an appropriate time, i.e. when the operator is somewhat clear about the

location, nature and extent of operations, and there is some certainty about what relevant exemptions may clearly exist. The Review Team seeks your views on a new right for landowners.

Declared equipment cannot be used in the course of mining operations until:

- it is authorised in accordance with an approved PEPR and, as a matter of policy, in accordance with a Native Title Mining Agreement; and
- a notice has been served under section 59 of the Mining Act (where required).

Owners of land can object to the use of declared equipment as set out in the notice of declared equipment using the procedure outlined in the Mining Act and Regulations.

In practice, objections to the use of declared equipment have not been pursued. It is not completely clear why this is the case, and the Review Team believes that this may be due to

issues being resolved as part of the process to object to notices of entry (which usually occurs prior to the declared equipment objection process).

Officers from the Department speak with various landowners weekly in the course of their work. The general feedback from those discussions is that there could be clearer forms, and some more connection between each of the above processes so that an operator could inform them of all of the relevant details in, say, one form (where possible).

Given the lack of use of the declared equipment objection process, it may also be appropriate for this to be streamlined.

The Review Team welcomes your feedback on the above, and any other processes, and also seeks comment on whether the current notification timeframes are appropriate.

“No landowner, pastoralist or native title holder has ever exercised their rights under the Mining Act to object to the use of declared equipment as set out in a notice.”

1.3.4 Fast and fair court processes and access to justice

Unless there is some other agreement or right to access, an explorer or operator intending to enter land must provide an owner of land with a notice of entry outlining the nature of operations proposed on the land at least 21 days before entering.

Landowners who hold a right of exclusive possession (other than pastoral lessees or petroleum or geothermal licence holders) have the right to formally object to entry in an appropriate court after a notice of entry is served. An appropriate court under the Mining Act is the Warden’s Court, the Environment, Resources and Development Court, or the Supreme Court.

A court may uphold a landowner’s objection to entry if the court is satisfied that the conduct of the operations on land would likely result in ‘substantial hardship’ or ‘substantial damage.’ If a court makes that finding, it then may impose conditions on access, or prevent access. The Department is of the view that this court process should be retained because it provides landowners with an important right to object to operations being undertaken on their land where it is clear that there may be substantial impacts.

Unlike the process mentioned above to object to a notice of entry, landowners have never had a right to commence court proceedings in relation to the determination of waivers of exemption over exempt land. For further discussion on exempt land see paragraph 1.3.2.

DISCUSSION

- Do you think that landowners should have equivalent rights to commence negotiations with an operator in relation to 'exempt land' by issuing a notice under section 9AA of the Mining Act? If so, at what time should this right arise?
- Do you agree that it seems reasonable that a landowner's right to commence negotiations should arise at the time the operator has enough information about the scope, location and likely impacts of mining operations?
- What opportunities do you see to streamline the notice of declared equipment process, and the other notification processes?
- In light of the fact that no landowner, pastoralist or native title holder has ever exercised their rights under the Mining Act to object to the use of declared equipment, are notices of declared equipment still relevant?

- What information do landowners want to receive from explorers and operators, and at what point in time during the exploration or production stage should that be provided?

Cross reference: section 9AA, *Mining Act 1971*; section 58, *Mining Act 1971*; section 59, *Mining Act 1971*; reg. 60, *Mining Regulations 2011*; reg. 61, *Mining Regulations 2011*; reg. 62, *Mining Regulations 2011*; reg. 63, *Mining Regulations 2011*



In practice, this means that landowners have to wait for operators to commence those proceedings before they can put forward evidence about why the 'adverse effects of the proposed operations cannot be addressed by the imposition of conditions (including compensation)'. For more information on this court process, see section 9AA of the Mining Act.

The Department has met with numerous landowners seeking an equivalent right to commence exempt land proceedings at an appropriate time.

If landowners were provided with an equivalent right to commence proceedings, the Department is of the view that that right should only arise after it is reasonably clear to all parties what exempt land is likely to be subject to any proposed exploration, mining or quarrying operations.

In practice, operators do not usually have enough information about the scope, location and likely impacts of production operations until after the submission of a lease application, and the receipt of a response from the relevant landowners about the proposal. For this reason, it seems reasonable that this equivalent right should be enlivened after the close of statutory submissions on a mining lease or retention lease proposal.

The Department is also of the view that landowners, such as farmers, and companies should have access to fast and inexpensive courts for the determination of exempt land matters.

Amendments to section 9AA made by members of the Legislative Council in 2011 have now meant that all exempt land proceedings can only occur in the more expensive, and more formal, Environment, Resources and Development Court. This amendment is out of step with all other leading practice jurisdictions in Australia, and is inconsistent with the numerous court efficiency projects that the Government has undertaken in recent years promoting access to inexpensive and fast justice.

The Department is of the view that requiring such formal court processes for waiver of exemption proceedings exposes landowners to unnecessary costs and risks, and that those proceedings should be able to be commenced in any appropriate court, being the Warden's Court, Environment, Resources and Development Court and the Supreme Court (like most other proceedings in the Mining Act).

Given the limited number of actions that will need to be heard in the Supreme Court, access to that court should only be available with leave of a Supreme Court Judge (this is a normal requirement for Supreme Court proceedings, to ensure the matter is appropriate, and no party will be disadvantaged).

This change would allow individual landowners to commence proceedings in a cheaper, less formal court, if they choose, or choose a more formal, higher court if they wish to in a particular matter.

The Department is of the view that landowners, such as farmers, and companies should have access to fast and inexpensive courts for the determination of exempt land matters.

DISCUSSION

- Do you agree that access to the court process to object to a notice of entry should be retained, so that landowners have a right to object to operations that will have substantial impacts?
- Do you agree that an appropriate time for a landowner to issue proceedings is at a time when the operator has enough information on the proposed operations?
- What other opportunities do you see to provide fast and fair access to justice for all?

Cross reference: section 9AA *Mining Act 1971*; section 58(3), *Mining Act 1971*





1.3.5 *Ensuring that Aboriginal communities are engaged and well informed*

South Australia is the only State or Territory to have its own native title scheme as distinct from the Commonwealth native title scheme under the *Native Title Act 1993* (Cth).

The South Australian alternative scheme under the Mining Act sets out procedures that must be followed before exploration or production activities can be carried out on native title land (land in respect of which native title exists, or might exist).

In recent years, the Department has become aware of some of the practical challenges being faced by native title groups and the mining and quarrying industries when working within the South Australian native title system. This includes, engaging early and respectfully, determining when activities affect native title, providing certainty about timeliness and costs and valuing and preserving Aboriginal heritage and culture.

There are different views about the nature of the particular challenges with this scheme and the best way to address them. These challenges cannot be solved by Government alone, so in recognition of the need to facilitate continuous improvement in exploration and production practice, the Department has developed the *Stronger Partners Stronger Futures* program to run parallel to this Review of the Mining Acts. *Stronger Partners Stronger Futures* aims to encourage more effective exploration and engagement by supporting the interaction between native title and exploration.

The objective is for Aboriginal communities, the mining and quarrying industries and Government to work together to identify and make improvements to the operation of the native title system as it applies to exploration. The Department believes this collaborative approach will enable it to develop and test solutions in good faith with all stakeholders to create the best opportunities and outcomes for Aboriginal communities and the mining and quarrying industry.

In conjunction with this ongoing engagement, the Department will also develop new approaches to support Aboriginal groups and explorers that will provide certainty about the operation of the native title system for exploration. This includes developing a range of communication and education tools to make sure everyone has the best opportunity to understand the South Australian native title scheme and learn more about exploration and production.

South Australia is the only State or Territory to have its own native title scheme as distinct from the Commonwealth native title scheme under the *Native Title Act 1993* (Cth).

DISCUSSION

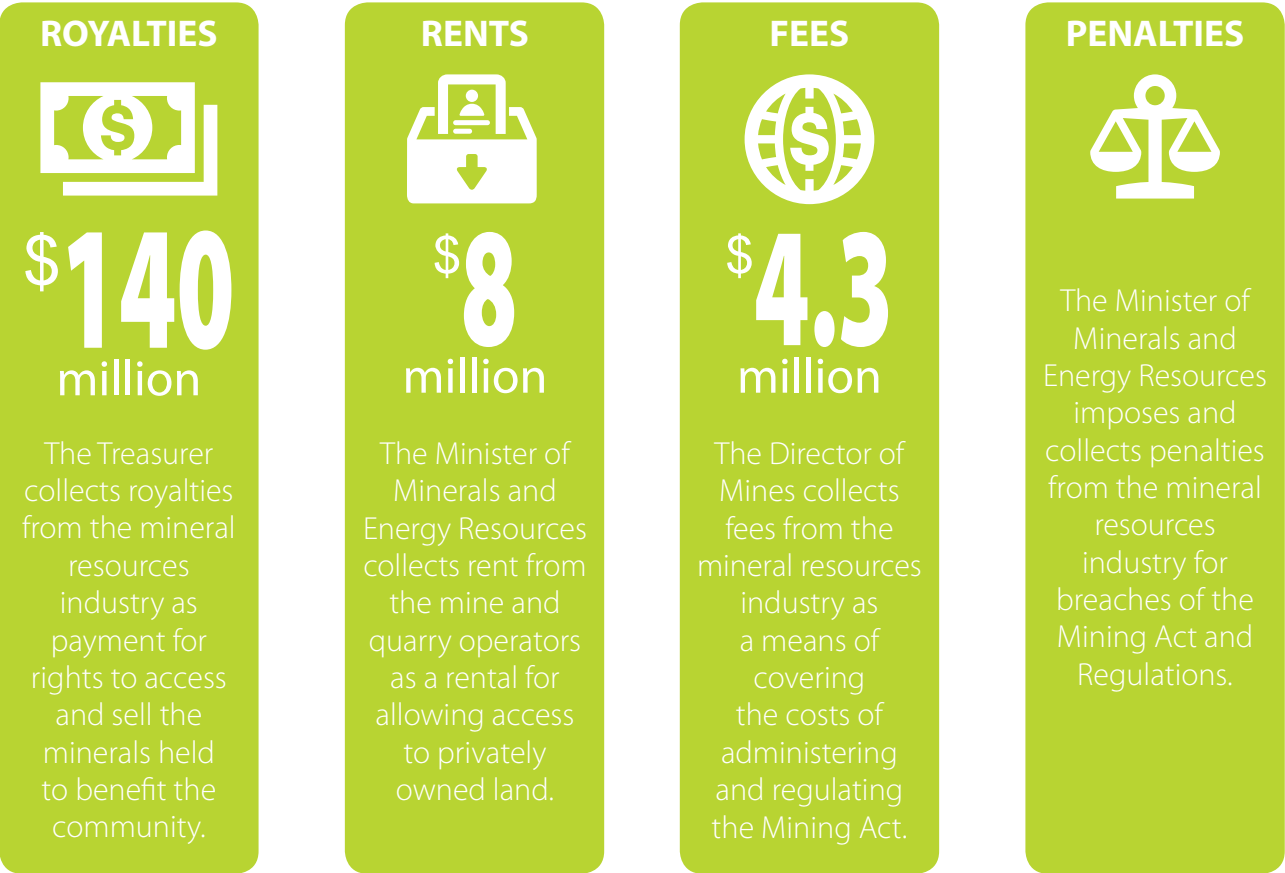
- What opportunities are there to work together to design and build a better system for land access to benefit everyone?
- Do we need better access to information and tools to make sure everyone has the best opportunity to understand the South Australian native title process and learn more about mining and exploration? How would you like to access information?

Cross reference: part 9B *Mining Act 1971*



1.4 Ensuring that payments and fees are recovered

Under the Mining Act, the South Australian Government collects the following payments:



The abovementioned payments are levied and collected to fund various aspects of the Department's administration and regulatory costs. The remainder contributes to the South Australian economy, with some royalty being diverted into the Extractive Areas Rehabilitation Fund (the EARF, see paragraph 2.6). Any non-payment of the above amounts is therefore a loss to South Australians and their communities.

To manage any risk of non-payment of fees and royalties, the Department can recover amounts from a bond imposed on an operator under section 62 of the Mining Act, or initiate court proceedings to recover the payments as a debt due to the South Australian government. Both options are costly: increasing bond amounts increases costs for industry, and cost recovery in the Court is expensive for all parties involved.

To ensure that non-payment by the mineral resources industry is not a burden on South Australians, the government needs flexible and cost effective measures to ensure these payments are met.

One way of further protecting the communities' right to payment of these amounts (in addition to bonds) may be to impose penalty interest or, create a statutory debt interest under the Mining Act relating to these payments so that the community has clear priority above other secured creditors.

Any such security could cover unpaid rents, royalties, fees, penalties and any amount incurred by the South Australian government when undertaking any obligations on behalf of a tenement holder (there are processes under the Mining Act for this to occur).

By ensuring there is sufficient security around the payment of amounts owed to the South Australian government under the Mining Act, unpaid amounts will not unnecessarily burden South Australians.

The Department also seeks feedback on whether this statutory interest could also extend to any costs incurred by the State relating to a failure to rehabilitate. Further discussion on rehabilitation can be found at paragraph 2.3.

DISCUSSION

- Do you agree that payments due to the South Australian government, for the benefit of the community, should have priority over other obligations?
- What other opportunities do you see to ensure that explorer and operators pay outstanding amounts when due?

Cross reference: section 40 *Mining Act 1971*; section 41E, *Mining Act 1971*; section 52, *Mining Act 1971*; part 3, *Mining Act 1971*; schedule 1, *Mining Act 1971*; section 40, *Mining Act 1971*; part 2, *Mining Regulations 2011*; reg. 42, *Mining Regulations 2011*; reg. 54, *Mining Regulations 2011*; reg. 109, *Mining Regulations 2011*

1.5 Ensuring that the community is informed of any changes

As discussed in paragraph 3.7, operators often need appropriate flexibility to make changes to their mining operations during the mine life to adapt their operations to changes, such as changes in the global commodity environment.

Some changes proposed to operations may be of interest to landowners and the community since they had the opportunity to comment on the operations during the original lease application assessment. However, where the proposed changes may lead to a substantial new or increased impact not considered in the original lease assessment, mere notification of these changes may not be sufficient.

The Review Team seeks your view on a change to operations process that would include a consultation process (similar to that of the public consultation undertaken under the mining lease approval process), to give landowners and the community the right to have their say on any proposed changes.

The Department is committed to appropriate transparency and consultation on any changes to operations during mine life, and seeks your view on outlining various processes in the Mining Act for consultation that will have different requirements (depending on the degree of change being sought, and the associated impacts).

DISCUSSION

- What changes to approved mining operations should give rise to a statutory right for a landowner to be notified?
- What changes to approved mining operations should give rise to a statutory right for a landowner to be consulted on the proposed change?
- What type of information should landowners and the community receive during any change of operation process?

Cross reference: section 34(9) *Mining Act 1971*; section 70C, *Mining Act 1971*; reg. 67, *Mining Regulations 2011*; reg. 68, *Mining Regulations 2011*





2

SUSTAINABLE FUTURES

We all want to be certain that any developments in our communities are sustainable, and that the impacts and benefits of exploration and production for current and future generations have been weighed up during all assessment processes.

It is the role of the Minister (or delegate), the Director of Mines, and the Exploration and Mining Regulation branches of the Department (collectively, the Regulator) to ensure that this occurs in all cases.

Between 1971 and 2011, the Mining Act has been periodically updated to strengthen and bolster environmental regulation and compliance so that it kept up with changing community standards around environmental management and rehabilitation. The most recent changes in 2011 moved South Australia to a leading outcomes based regulatory system. For further discussion of this, see the Overview.

Modern regulatory practice is focused on objectives and outcomes, and is performance and risk based. Outcomes based regulation requires explorers and operators to achieve certain environmental outcomes, but do not prescribe particular activities that need to occur to achieve those outcomes. The outcomes (i.e. statements of the appropriate impact on the environment) are determined during project assessment by the Regulator (and through community consultation) for leases and are not prescribed in the Mining Act.

Some examples of outcomes that can form part of an assessment (and could be a condition on an approved licence, lease or PEPR etc.) include:

- There will be no introduction of new declared weed species or pests (including feral animals), and no increase in existing weed species or pests, on the site.
- There will be no contamination of soil and vegetation as a result of activities.
- There will be no permanent loss of native flora/fauna abundance or diversity within the licence areas and adjacent areas caused by mining operations and vegetation clearing.
- Any extraction or use of groundwater (in accordance with any licence) must not adversely affect third party users or dependent ecosystems.
- There will be no disturbance to Aboriginal artefacts or sites of significance unless prior approval under relevant legislation is obtained.
- There are no public health and/or public nuisance impacts from air emissions and/or dust from mining operations.

“The Department employs specialist teams of highly qualified environmental scientists and officers, geologists, mining engineers, environmental engineers, geomechanics and geophysical engineers to assess applications.”

Compliance action can be taken against explorers or operators who do not meet an environmental outcome or condition (see paragraphs 2.1.2)

South Australia's move to an outcomes based system is consistent with the Council of Australian Governments (COAG) agreement that all Australian governments should ensure that regulatory legislation promotes⁶:

- A Triple Bottom Line assessment (i.e. a combined social, environmental and economic assessment).
- Effective consultation with stakeholders.
- Proportionate government action.

The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is the Australian Government's key piece of environmental legislation. It provides for the protection of the environment, especially matters of national environmental significance, through a national environmental assessment and approvals process.

In 2014, an assessment bilateral agreement under the Commonwealth EPBC Act, between the South Australian and Commonwealth Governments came into operation. The agreement provides for a single environmental

assessment process to meet the regulatory requirements of both South Australian and the Commonwealth legislation, which streamlines these processes to reduce the regulatory burden on businesses.

The agreement covers any environmental assessment of proposed developments in South Australia that could impact on a matter of National Environmental Significance. This agreement accredits South Australian environmental assessment processes under the Mining Act only where those processes meet the strict environmental protection requirements of the EPBC Act.

This inter-jurisdictional agreement demonstrates that the Mining Act meets the stringent environmental regulatory standards set by the EPBC Act. It is intended that any changes to the Mining Act resulting from this Review will not impact on this important accreditation, but rather strengthen it.

The Regulator and the Commonwealth are confident that the Mining Act establishes a leading legislative framework for the achievement of positive environmental outcomes. However, we seek your thoughts on any further improvements that could be made.

⁶ "Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies" Council of Australian Governments (COAG) October 2007.



2.1 Protecting South Australia's environment through programs for environment protection and rehabilitation

The grant of a tenement (e.g. an exploration licence or mining lease) is the Minister's grant of rights over the minerals.

A program for environment protection and rehabilitation (PEPR), or other operational approval, is the Minister's approval of the operations that will be undertaken to explore for or extract the minerals.

No exploration, quarrying or mining operations can commence in South Australia without an approved PEPR or other operational approval (or the necessary tenement and land access rights, see the Overview).

The PEPR assessment process requires the regulator to assess a PEPR submitted by the explorer or operator and consider the

environmental outcomes that must be achieved while undertaking exploration or production activities, and the criteria that need to be monitored to measure the achievement of those environmental outcomes.

The Regulator also has to consider whether the operator has the ability to achieve those environmental outcomes, and meet those criteria.

A standard, generic PEPR is usually approved for common low impact operations. The Regulator has also developed generic outcomes and measurement criteria to assist explorers who are preparing a PEPR for submission.

Since the introduction of PEPRs in 2011 (when the 2010 amendments commenced), the Regulator has had better tools to impose and monitor best-practice behaviours from an early stage, and has had clearer and more practical environmental outcomes and criteria to measure performance against.

For more information in relation to mining regulation compliance in South Australia, see www.minerals.statedevelopment.sa.gov.au/latest_updates/south_australian_mining_act_compliance_and_enforcement_policy_handbook_released

Despite these recent advancements, there are likely to be further opportunities for improvement.

So, the Review Team wants to hear from you about how the Department can make the PEPR assessment processes for exploration and production better for the community, the environment, landowners and operators. To assist you in considering this, further information on preventative and reactive compliance measures is outlined below.

DISCUSSION

- How can we make the PEPR development and assessment process, and transparency after approval, better for the community, the environment, landowners, explorers and operators?

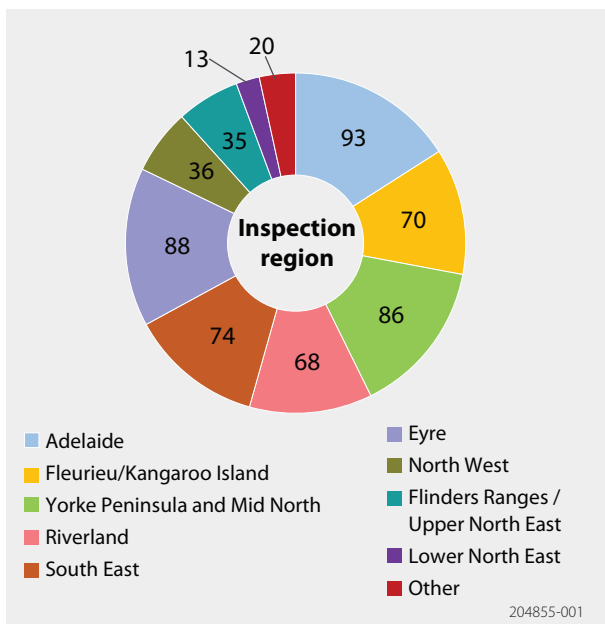
Cross reference: part 10A *Mining Act 1971*; part 7, *Mining Regulations 2011*; minerals general determination (MD001); mineral general determination (MD013); mineral general determination (MD002); mineral general determination (MD005)

2.1.1 *The scope of preventative regulatory measures*

The Government is committed to attracting and retaining companies who have the best track records of environmental compliance and protection. Preventative measures are the best measures we can use to ensure exploration and mining operations do not result in undue damage to the environment, or a breach of environmental outcomes under a PEPR.

Under the current system the Department and the Minister have a number of preventative tools, including:

- requiring explorers and operators to give a security bond to the Minister which covers the present and future costs of the rehabilitation of all land disturbed by operations (financial assurance is discussed in further detail at paragraph 2.4);
- using authorised officers to gather information and conduct investigations to monitor compliance with the Mining Act;
- requesting an independent audit of the environmental outcomes required under a PEPR; and/or
- requiring an operator to:
 - prepare an annual compliance report;
 - provide initial incident reports relating to any failure to achieve an environmental outcome specified in a PEPR;
 - provide information that evidences the operator's capability and competence to comply with the Mining Act, tenement conditions and the PEPR; and/or
 - maintain public liability insurance for an amount assessed by the Regulator.



Mining operation inspections conducted by DSD in 2015 shown by region.

The Review Team seeks your thoughts on strengthening the above preventative measures by allowing the Minister to condition PEPRs so that operations cannot commence until after a particular point in time, e.g. until the payment of the bond or the satisfaction of a compliance direction.

The Review Team also seeks your views on how greater transparency can operate as a preventative measure in ensuring environmental sustainability. For detailed discussion on improved environmental accountability via transparency, see paragraph 2.2.

It may also be in the best interest of the community for there to be a clear power to prohibit or delay the expiry of a tenement until all environmental and other obligations

“ Since 2011 ALL compliance directions issued by the Regulator under the *Mining Act 1971* have been complied with.”

are complied with. For example, surrender or expiry (subject to certain controls) could be made subject to the operator paying all fees, charges and outstanding royalties under the Mining Act, submitting a final compliance report and royalty return, and declaring that operations have ceased and there are no liabilities (including litigation liabilities), or there is an acceptable management plan in place for managing or transferring those liabilities.

Once all of these obligations are complied with, the explorer or operator could publicly release a notice of intention to surrender or notice of expiry for any public comment. The above information is the kind of information that the Department could request from a particular operator under the current scheme, but, having a uniform obligation may build further community confidence around the rehabilitation, surrender and expiry processes. For further discussion on the surrender, forfeiture and expiry processes see paragraph 3.8.

Finally, the current framework under the *Environment Protection Act 1993* and the *Mines and Works Inspection Act 1920* provides for the pursuit of an operator, or management, in relation to any environmental damage that has occurred on a site after the tenement has



DISCUSSION

- Do you think that the Minister should be able to place conditions on PEPRs so that explorers or miners cannot commence activities until after a particular point in time (e.g. until the payment of a bond or the satisfaction of a compliance direction)?
- Should the Department be able to prohibit or delay the expiry of a tenement until an explorer or operator has complied with all outstanding obligations?
- Should the Department adopt a more streamlined surrender and/or expiry process whereby the Department and the community

can be assured that all outstanding liabilities are complied with prior to surrender or expiry?

- Should the process be open for public comment prior to acceptance of the surrender or expiry date to ensure all outstanding liabilities are brought to the attention of the Department and the community?
- What other preventative tools do you think should be introduced to ensure damage to the environment can be prevented?

Cross reference: section 14-14F *Mining Act 1971*; section 62, *Mining Act 1971*; reg. 67, *Mining Regulations 2011*; reg. 86, *Mining Regulations 2011*; reg. 87, *Mining Regulations 2011*; reg. 90, *Mining Regulations 2011*



expired. Clear amendments to the Mining Act to include similar powers is another change that may encourage greater compliance during the life of mine.

Another possible tool to encourage compliance would be to delay approval of a PEPR, or other approvals under the Mining Act, if that particular operator has non-compliant operations elsewhere in the State, or other non-compliances under the Act.

The Review Team seeks your views on these, and any related, matters.

2.1.2 *The scope of compulsive tools*

If preventative regulatory measures do not produce satisfactory results, the Regulator has a number of compulsive tools available to ensure the protection of our environment. These tools include the power to issue environmental directions, rehabilitation directions, and compliance directions.

An environmental direction is a written notice directing the explorer or operator to take action to prevent or minimise damage to the environment.

A rehabilitation direction is a written notice directing the explorer or operator to take action to rehabilitate land in accordance with the requirements of a PEPR and/or to the standard required to secure compliance with a condition of the tenement. A compliance direction is a written notice issued by the Minister for the purpose of:

- securing compliance with a requirement under the Mining Act, a tenement (including a condition of a tenement) or any authorisation relating to a tenement;

DISCUSSION

- Do you see benefits in enhancing the Departments compulsive tools by:
 - Increasing penalties;
 - Preventing renewals, transfers, cancellations surrenders and transfers until environmental obligations have been complied with; and
 - Imposing personal liability for directors for company non-compliance.
- What other compulsive tools do you think should be introduced to ensure explorers and operators comply with their environmental obligations?

Cross reference: section 70E *Mining Act 1971*; section 70F, *Mining Act 1971*; section 30(4), *Mining Act 1971*; section 34(8), *Mining Act 1971*; section 52(4a), *Mining Act 1971*; section 45(2), *Mining Act 1971*

- preventing or bringing to an end operations contrary to the Mining Act or a tenement; or
- requiring the rehabilitation of land on account of any operations conducted without an authority required by the Mining Act.

There is a maximum penalty of \$250,000 for failing to comply with a direction within the time stipulated in the direction. If the requirements are not complied with, the Minister (or someone authorised by the Minister) may take the action required by the direction, and recover the reasonable costs and expenses of taking the action (as a debt).

The Minister also has power to further limit or restrict activities by amending the conditions of an exploration licence, mining lease or miscellaneous purpose licence to prevent undue environmental harm. In addition, the Minister can also impose administrative or criminal penalties such as the forfeiture of a bond, and/or can suspend or cancel a tenement.

The Review Team believes that these broad compulsive tools are sufficient, but seeks your thoughts on enhancing these measures by: increasing penalties to appropriate levels; preventing renewals, cancellations, surrenders and transfers until environmental obligations are complied with; and strengthening the powers available relating to Directors where a company has been non-compliant.

2.2 Ensuring greater government and industry environmental accountability and transparency

All South Australians want a strong legislative framework around environmental accountability, transparency, integrity of review, and the prevention of any maladministration by either government or industry.

The Review Team seeks your thoughts on improving government accountability by allowing for the publication of relevant government and operator documents (where appropriate) to the community.

The Department proposes to expand the use of the Mining Register to include an array of documents which demonstrate compliance with the Mining Act and Regulations. It is intended that this information will lead to better accountability and act as a deterrent. The Department seeks your views on the public disclosure of the following documents:

- Compliance directions
- Rehabilitation directions
- Public liability insurance limits and insurance compliance certificates
- Notices for failure to comply
- Incident reports
- PEPRs
- Compliance reports
- Bond amounts
- Minimum expenditure obligations and expenditure reports containing actual exploration expenditure.

The Department is also seeking to encourage industry accountability by ensuring that all debts due to the Crown in respect of any liability are recoverable (including via statutory charge, or otherwise).

The Department proposes to improve industry accountability by requiring the timely payment of rents, and discretionary power to prohibit tenement renewals, cancellations, surrenders, or transfers until all obligations are performed (including registrations, lodgements, directions, and the payment of all outstanding fees, royalties and rents). For further information see paragraphs 3.9 and 3.12.

The community expects, and the Regulator demands, that closure of a mine achieves sustainable environmental outcomes.



DISCUSSION

- Do you see benefit in publishing relevant government, explorer and operator documents (where appropriate) online to increase government and industry transparency and accountability?
- What other documents in addition to the abovementioned list should be publicly disclosed to improve industry accountability?
- Do you agree that the Department can increase the accountability of explorer and operators by:
 - Ensuring the timely payment of rents;
 - Prohibiting tenement renewals, cancellations, surrenders or transfers until all outstanding obligations are performed?
- What other opportunities are there to increase Government and industry accountability?

Cross reference: section 77D *Mining Act 1971*; reg. 88 *Mining Regulations 2011*

2.3 Enforcing leading practice mine closure planning, and progressive rehabilitation to achieve sustainable mine completion outcomes

Appropriate rehabilitation of all mining operations should be non-negotiable.

Planning for mine closure from the earliest stages of mine planning and progressive rehabilitation throughout the life of a mine is leading practice behaviour, and all regulators should be able to elicit this behaviour, whether by regulation, sanction, condition or financial assurance models that incentivise best practice behaviour.

The community expects, and the Regulator demands, that closure of a mine achieves sustainable environmental outcomes through appropriate planning and that, if there is a failure to rehabilitate, timely rehabilitation directions are issued and strict PEPR requirements are imposed.

Generally speaking, South Australian operators responsibly rehabilitate their operations. This has been driven by the strengthened provisions of the Mining Act, the changing community expectations around mining and quarrying, the risk of negative reputational impacts for future projects, and the proactive responsible behaviours being exhibited by our socially minded explorers and operators. However, some operators could improve their mine closure planning and rehabilitation behaviours, and there are instances where insolvency events are a factor in some of these failings.

The Department wants to support and promote good industry behaviours and wants assurance of industry accountability and responsibility within all levels of the business.

For this reason, the Review Team seeks your thoughts on mitigating measures and regulatory tools (including those outlined in paragraphs 2.1.1 and 2.1.2) that may ensure accountability. Your feedback will assist in any reconsideration of the breadth and scope of the financial assurance model applicable to mines in South Australia in accordance with paragraph 2.4.

The Review Team also seeks any comment on rigorous legal mechanisms that would protect the community where there is any insolvency event, including preventing explorers and operators (or their administrators or liquidators) from transferring mine site assets where it would be unsafe or inappropriate to do so, or would result in environmental harm or a breach of outcomes.

2.4 A modern leading practice financial assurance model and the rehabilitation of former mine sites

Some of the greatest concern in the community in respect of mining relates to un-rehabilitated former mine sites that are the legacy of old, outdated regulatory systems and practices of times past.

Often, these former (legacy) sites fell into government care because there was no

DISCUSSION

- Do you think the current tools and the proposed changes to regulatory tools in paragraphs 2.1.1 and 2.1.2 will be sufficient to ensure leading practice mine closure and progressive rehabilitation (including the progressive rehabilitation of exploration operations)?
- What changes can be made to our financial assurance model to further encourage or guarantee appropriate mine closure practices and/or rehabilitation outcomes?
- What other mechanisms should the Department consider to promote or mandate leading practice mine closure and progressive rehabilitation behaviours?
- What powers or mechanisms should the Department adopt to ensure that administrators and liquidators or explorers and operators could not transfer assets where it would be unsafe to do so, or would result in environmental harm or a breach of outcomes?

Cross reference: part 10A *Mining Act 1971*; part 7, *Mining Regulations 2011*

requirement on operators in Australian colonies and jurisdictions to comprehensively rehabilitate mining land for most of the last two centuries. In some cases, the liability for mine sites fell to the South Australian government, and therefore the community (albeit far less than in other States and Territories).

The Government is committed to ensuring there are no new legacy sites in South Australia going forward. The compliance powers discussed in paragraph 2.1.2, and the environmental regulation amendments made in 2011, are intended to ensure that explorers and operators can be forced to comply with their mine closure and rehabilitation obligations so that no future generation will be burdened with legacy mine sites.

However, the Department still needs adequate powers and funds to manage and rehabilitate existing legacy mine sites.

In the last two years, several Australian State and Territory Governments have been grappling with this same issue, and have undertaken reviews of their financial assurance model (namely, the systems of bonds, relevant levies/fees, rehabilitation funds and insurance requirements under each Act) relating to mines in their jurisdiction in order to identify appropriate ways to fund the rehabilitation of former sites.

The Government has been proactively engaging with its counterparts directly, and through the COAG Energy Council, to seek a greater understanding of what assurance models are working, and any challenges associated with the various models.



There are a range of financial assurance models in place around Australia and other significant mining nations. The financial arrangements underpinning these models include:

- company or mine specific financial instruments (e.g. cash bonds, bank guarantees) designed to reduce the probability of companies transferring costs to government
- sector-wide levies and pooled funds designed to cover the costs of existing, potential and transferred rehabilitation liabilities (e.g. the mining rehabilitation fund in Western Australia, the Institutional Control Program in Saskatchewan (Canada), legacy mine levies in some jurisdictions).

The variety of approaches across national and international jurisdictions is influenced by the size and make-up of their industry, the size of the liabilities, and the likelihood of these liabilities deferring to government.

Company or mine specific financial instruments can sometimes be deficient due to a failure to review and update the level of liability and the related bond or due to inaccuracies in the liability estimation process. Bonds also tie up working capital and it can be difficult to cover potential liabilities that may arise post-surrender using bonds.

Pooled funds can be problematic if they act as a disincentive for the operator to manage the risks in the knowledge that the fund will cover the operator's shortcomings. This can result in responsible miners subsidising the failings of other miners, which is not an appropriate model.

The current process for mining projects in South Australia is that the Government seeks to impose unconditional bonds for 100% of the estimated rehabilitation liabilities. Except for the EARF, there are currently no levy or pooled fund arrangements for addressing potential liabilities that are difficult to estimate, such as

the risk of rehabilitation failure subsequent to the surrender of a tenement or for addressing environmental legacies from former mines.

The EARF operating in South Australia is an example of a pooled fund. It is funded by diverting a small portion of the Crown royalty to provide for a fund of last resort for the quarry industry in South Australia. The EARF is one way of ensuring that legacy quarry sites are rehabilitated.

For further discussion on the EARF, please see paragraph 2.6.

The Department is proposing to introduce a leading practice financial assurance model into South Australia that will adequately meet three 'non-negotiable' criteria. Namely, any modernised model must:

- appropriately cover the financial risk and environmental liability relating to a project that would otherwise fall to Government and the community (preferably in a way that generates revenue for the rehabilitation of any legacy sites);
- appropriately incentivise progressive compliance and rehabilitation behaviour so that all operations are undertaken in the most sustainable manner; and
- be flexible and cost-effective for operators so that they are not subject to unnecessary burdens of tying down assets in order to provide surety for their rehabilitation obligations.

Current modelling being undertaken by the Department indicates that there may be some options for financial assurance models

comprised of a combination of company/mine specific financial instruments and a pooled fund that can provide an optimal arrangement for achieving these three criteria. A renewed model, combined with the preventative and regulatory tools outlined in paragraph 2.1.1 and 2.1.2 (including rights to adequate address monies owed to the Crown), should ensure that South Australians will not be burdened with any further legacy sites. There also may be opportunities to efficiently progress the timely rehabilitation of key former sites in the State, by utilising funds available via a more modern financial assurance system (provided there is no nett increase in costs to industry).

For example, this may be possible via a hybrid system where the mix of cash/security bond and levy into a pooled fund covers the same risk for a similar cost for an operator, which could then facilitate the payment of an amount to fund rehabilitation of legacy sites.

DISCUSSION

- What type of model do you think will achieve a cost-effective leading practice financial assurance model for South Australia?
- In addition to the examples above, what other financial assurance models do you think will achieve the three criteria outlined in this paragraph?

Cross reference: section 62 *Mining Act 1971*

The Review Team seeks any comments on an appropriate cost-effective leading practice financial assurance model for South Australia that will fund the rehabilitation of former mine sites, while protecting South Australians against any future liability arising from legacy mines. **However, no proposal should involve any impact on the current funds in the EARF, or the future accumulation and exclusive use (on application) of those funds by extractive operators.**

2.5 The regulation of private mines

Over the last 175 years, the Mining Acts regulating mining have dealt with the possession of minerals in various ways. For significant periods of our history, the rights to minerals have been held by the Crown, on behalf of citizens, as is the case under the current Act.

At other times, the rights to certain minerals were held by the particular freehold owners of the property. Usually, this system would be in place for short periods, before Parliament would return the rights to the Crown and the citizens of South Australia. The debates in Parliament around those transitions back to the Crown ownership system clearly indicate that, when mineral rights were placed into the hands of property owners (and not the community) there was substantial loss of employment across the State, and the minerals were not adequately mined to meet the construction and economic demands of the

community. This led to either the cessation of construction on some projects, or exorbitant costs for projects because of the greater cost of material that had to be transported from other colonies or states. The Department has no intention to change the fundamental foundation of the mineral ownership system currently in force under the Mining Act.

Between 1951 and 1972, Parliament returned the rights in minerals to the community, by vesting all property in all minerals to the Crown, and divesting private individuals of their property in minerals.

In order to facilitate this change, some individuals and companies who had previously owned the minerals in their land, and had commenced mining operations, were given the opportunity to apply for a private mine that would enable them to retain tenure over those minerals until they completed operations. Each private mine was then proclaimed by the Governor with no expiry date.

Under the post-1971 scheme, private mine holders were not required to obtain a mining lease to extract or sell minerals, and private mines are exempt from the Mining Act (other than Part 11B or as otherwise specifically provided).

Private mines offer a number of significant benefits to an operator, including secure tenure and the ability to mine closer to boundaries and exempt land than is possible under an ordinary lease under the Mining Act.

Some private mines were also granted over strategic mineral resources that are important

to the State, and that access needs to be retained because it was part of the negotiation of the passage of the Mining Act in 1971.

However, the current provisions relating to private mines do not provide an environmental regulation regime as rigorous as that provided for elsewhere in the Mining Act. Examples of some challenges and uncertainties with private mines include:

- Only the objectives and criteria of a mine operations plan (MOP) (the rough equivalent of the PEPR operations approval (see paragraph 2.1)) are made publicly available and are subject to approval. This can create community concern due to the 'unknown' scope of operations.
- A number of large metropolitan quarries involve a mix of private mines and other tenements, as a result of private mines having expanded their operations after 1971. It is very difficult to align the overlapping obligations of mine operations plans and PEPRs at those sites, and can be costly for operators to submit overlapping MOPs and PEPRs for approval.
- There are no clear provisions for development assessments on private mines, e.g. constructing additional mine related plant and infrastructure.
- There are limited transparent compliance reporting requirements.
- The aspects of the environment that must be considered in a MOP is narrower in scope than under the Mining Act.
- The enforcement provisions around private mines are not as comprehensive.

- Private mines are difficult to administer, because comprehensive current and historical details do not appear on the Mining Register, and it is difficult to keep ownership details up to date.
- It is difficult to revoke unused or exhausted private mines (of which there are many).
- Bonds do not apply to private mines, and there is not a consistent royalty regime.

The Department has no intention to change the underlying tenure of private mines as part of this current Review. However, there could be a reduction in regulatory uncertainty if the regulatory provisions relating to operations on private mines were more in line with other types of mining tenements, as appropriate. This may include the application of provision relating to PEPRs, compliance and enforcement, transparency, bonds and royalties (with transitional exemptions).

The Review Team seeks your views on these legislative changes, and any appropriate transitional provisions, to ensure these changes can be implemented fairly, and in a balanced way.

The Department also wishes to explore options that enable the efficient revocation of inactive private mines, or mines where the zoning or ownership would now effectively prevent the working of the site in the future (for example, some private mines are located in residential areas and are unworked).

The original intent of private mines was to allow landowners to use the minerals on their land, with accompanying (but now repealed) provisions requiring that operations commence operations within 3 years (or risk losing the right).

Revoking inactive private mines would be consistent with these original provisions, and the Review Team seeks your views on the introduction of transitional provisions that will automatically revoke private mines deemed inactive (or seek an appropriate determination by the Governor) in order to avoid the incursion of legal costs by the Government in the current Warden's Court processes.



Did you know?

A number of private mines have been completely inactive over many years. For example, only 80 private mine operations of the 207 in South Australia have reported production in the last 5 years.

DISCUSSION

- Do you think private mines should be regulated in a similar way to other mining activities under the Mining Act? If so, in which respects?
- Do you agree that there should be an efficient and cost-effective process for revoking inactive private mines?

Cross reference: part 11B, *Mining Act 1971*; part 10, *Mining Regulations 2011*

2.6 The Extractive Areas Rehabilitation Fund

The Extractive Areas Rehabilitation Fund (EARF) provides funding for the rehabilitation of extractive mining operations. Over 1,000 rehabilitation projects have been approved from the EARF to date, at a cost of \$34 million.

Income for the fund is derived from the royalty payment received or recovered on extractive minerals with the Minister paying the prescribed rate into the EARF. The prescribed rate has varied over the years but has been at \$0.25 per tonne in recent times.

Royalty rates in South Australia are comparable to other States, and so the funds entering the EARF are funds that would otherwise flow to the Government. In 2004 the Department undertook a significant review of the operation of the EARF in consultation with the extractive mining industry. This review resulted in a

tightening of the eligibility criteria for funding and the obligations of quarry owners and/or operators to undertake rehabilitation as a normal and integral part of their operations.

The fundamental responsibility for the rehabilitation of extractive mining operations rests with the holder of the extractive minerals lease and the EARF will only be used by the Department to fund rehabilitation in the event the lessee fails to meet their obligation to carry out rehabilitation to achieve appropriate environmental outcomes, and all regulatory actions have been exhausted. This reflects current community expectations that a funding source of 'last resort' is always available to rehabilitate extractive mining operations.

As a consequence of this the Department seeks to maintain the balance of the EARF at an adequate level to meet any rehabilitation obligations that arise (and relevant EARF administration and environmental regulation costs etc.), and periodically reduces or increases the prescribed rate to ensure an adequate balance. The most recent change made to prescribed rates was on 16 December 2016.

Because it is a percentage of the Crown royalty payable on extractive mineral production that has been used to build the EARF to date, the Department is unlikely to propose any changes that will impact on the current funds in the EARF, or the future accumulation for the use of those funds for rehabilitation of extractive operations.

DISCUSSION

- What ways could the EARF be improved to better protect the environment and facilitate operator's needs?
- Do you think the EARF has performed as a successful fund of 'last resort' for ensuring adequate rehabilitation of extractive mines in South Australia?

Cross reference: section 63 *Mining Act 1971*; part 9, *Mining Regulations 2011*





2.7 Transfer of ownership and responsibility for mine infrastructure, productive assets and mining landforms to third parties

In the ordinary course, all mine assets of minimal value are demolished, dismantled and removed in accordance with the rehabilitation and closure plan that is an essential component of the PEPR.

However, some mine related landforms like decommissioned tailings storage facilities, mine workings, and rock dumps cannot be removed, but are remediated for long term stability and public safety in accordance with the rehabilitation and closure plan.

In some cases, there is a need for ongoing monitoring and maintenance of these types of mine related landforms where there may be a risk of harm to people or the environment if

the landforms or public safety measures do not perform as expected.

Currently, there is no mechanism under the Act that clearly allows for the careful transfer of these ongoing monitoring and maintenance obligations to a third party approved by the Regulator. For example, it may be appropriate for an operator that intends on leaving the State to provide sufficient funds and security to the government or a government approved third party to take over the remainder of a particular schedule of monitoring and maintenance activities, and leave enough security to cover any ongoing potential risks. The Review Team seeks any comments on legal mechanisms that would allow for these kinds of transfers.

On the other hand, sometimes there is authorised mine related infrastructure that the operator is bound to dismantle and remove (in accordance with the closure plan), but that could be sold to third parties and repurposed

for the benefit of a local community, government or a local business (for example, useful power infrastructure that the operator no longer requires).

There is currently no process under the Mining Act that allows for the transfer of socially beneficial or productive assets and infrastructure to government agencies, non-governmental organisations (NGOs), councils or communities prior to the surrender of the tenement.

The Review Team seeks your views on any mechanisms that would permit stakeholders and communities to obtain maximum post-surrender benefit from valuable infrastructure that could be transferred rather than be dismantled, and any comments on a proposal to allow for the prudent handover of minor ongoing monitoring and maintenance liabilities to competent third parties either before or after surrender.



DISCUSSION

- What opportunities are there to maximise the benefit of permanent infrastructure at the end of mining activities?
- What ways could Mining Act assessment processes and other assessment processes under other Acts such as the *Development Act 1993* be improved?
- How can maintenance and monitoring of post-surrender assets and infrastructure be better managed?
- How can the transfer of post-surrender assets and infrastructure be regulated to ensure any rehabilitation (if any) is appropriately addressed?

The Department seeks your thoughts on the matters outlined in this chapter, and any other issues relating to the environmental regulation of mining and quarrying in this State.



3

THE BENEFITS OF A STREAMLINED, RIGOROUS AND COMPETITIVE REGULATORY ENVIRONMENT

Over the last 45 years the Mining Act and Regulations have been amended in stages to adapt to the rapidly evolving, and more efficient, modern mining industry.

More than ever before, we expect operators to act responsibly, care for the environment, and foster good community relationships. Australian governments and the community will no longer tolerate rehabilitation challenges of the past like the Brukunga Mine site, where significant damage occurred as a result of mining that commenced in the mid-1950s.

Legacy mines like Brukunga continue to be used as examples of why no mining should occur in our State today. But, of course, no modern society operates without a strong and diverse mining and quarrying sector, and governments have progressively introduced more rigorous regulatory regimes that align with changing community and environmental standards. So, the important first question for South Australians in getting the balance right for our State is always:

“What are the appropriate environmental and community protections that we must have in place around mining and quarrying in South Australia?”

Some of those issues and protections have been considered in Chapters 1 and 2 of this Paper.

Once sufficient environmental and community safe guards are in place, we must then

make sure that our regulatory processes, requirements and tenement structures do not create unnecessary work and cost for South Australian explorers and operators. We all agree that unnecessary red tape benefits no-one.

Amending the Mining Act in several short bursts over the last 45 years, rather than pursuing a holistic review, has meant that there may be some processes under the Act that no longer provide benefit to the community, the environment, operators, the Regulator or the Government. This tends to happen to all legislation over time as industries evolve and modernise, and is not unique to mining and quarrying.

If particular processes under the Mining Act are of no benefit, then they are likely to place unnecessary cost burdens on businesses who are trying to supply the local, cost-effective extractive minerals (sand, soil, construction materials) and minerals that we need to build our communities and live our daily lives.

61%

of all mining jobs
are located in regional or
remote Australia.

(reference Mining Council of Australia
February 2016)

Any unnecessary burdens on operators actually often place burdens on South Australians, because it then costs us more to build our houses and infrastructure, and it means that those operators can't provide as many secure and diverse employment opportunities in our regional and metropolitan communities.

If South Australia is uncompetitive with other jurisdictions, then we risk losing our compliant, environmentally responsible and community focused explorers and operators to other States, or not attracting them to the State.

So, South Australia must make sure that our processes for assessment and compliance in the sector are balanced and not too rigid. They must be fair and competitive, and must not compromise on protecting the community from any environmental or financial risk.

The Minister will never compromise on making sure that the Regulator has the powers needed to deal with any breaches of environmental conditions in a fast and effective manner. However, that doesn't mean that there is not further room for improvement in our practices, processes and tenement structure.



Did you know?

South Australia continues to attract global attention for investment in mineral resources with three top ten world rankings in 2015 for:

- Geological databases (9th) - although on this category South Australia scored first in the world for geological databases that encourage investment. This strong performance is consistent with results of previous years.
- Investment attractiveness (10th)
- Legal system (5th)

If you think that the Department's or the Regulator's current processes are unnecessary or unnecessarily burdensome, we want to hear from you. If you have observed that the current tenements aren't fit for purpose or competitive, we want to hear from you. If you find the current systems are not flexible or certain enough to promote competition and attract the world's best operators, we want to hear from you.

20,000+ employed

Each day, over 20,000 South Australians are employed directly and indirectly in or around the mining industry, and mining companies remain industry leaders in the employment of Aboriginal persons (which in some cases represent up to 35% of their workforce).

Part of remaining competitive is ensuring that explorers, operators and community members can easily find the information or services that they need online. The South Australian government recently declared its intent to progress to digital delivery for all appropriate services and processes, where it was effective to do so and offered value for money for users⁷.

The Department has already had some great success in moving mineral resources and petroleum services online. For example, the South Australian Resources Information Geoserver Gateway or SARIG (www.sarig.pir.sa.gov.au) is one of the most advanced mapping and mining information tools in the world, and delivers over 600 layers of geological information in a user friendly format. SARIG is accessible 24 hours a day, 7 days a week.

Explorers and operators can use SARIG to view a wide range of geophysical and tenement maps, create and print custom maps, and undertake other business. Geologists can even call up high resolution photos of drill core (the small ~9 cm wide column of rock taken when drilling), view hyperspectral logs of that core (showing minerals contained in the rocks) and then make a booking to go and see the actual core at the new Award-winning South Australia Drill Core Reference Library at Tonsley.

SARIG is also a useful tool for other government departments, school students, councils, and community members, because you can zoom in on a house or location and get up-to-date information about any mining or exploration rights applied for or granted in that area. The

100%
of environmental directions
issued to explorers and
operators were complied with
in 2015-16.

dedicated 'infrastructure channel' also provides information on the State's transport and power network, towns, ports, water, and environment, and SARIG is directly linked to a free database of reports submitted to or produced by the Department in the last 130 years.

The new online mineral tenement administration tool within SARIG also helps tenement holders and service providers to do business more efficiently. The information on SARIG is automatically updated every night (depending on the dataset) from our internal systems and servers, to ensure that it is current and accurate.

The Department also publishes and makes freely available all of its policy, guidance and information materials online through the Minerals website. You can access this information at any time at <http://minerals.statedevelopment.sa.gov.au/>. Alongside the Review, the Department is also currently updating all of those materials, and the layout of related parts of the website, so that it will be easier to find information.

The ongoing development of SARIG, and the revision of the website and policies, are just some ways that the Department is moving towards a more efficient, digital by default, future.

But, there is still some way to go.

⁷ Premier's Digital by Default Declaration, 2014

We welcome your comments on any additional cost effective further improvements that we can make in these, or any other, areas.

We seek your comments on the issues outlined below, and any other issues important to you.

3.1 Ensuring our legislation doesn't restrict the adoption of modern, evolving e-commerce and information systems

3.1.1 *Moving towards a digital by default e-commerce future*

We live in a society where detailed land transfers, development applications, registrations and even our own complex tax assessments are processed online.

If the right data protections are in place, and we can ensure faster and better service delivery, then the Department would consider facilitating more applications, tenement transfers and registry updates online so that it is easier for companies and communities

to track applications and get up-to-date information from the Department in one accurate digital location.

Any further steps towards e-commerce service delivery is likely to require some minor changes to our Act, Regulations and policies, and so we seek any comment on these matters as part of this Review.

The Mining Registrar is required to publish various notices in the Government Gazette and local newspapers under the Mining Act and Regulations⁸. The Government Gazette is still used today as a central reference for Government actions, but these requirements were put in place at times when the newspaper and the Gazette were the *only* ways to widely disseminate and publicly record information (and newspapers were printed and bought by most of the population). We now live in a digital era, where more and more print newspapers have stopped circulation, and there are new ways to make public announcements. Although the Department does not intend to stop using print media (because it is one of the only ways of informing all members of some regional communities), it needs to make sure that the Act and Regulations are 'future proof' by allowing certain information to also be disseminated online (outside of the Gazette) so that more people are properly informed.

The Review Team is seeking comments on all current application and registry processes, and any challenges or benefits to those processes being (cost effectively) available online.

\$1.8 Billion

Mining Industry expended 1.8 billion dollars on research and development in 2013-14 in Australia.

(reference Mining Council of Australia February 2016)

⁸ Copies of the Gazette are available online: www.governmentgazette.sa.gov.au/

DISCUSSION

- What opportunities are there to create efficiencies in the current application and registry processes by updating digital methods and processes?
- What digital advances to the Mining Register will improve accessibility and effectiveness?
- What other opportunities are there to modernise our regulatory services through advances in digital processes?

Cross reference: section 28(5) *Mining Act 1971*; section 35A(4), *Mining Act 1971*; section 35B, *Mining Act 1971*; section 41BA(1), *Mining Act 1971*; section 53(2), *Mining Act 1971*; section 73M(4), *Mining Act 1971*

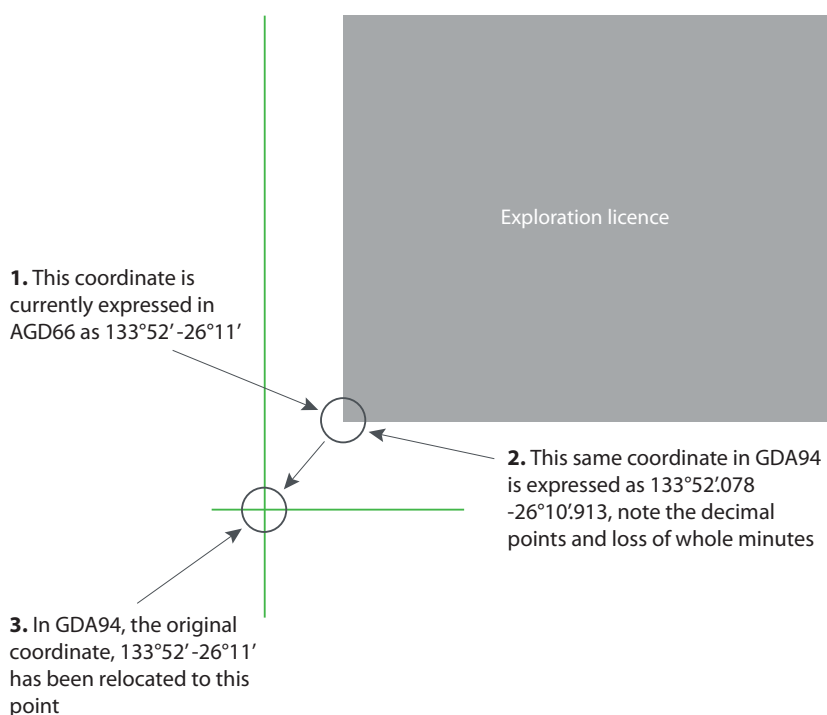


3.1.2 Using modern methods of mapping

Our GPSs, phones and other electronic mapping systems use 'datums' to make sure your position on a map lines up to your position on the ground. Datums are various sets of reference points that help us to map out the globe in a uniform and consistent way.

There are numerous Australian datums in use today, ranging from the Australian Geodetic Datum 1966 (AGD66) to the forthcoming Geocentric Datum of Australia 2020 (GDA2020). Modern datums use more comprehensive and accurate sets of references that take into account the subtle movements of tectonic plates and continents. GDA2020 will be the first 'dynamic' datum (which means that the reference points will be continuously updated and made increasingly accurate with time).

South Australia currently utilises AGD66 to manage exploration licences and the Geocentric Datum of Australia 1994 (GDA94) for production tenements. GDA94 is the national standard and the majority of other jurisdictions use GDA94 for both exploration and production. Many states across Australia utilise a 'graticular block' system, where a grid is drawn over the state and licences are defined in terms of blocks within that grid. While South Australia doesn't have a graticular block system, the Department requires exploration licences to be defined in whole minute coordinates, resulting in licence areas that closely mirror the 'block' licences found in other states.



Current South Australian coordinates system utilising the Australian Geodetic Datum 1966.

Please take a moment to fill out the survey on exploration graticular blocks and datum modernisation: www.minerals.statedevelopment.sa.gov.au/graticular_blocks_survey

It is anticipated that the Department will convert all production tenement coordinates from GDA94 to GDA2020 at an appropriate time after the release of the datum in 2018.

The Department has undertaken a scoping study in the spatial management of exploration licences that considers the conversion to GDA2020 and the implementation of a graticular block system. This study identified three distinct methods for transitioning to the new system. Each of these methods are set out in the 'Information Sheet: Proposed Exploration Licence Graticular Block System' available on the DSD Minerals website http://www.minerals.statedevelopment.sa.gov.au/graticular_blocks_information_sheet

DISCUSSION

- Should we move to a graticular block system and, if so, what is the preferred method of transitioning to a graticular block system?

Cross reference: section 33A *Mining Act 1971*

The Review Team welcomes any comments or suggestions on ensuring that the mapping system underpinning our tenement registry and online systems is up-to-date and reflective of modern practice.



3.2 A modern, accurate and easy to access Mining Register

Mineral claims, leases, licences and ‘instruments’ can currently be registered under the Mining Act. The term ‘instruments’ is not defined in the Act, but the Department interprets this to mean (amongst other things) mortgages, renewals, transfers, some agreements, and caveats.

Recent feedback from explorers and operators is that the scope of documents that can be registered should be broadened to allow for the registration of modern contractual agreements and other dealings that may not give rise to a ‘proprietary’ interest in tenements.

The current limitations on registration causes difficulties for operators, as it is now common commercial practice to farm out an ‘equitable’ interest, or negotiate contractual interests such as interests payable in reference to production tonnage from a tenement.

By not having a clear legislative framework for recognising these interests, explorers and operators are unable to register caveats to seek to protect their interests, or register their agreements to put others on notice of their interest in a tenement. These limitations on registration can be a barrier to commercial activity in South Australia.

The Review Team seeks your view on amending the provisions relating to the Mining Register, to allow the following categories of registerable instruments:

- mineral claims;
- leases and licences;
- transfers of proprietary interests in a mining tenement;
- mortgages;
- caveats (discussed further in paragraph 3.2.1);
- dealings/instruments required to be registered under the Mining Act;

- dealings/instruments not required to be registered under the Mining Act, but which the tenement holder may choose to register; and
- instruments issued under the Mining Act (compliance and rehabilitation directions, bonds, penalties).

Currently, the Minister (or delegate) must also consent to the transfer of an interest in a tenement. This is a requirement because the State and the community need assurance about the financial and technical capabilities of an operator seeking to have a tenement transferred to them.

If the types of instruments that can be registered is expanded, the Minister and the Department will need to consider whether the Minister's consent is necessary for the registration of these new instruments (including existing instruments such as mortgages or caveats), and whether it remains beneficial for the Mining Registrar, the Minister, or some other officer or Court to review the validity of an instrument on application. The Review Team seeks your views on limiting ministerial consent to transfers of proprietary interest, and allowing all other instruments or dealings in a tenement to be registered at the tenement owners own risk (with no liability flowing to the Crown in respect of that registration). For further discussion of caveats, see paragraph 3.2.1.

It may also be beneficial to move towards a Mining Register that allows parties to see a history of dealings, instruments, transfers, tenement changes, caveats and mortgages over the life of the tenement

and any subsequent, renewed, substituted, replacement, amalgamated or extended tenements.

The Mining Register is meant to be an accessible record for the benefit of operators and the community. The Review Team is seeking your feedback on what you want from the Mining Register, and what dealings or instruments you think should be publicly available.

Further information on the Mining Register is available at: www.minerals.statedevelopment.sa.gov.au/mining_register

DISCUSSION

- What type of dealings or instruments should be on the Mining Register, and which of those should be made publicly available?
- How can the framework of the Mining Register be updated to best suit the needs of the mineral resources industry and the community?
- What other opportunities are there to modernise the Mining Register?

Cross reference: section 15A *Mining Act 1971*; part 11A, *Mining Act 1971*; section 83, *Mining Act 1971*

3.2.1 *Providing certainty to businesses through the use of caveats*

The present caveat scheme under the Mining Act only allows for the caveating of a proprietary or legal interest, and provides limited scope for parties to control the duration of the caveat.

Caveats are not often registered on the Mining Register in South Australia because of these limitations.

The Review Team seeks your views on adopting a modern caveat model. Specifically, we seek your thoughts on moving towards a flexible system that provides the breadth of protection and options provided for under the Western Australia model. Western Australia has three types of caveats which extend to proprietary, equitable and contractual interests, as follows:

- absolute caveat
- caveat by consent; and
- subject to claim caveat.

An absolute caveat is similar to that of South Australia's absolute caveat, however, the Western Australian caveat forbids surrenders.

Caveats by consent in Western Australia operate in the same manner as under the South Australia system.

A subject to claim caveat protects an interest in a tenement and forbids the registration of all dealings (for example a transfer or mortgage) unless the caveat is subject to that dealing. A subject to claim caveat also prevents surrenders.

For example, a subject to claim caveat may be lodged after signing the farm-in agreement

(and will be subject to the further transfers as planned under the farm-in agreement). By lodging a subject to claim caveat, the person earning their farm-in interest can make sure that the owner of the tenement does not sell the tenement to someone else before they earn their interest.

Currently, the Mining Registrar reviews caveats prior to registration and determines whether there is a caveatable interest. Other jurisdictions are moving away from this model and leaving it up to the parties to determine between themselves whether or not there is a caveatable interest. If disputes arise, some jurisdictions leave parties to determine this in a court, like the Warden's Court. Other jurisdictions have a review process whereby the Department assesses the disputed caveat and determines its validity. The Review Team is interested in your views as to whether the Department should make determinations about caveatable interests, and if so, at what stage. Appropriate costs and immunity provisions would necessarily be part of any such scheme.

DISCUSSION

- What type of caveat system will best protect dealings in tenements and promote investment in South Australia?
- Should the Department determine caveatable interests (either at registration or dispute) or should this be determined by a competent court or another process?
- What other opportunities are there to modernise the caveat system?

Cross reference: part 11A *Mining Act 1971*; Form 24 – Caveat against a mining tenement; Form 25 – Caveat by consent

The types of interests that can be protected by a caveat under the current Act is limited, and so caveats are not often registered on the Mining Register in South Australia.

3.3 The benefits of the timely release of information and transparency of process

Appropriate transparency and disclosure are key drivers in this Review, and they are discussed in several places in the paper. Paragraph 1.2 discussed the importance and benefits of transparency for the community, and paragraph 2.2 discussed the need for transparency for environmental accountability.

There are barriers in the Mining Act which mean that the Minister and public officers have difficulty disclosing Department information, or disclosing information submitted to the Department by tenement holders.

To date, the Department has managed these restrictions by encouraging the tenement holder to disclose information that would be valuable to the public at a particular stage.

Access to these documents is very important. Just because information could be the subject of a *Freedom of Information* application or noted on the Mining Register, does not mean it is easily accessible. The Government is committed to open and early transparency, where appropriate.

As part of the Department's initiative to increase transparency, the Review Team is interested in your view on the proposed transparency reforms, and disclosure initiatives around the Mining Register. Please see paragraph 3.2 for further discussion on the Mining Register.

The Review Team is interested to hear how more transparent processes could provide greater certainty for explorers and operators, increase business efficiencies, and decrease risks.

DISCUSSION

- What information do you think should be made publicly available and at what times?
- What restrictions should be placed on disclosure and on what type of information?

Cross reference: section 77D *Mining Act 1971*; reg. 88 *Mining Regulations 2011*

3.4 The benefits of clear and efficient 'one-window-to-government' assessment processes

Together with DEWNR and EPA, the Department is one of the central government environmental regulators in the State.

South Australia has a single decision mineral tenement assessment process that is unmatched by any other Australian State or Territory. Under the South Australian model, the Department assesses exploration licence applications and PEPRs, mining lease applications and proposals, lease PEPRs, MOPs, native title management agreements and, more recently, impacts on matters of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

The Mineral Resources Division within the Department diligently performs this important regulatory role. In fact, their commitment and adherence to national standards of

environmental regulation has been recognised by the Commonwealth, which has authorised the South Australian Regulator to undertake stringent Commonwealth environmental impact assessments under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Division employs specialist professionals including highly qualified environmental scientists and officers, geologists, mining engineers and environmental engineers to assess applications. These teams work collaboratively with experts and co-regulators throughout the assessment phase, as necessary. The Regulator's role under the Mining Act is to ensure that mineral resources are developed in a way that delivers **balanced environmental, economic and social outcomes**, and our rigorous and transparent assessment system is recognised as being best practice.

The Department is committed to streamlining the decisions needed from State and Federal governments to ensure mineral resource projects in South Australia can get underway

in the most efficient and cost effective way possible, without compromising on environmental accountability.

The Review Team is seeking your thoughts on ways that the current 'one-window-to-government' application and assessment processes could be improved, and how the Department could provide further guidance and clarity around the various stages of the assessments process.

DISCUSSION

- What opportunities are there to provide further guidance and clarity around the various stages of the assessments process?
- What other opportunities are there to streamline assessment processes?
- How can the department improve its relationship with the other States, Territories and Federal Governments to increase efficiencies in assessment processes?

Cross reference: section 29 Mining Act 1971; section 35, *Mining Act 1971*; section 41B, *Mining Act 1971*; section 53, *Mining Act 1971*; part 10A, *Mining Act 1971*

3.5 Ensuring that we have a modern, flexible tenement structure

Operators in the State usually commence production operations by going through the process outlined in the 'Overview of mining and quarrying in South Australia' that begins on page 11 of this Paper.

There are some practical ways that the tenement structure could be improved so that it is more efficient and flexible, without compromising on safety or certainty for the community or operators.

Paragraph 3.5 outlines below some of the opportunities to streamline our tenement structure and tenement processes. The Review Team seeks your thoughts on these, and any other, improvements that could be made to the tenement structure to ensure that South Australia remains one of the most efficient, leading practice mining jurisdictions.

Exploration licences (ELs)

Under our current tenement structure, an operator applies for an exploration licence for the general right to undertake exploration activities, and then applies for the operational approval to carry out particular work on the licence (known as a program environment protection and rehabilitation (PEPR)). The explorer can only commence those operations after they have obtained all necessary land access rights.

Under an exploration licence, the types of activities that can be approved under an exploration PEPR can range from minor activities such as using a hand held detector to more 'advanced' activities, such as exploration drilling.

Explorers for extractive minerals (sand, soil, construction materials, which are not minerals under the Act) do not explore using an exploration licence, because the Mining Act states that an exploration licence cannot be granted for extractives operations. Rather, an extractives explorer commences their exploration by pegging a mineral claim.

An exploration system that is easy to understand and open to all (including foreign and junior participants) will benefit South Australia by attracting the best explorers and increasing investment. The Department wants to provide a clear, modern and flexible application process to address industry's needs, and so we want to hear your thoughts on improvements that may be made. At a minimum, a revised EL scheme could implement appropriate reforms to terms and renewals, ensure that there is secure flow-on tenure and expenditure compliance, and introduce flexible mechanisms for the forfeiture and transfer of the licences (where there has been material non-compliance).

Paragraphs 3.5.1 to 3.5.6 below outline some of the opportunities to streamline our exploration licence structure and processes.

3.5.1 Opportunities to modernise ELs and exploration licence applications (ELAs)

An exploration licence grants an explorer an exclusive right to explore in a defined area. Modern commercial arrangements are often written to attempt to divide or collaborate efforts of several operators over particular tenements. Sometimes, these arrangements may include an aspiration for two explorers to be able to explore for different minerals in the same area.

It is advantageous to ensure that our exploration tenement structure is flexible enough to accommodate these kinds of agreements and collaborative operations and to encourage exploration in South Australia. In paragraph 3.2 there is a discussion around how commercial arrangements that encourage exploration can be better recognised on the Mining Register.

The Review Team seeks your views on other opportunities to reconfigure ELs and ELAs so that we have a more practical, but robust, system. For example, the Mining Act currently only allows for overlapping exploration of minerals and opals. The Department is currently considering whether there would be benefits to overlapping mineral specific ELs. A flexible tenement structure based around separate minerals or mineral classes may encourage further collaborative joint ventures by companies, which could increase positive outcomes for regions.

The Department is also considering whether further flexibility in relation to the size and shape of ELs may also be of some benefit to explorers. Further flexibility could be built into the ELA process by allowing applications to amalgamate ELAs with adjoining tenements, or to propose new ELA shapes. For further discussion on ELAs and exploration release areas (ERAs) see paragraph 3.5.3.

Allowing for the subdivision of ELs may also lead to increased exploration activity in South Australia, and open up more opportunities for exploration.

The Review Team welcomes any comment on these matters, noting that, if a graticular block system was adopted (see paragraph 3.1.2), any arrangements would have to be consistent with that system.

Of course, none of these changes would be made if it would mean a regressive step to any landowner rights or environmental assessment processes. But, such changes could provide some efficiencies to industry because, for example, one explorer may not be taking on the entire burden of minimum exploration expenditure conditions for a whole area for a large subset of minerals, but only for the minerals they are seeking.

DISCUSSION

- What changes to the tenement structure of exploration licences will promote flexibility and modern exploration methods in South Australia?
- Would the benefits of flexible shapes and sizes of exploration licences better support and facilitate efficient exploration?
- What benefits and risks are there to introducing overlapping mineral specific ELs in South Australia?
- Would the ability to sub-divide exploration licences with commercial freedom (subject to ministerial consent) to transfer to a third party increase investment and promote exploration in South Australia?
- What other opportunities are there to modernise and streamline the tenement structure in South Australia?

Cross reference: part 5 *Mining Act 1971*; part 5, *Mining Regulations 2011*

3.5.2 Opportunities to streamline the EL renewals and subsequent EL grant processes

Exploration licences are usually granted for two years and can be renewed on an annual basis for a maximum of 5 years, after which a holder can apply for a subsequent licence (over all or part of the area).

Subsequent licences are new tenements (i.e. not merely an extension or renewal) and a new tenement number is allocated⁹. If a subsequent licence is granted, the licence area (compared with the old area of the prior licence) may be reduced, and new conditions may be added or removed.

The Department has received considerable feedback from industry that the subsequent licence process could be modernised and updated, and that the allocation of a new tenement number (rather than merely extending the prior licence) creates legal and contractual difficulties.

Because subsequent licences are new tenements, only registered mortgages are carried over on the Register (and some native title mining agreements). All other contractual dealings require re-registration. These limitations add unnecessary costs and legal risks, and could be avoided with some minor amendments to the Act and Regulations without compromising on the strengths of the current scheme.

For further discussion on other improvements that could be made to the Mining Register see paragraph 3.2.

⁹ Gazette notices relating to the grants of ELs or subsequent ELs are available online: www.governmentgazette.sa.gov.au/

DISCUSSION

- What opportunities are there to modernise and improve the scope of exploration licences and subsequent exploration licences in South Australia?

Cross reference: part 5 *Mining Act 1971*; part 5, *Mining Regulations 2011*

3.5.3 Opportunities to improve the Department's administration of competitive processes for exploration release areas (ERAs)

We must ensure that the best explorers are given the best opportunities to explore appropriate ground, and that exploration process are administered in an effective and efficient way by the Department.

For this reason, there is a competitive process under the Mining Act for certain areas that don't come under the 'first come, first served' EL application process (as outlined above). These areas are known as exploration release areas, or ERAs.

The ERA competitive tender process applies to land that is relinquished due to expiry, full surrender, or the cancellation of an EL¹⁰. The released area is set by the shape of the

¹⁰ Land is released under the ordinary 'first come, first served' system if it becomes relinquished ground due to partial relinquishment by an exploration licence holder. Partial relinquishment occurs where there is a partial surrender, reduction of the exploration licence size on renewal, or reduction of size when a subsequent exploration licence is granted.

relinquished tenement area. Applications relating to an ERA are assessed on their merits, against a number of pre-defined published assessment criteria.

The current ERA scheme under the Mining Act is quite complex and inflexible, and there are burdensome requirements on the Department relating to notifications throughout the process. These processes could be easily updated and simplified so that the scheme is more efficient for the Department to administer.

The Department has also received feedback from industry requesting flexibility to apply for part of a released area, or share or amalgamate an area with an adjacent application. However, it should be noted that applying for part of an ERA will likely result in a longer assessment process which may delay exploration investment.

There also could be further clarity around the application of the ERA process to land that has been geologically surveyed by the Minister under section 15 of the Mining Act, newly opened areas that were previously special declared areas, and the re-release of ELs forfeited under the Act. Any amendments to the Act could also clarify these matters.

“A specially protected area is the Adelaide Dolphin Sanctuary, or a marine park constituted under the Marine Parks Act, or a River Murray Protection Area.”

DISCUSSION

- Would the flexibility to share or amalgamate ERA areas with adjacent applications or exploration licences benefit explorers?
- What opportunities are there to clarify and improve the ERA process?

Cross reference: part 5 *Mining Act 1971*; part 5, *Mining Regulations 2011*

3.5.4 *The EL renewals process in specially protected areas*

The protection of specially protected areas is of the utmost importance.

Exploration and mining is not prohibited within specially protected areas but, if a tenement application relates to an area within or adjacent to a specially protected area, the Minister for Mineral Resources and Energy must refer the application to the Minister for Sustainability, Environment and Conservation and consult with them before making any decision.

The Departments of both Ministers have identified that this process is inefficient, because the Ministers consult on the initial grant of the exploration licence, and the Departments then consult again during the operational (PEPR) approval stages. This further consultation requirement at the renewal stage duplicates processes and causes unnecessary delay.

The Departments agree that consultation at the initial application stage and PEPR approval is considered adequate, and so streamlining the renewal process by removing this duplicated consultation process may avoid unnecessary costs and delay.

DISCUSSION

- Do you agree that repeated consultation between Ministers during the renewal process may not be necessary?

Cross reference: section 30A(7) *Mining Act 1971*

“ Generally speaking, it takes around 1,000 exploration programs to find a mine and the commodity focus of an explorer on a single patch of ground can change multiple times depending on commodity prices and other factors. ”

3.5.5 Terms of ELs

The consideration of renewals and subsequent licences in the last three sections open up a wider discussion about the term of exploration licences.

Under the current system, it is possible for an explorer to obtain an initial grant and renewal for up to 5 years. A subsequent exploration licence can be granted over the same area for periods of 5 years (which is usually subject to a requirement for double expenditure every 5 years to ensure increased exploration).

Some explorers have informed the Department that a longer period of initial grant should be possible, provided that appropriate expenditure obligations and expanded forfeiture processes are introduced (see below in paragraph 3.5.6).

Recognising this, EL terms could be extended for up to 10 years, with a subsequent right of renewal for a similar period (in appropriate circumstances). Licenses could then go into the ERA competitive release process after that time (20 years). Alternatively, an initial grant could be permitted for up to 20 years, provided there were robust and simple forfeiture processes where non-compliance occurred.

The Review Team seeks your views on this important aspect of exploration in South Australia.

DISCUSSION

- What EL terms and regulatory mechanisms will ensure adequate time to explore and identify mineral deposits in South Australia, without leading to ‘land banking’?

Cross reference: section 30A(7) *Mining Act 1971*



3.5.6 *Forfeiture, and other means for ensuring that explorers meet their expenditure and survey obligations*

Currently, a tenement can be forfeited if the explorer or operator has unpaid debts due to the Crown. Mineral claims, retention leases and mining leases can also be forfeited on application to the court by another operator. These 'use it or lose it' forfeiture processes do not currently apply to exploration licences.

One of the ways to encourage greater compliance and competition in the exploration industry could be to reintroduce a more comprehensive forfeiture process (like that used in relation to leases) so that another explorer could seek to have a licence forfeited and transferred to them for the remainder of the term of the licence.

Under the current forfeiture provisions, an interested person can apply to the Warden's Court to have a mineral claim, retention lease

or mining lease forfeited and transferred to that person for the remaining term.

Any right to seek forfeiture (and transfer) of an EL should be limited to circumstances where the explorer has materially breached their obligations under the EL, the PEPR or the Mining Act. These 'use it or lose it' forfeiture procedures are in place in other jurisdictions (such as Western Australia), and are used in South Australia for other tenements.

If these processes were introduced in South Australia, they would create a market driven system for the transfer of licences where there was material non-compliance, and would be in addition to the Regulator having the power to impose compliance measures on the explorer for those breaches.

If these changes were pursued, then the Mining Register could be used to record minimum expenditure obligations, expenditure reports containing actual exploration

expenditure, PEPR documents, and other requirements. Making this information publicly available will create an accessible means for other explorers to identify the obligations imposed on other tenement holders. Any transition to this transparency would not have to be retrospective. For further discussion on disclosure of information see paragraph 3.3.

The Department is interested to hear your feedback and recommendations on a workable and accessible forfeiture process. Any changes would not fundamentally change the current surrender and cancellation processes available under the Act.

DISCUSSION

- Should the forfeiture provisions only relate to mining leases, retention leases and mineral claims, or should this include exploration licences?
- What type of workable and accessible forfeiture process would explorers and operators benefit from?

Cross reference: section 69 *Mining Act 1971*; section 70, *Mining Act 1971*

Mineral claims (MCs)

A mineral claim is a tenement used by an explorer to transition from exploration activities to mining activities. An explorer applies for a mineral claim by pegging an area in order to mark it out, and by registering the claim with the Mining Registrar.

‘Pegging’ can occur by putting wooden or metal pegs in the ground, but can also occur in an alternative manner (such as electronically marking out the area on a map). Pegs are a clear, on the ground, representation of an operator ‘staking their claim’.

While getting to this stage means the operator can undertake some further activities (provided they have the necessary approvals and land access rights), they still cannot mine or quarry in the area without a relevant production lease, or some other right to mine.

The Mining Registrar must register a mineral claim if the applicant has complied with all of the obligations under the Mining Act and Regulations.

3.5.7 *The future of mineral claims*

The registration of a mineral claim defines a small prospective area and gives the holder further application rights for 12 months.

The Department is currently considering whether removing mineral claims may improve the transition from exploration to mining. The Review Team seeks your response on the advantages and disadvantages of mineral claims in order to determine whether a modern tenement structure can operate without mineral claims.

It may be possible to revise the Mining Act so that explorers simply peg an area of their exploration licence to mark out an application area for a mining lease or retention lease. This may decrease uncertainty, costs and risks that mineral claim tenure can create.

Alternatively, if mineral claims are retained, the Department would recommend that the process be modernised to remove any unnecessary procedures and legal uncertainties. In either case, appropriate and robust transitional provisions would come into force to ensure that there was certainty for all operators, with no unintended negative consequences.

The Department is committed to ensuring that any modern tenement structure, with or without mineral claims, will not lead to increased approval times.

The Review Team seeks your views on the utility and modernisation of mineral claims, and any challenges created by the current mineral claim system.

DISCUSSION

- What benefit do mineral claims provide to the mineral resources industry, and should mineral claims be retained?
- Could the mineral claim stage be replaced by other regulatory processes?
- What other opportunities are there to modernise mineral claims, or the processes commonly undertaken when establishing a mineral claim?

Cross reference: part 4, *Mining Act 1971*; part 3 div 1, *Mining Regulations 2011*

Extractive minerals leases (EMLs) and minerals leases (MLs)

Once a claim is pegged, the claim holder has an exclusive right to make an application for a production lease over the pegged area. The two classes of mining leases available are extractive minerals leases and mineral leases.

These leases are granted by the Minister for Minerals and Energy (or a delegate) and are, in most cases, the tenement needed in order to progress to removing and selling the minerals (although minerals may be sold from an MPL, see paragraph 3.5.10).

Applications for mining leases undergo a stringent environmental assessment (which includes an assessment of social factors) by the Regulator before any decision to grant or refuse is made.

Because of the stringent nature of the assessment process, mining lease proposals (attached to applications) are comprehensive documents and include numerous expert reports from environmental consultants, geoscientists, engineers, and operations experts. You can see some examples of mining lease proposals for some recent major projects on the Department website at www.minerals.statedevelopment.sa.gov.au/mining/public_notices_mining.

If the Minister (or delegate) is satisfied that the impacts of any operations can be regulated or addressed by the imposition of appropriate 'outcomes', then a lease may be granted. The Minister (or delegate) has a discretion to impose any reasonable conditions on the lease, including conditions in relation to progressive rehabilitation and closure.

3.5.8 Opportunities to introduce a more flexible 'generic' mineral lease

Minerals are classified under the Mining Act as either extractive minerals or minerals. These classes then underpin whether the appropriate lease is an extractive minerals lease or a mineral lease (which each have different royalty requirements and financial assurance obligations).

This division between minerals and extractive minerals doesn't always make practical sense

because often minerals and extractive minerals form together in the same mineral system. This makes it difficult for an operator to get approval to use and sell the minerals not covered by their tenement if they happen to recover something different in their operations, or if a particular commodity happens to become commercial.

Extractive minerals and minerals can be mined over the same area by use of authorisations under section 39 of the Act or by seeking a superimposed lease. However, both of these processes are quite complex.

Combining both minerals and extractive lease types so that all minerals could be sought is one possible solution, provided there were still the stringent protections of the landowner right to use extractive materials for 'personal use'.

Another solution may be to consider the benefits of the system used in other jurisdictions where particular tenements can be for particular minerals, or classes of minerals, so that a company can search for and extract what they want, while freeing up rights for other operators to search for and recover different minerals in the same area.

“Magnesite (a mineral under the Act) and dolomite (an extractive mineral under the Act) often form together in banded geological formations.”

DISCUSSION

- Would a generic mining lease which covered both minerals and extractive minerals (with flexibility for change) benefit operators?
- What issues could a generic mining lease create for landowners?
- What other opportunities are there to improve or modernise mining leases?

Cross reference: part 6 *Mining Act 1971*; part 4 div 1, *Mining Regulations 2011*

If these, more flexible, leases were introduced there would be some aspects of the scheme that should not necessarily be changed, for example:

- The Extractive Areas Rehabilitation Fund would remain as a fund of last resort for extractive minerals rehabilitation.
- The Ministerial Determinations (MD003, MD006, MD002 and MD005, www.minerals.statedevelopment.sa.gov.au/ministerial_determinations) would be retained (although appropriately simplified), and application requirements for extractive operations would remain less onerous than minerals type applications (and would be consistent with a risk-based approach).
- Consultation and/or consent from a landowner for the quarrying of extractive minerals would still be required.
- A specific royalty rate for extractive minerals is likely to be retained.

The Review Team seeks your views on the above discussion of the modernisation of mineral leases.

3.5.9 *Ensuring that lease terms are referable to the mine life*

Australia is a stable democracy with a well-established legal system, good infrastructure, and highly prospective resource areas.

Security of tenure can be a deciding factor in an investment decision. Despite Australia being a relatively high-cost jurisdiction when compared with other mining jurisdictions, Australia continues to attract strong interest from foreign investors. This is likely due to several factors, including that ‘sovereign risk’ in Australia is relatively low in comparison to the rest of the world.

Extractive minerals leases and minerals leases can be granted for a maximum of 21 years with further renewals. The mine life for a mining lease normally exceeds 21 years, and so operators will often not have basic certainty about their ongoing rights to mine in South Australia. The Review Team seeks your view on whether the term of extractive minerals leases and minerals leases should be able to be granted for terms that more accurately reflect a projects mine life.

Miscellaneous purposes licences (MPL)

A miscellaneous purposes licence (MPL) can be granted for carrying on any business or purpose that supports the effective conduct of mining operations, including operations such as the building of amenities, a treatment plant, or drainage systems or the storage or processing of mineral process waste or overburden.



DISCUSSION

- What benefits and opportunities do you see in allowing for the grant of mining leases for a term that reflects the predicted mine life?
- What term should be the 'maximum' term for which a lease could be granted?
- What other disadvantages or risks are there to granting mining leases for a term that reflects the predicted mine life?

Cross reference: section 38(1) *Mining Act 1971*

3.5.10 Opportunities to clarify the operation of MPLs

Miscellaneous purposes licences have generally been granted for 'transient' or 'non-permanent' activities/operations/infrastructure, that relate to a particular mining lease.

Although it is not strictly necessary for an MPL applicant to have a mining lease, there would have to be a clear and robust agreement between the miscellaneous purposes licence applicant and a relevant operator for the Minister (or delegate) to be able to grant a miscellaneous purposes licence on reasonable grounds.

Some operations, such as constructing power and water infrastructure corridors, can be approved via a miscellaneous purposes licence, or under the *Development Act 1993*. This gives operators an option of using different legislation to obtain approval for those operations.

DISCUSSION

- What changes can be made to miscellaneous purposes licences to increase the benefits to operators?
- Are miscellaneous purposes licences still a practical and useful tenement type, or could relevant operations be approved under the associated mining lease?
- What opportunities are there to improve the miscellaneous purposes licence framework?

Cross reference: part 8 *Mining Act 1971*; part 5 div 2, *Mining Regulations 2011*

Retention lease (RL)

A retention lease can be granted for up to 5 years and can be renewed for a further 5 years. Fees and rental rates levied on a retention lease are half that of a mining lease, but are higher than an exploration licence.

3.5.11 *Retention status*

As at the date of this Discussion Paper, there are currently 32 retention leases in South Australia.

These figures indicate that retention leases are not often used. Initial feedback from industry indicates that this lack of use is due to a range of reasons, including cost and a lack of understanding of their scope.

It is important to ensure that the legislative scheme adequately balances the equitable use of retention leases, without permitting 'land-banking' behaviours.

There may be some opportunities to improve retention lease application processes by, for example, removing the requirement for pegging a mineral claim (if the mineral claim stage is removed).

Other alternatives to the retention lease scheme could also be considered, such as moving to 'retention status' similar to the system used in Western Australia. Under that system, the holder of a prospecting licence or an exploration licence can apply for the licence to convert to a 'retention status'. This 'retention status' is generally only available if the mining of the identified mineral resource is uncommercial or impractical, or where there is some other barrier to obtaining requisite approvals. The Western Australian system allows for the temporary suspension of minimum expenditure requirements or exploration licences.

The Review Team is interested in your views on the removal of retention leases, and the introduction of a 'retention status' for mining leases (that would be appropriately regulated). If such a system was adopted, the Review Team is interested to know the conditions on which it should be available.

DISCUSSION

- Should we adopt a 'retention status' similar to that under the Western Australian system, and what conditions should restrict that scheme?
- What tenements should any 'retention status' apply to in South Australia?
- Should we consider removing retention leases all together if a 'retention status' was introduced?
- What other opportunities are there to improve and modernise retention leases?

Cross reference: part 6A *Mining Act 1971*; part 4 div 2, *Mining Regulations 2011*

Mineral exports from Australia represent approximately

56%

of all exports, and make up

9%

of Australia's GDP

Minerals Council of Australia

3.5.12 *Special mining enterprises (SMEs) and indenture operations*

The Mining Act allows for the grant of special mining enterprises, which are mining enterprises of major significance to the economy of the State. Special mining enterprises can provide greater security and flexibility of tenure for operators.

The only SME that has ever been established in South Australia was for the former Penrice soda ash business: a significant industrial chemical business comprised of the Dry Creek salt fields, the Angaston limestone quarry, and the Osborne soda ash plant.

There are currently no special mining enterprises in the State. The Department seeks your views on any improvements that could be made to the special mining enterprise provisions.

Two mining operations within South Australia also operate under an indenture agreement. An indenture is an agreement between the State and a company or companies that sets out the rights and obligations of both parties. That agreement is then given the statutory force through a ratification Act passed by the Parliament, and formally becomes an indenture.

There are two indentures that permit mining operations in South Australia: the *Roxby Downs (Indenture Ratification Act) 1982* (Olympic Dam) and the *Whyalla Steel Works Act 1958* (which authorises iron ore mining to supply the steel works).

Operations carried out under an indenture are not subject to the Mining Act, unless the indenture (or another piece of legislation) provides that sections of the Mining Act apply.

In the first Discussion Paper on the *Mines and Works Inspection Act 1920* there is some discussion of the application of that Act to these indentures. If the Mines and Works Inspection Act is repealed as part of this Review, then the indentures and/or the Mining Act would be amended so that relevant equivalent provisions of the Mining Act would apply to those operations.

The Department seeks your views on any improvements that could be made to the regulation of indentured mining operations in South Australia.

DISCUSSION

- What changes can be made to the SME framework to better facilitate major projects?
- What improvements could be made to the scope and flexibility of special mining enterprises?
- What opportunities are there to improve regulation of indentured mining operations in South Australia?

Cross reference: part 8A *Mining Act 1971*

3.6 Decreasing tenement assessment times

The Department is committed to identifying leading practice regulation that leads to better processes and shorter approval times, where appropriate.

The Department aims to attract the best explorers and operators by ensuring that we have clear and objective assessment criteria, and established timeframes and appeal processes.

The Deputy Chief Executive of the Department is the Chair of the Land Access Resources Working Group of the COAG Energy Council. Through COAG, South Australia and Western Australia are progressing an initiative to track and compare tenement assessment times across Australia – from the lodgement of an application to grant or refusal and PEPR approval – so that we can benchmark the various stages of these processes and identify any State specific inefficiencies or delays.

In addition to this, moving to a graticular-based, online, trackable application process and further streamlining our 'one-window-to-government' processes under the Mining Act will decrease assessment times.

DISCUSSION

- How could the Department further decrease assessment times?

Cross reference: section 29 *Mining Act 1971*; section 35, *Mining Act 1971*; section 41B, *Mining Act 1971*; section 53, *Mining Act 1971*

3.7 Providing appropriate flexibility for necessary changes to operations

Operators often need the flexibility to make changes to their mining operations during the mine life to adapt their operations to certain changes, such as changes in global commodity prices.

As discussed in paragraph 1.5, proposed changes to mining operations may be of interest to landowners and the community since they may not have had the opportunity to comment on the operations during the original lease application assessment. Where the proposed changes would result in a substantial new or increased impact not considered in the original lease assessment, mere notification of these changes may not be sufficient.

If an operator wants to propose changes to their operations, this may require changes to their approved PEPR or to the terms and conditions of their lease. The terms and conditions of a lease are set after the assessment of the lease application and the public consultation period.

Under the Mining Act, if changes to an approved PEPR are needed, a revised PEPR must be submitted to the Regulator for approval. If the proposed change of operations also requires a change to the terms and conditions of a lease, such a change can only be made if the changes to the terms and conditions are necessary to prevent, reduce, minimise or eliminate undue damage to

the environment associated with mining operations (section 34(9)).

The Review Team is interested in your views on how we could improve the change to operations processes.

The Department is committed to appropriate transparency and engagement on any changes to operations during mine life, and so any change of operations regime would need to be balanced with appropriate consultation and engagement, as discussed in paragraph 1.5.

The Review Team anticipates that different levels of change will need different engagement requirements. The Team seeks your views on what type of change of operations regime should apply in South Australia.

DISCUSSION

- What framework for flexible change would best facilitate the needs of operators and the expectations of the community?
- What changes to approved operations should give rise to a statutory right for a landowner to be notified, and what changes should give rise to consultation?

Cross reference: section 34(9) *Mining Act 1971*; section 35, *Mining Act 1971*; section 70C, *Mining Act 1971*; reg. 67, *Mining Regulations 2011*; reg. 68, *Mining Regulations 2011*

3.8 Providing secure tenure

Security of tenure is important to explorers, operators and the State because it provides certainty to the operator, which protects their investment in South Australia and assists in obtaining finance.

Under the current system the Minister ‘grants tenure’ (i.e. grants or registers a tenement) if an operator lodges a valid application and that application is assessed and/or approved in accordance with the Mining Act. But, tenure rights are merely a right in relation to the minerals, and an explorer or operator cannot commence any operations until an operational approval (such as a PEPR) and land access arrangements have been obtained in accordance with the Mining Act.

DISCUSSION

- In order to ensure that we have a tenure system that is both robust, modern, and practical, what benefits, opportunities and challenges do you see in:
 - allowing for the grant of mining leases for a term that reflects the predicted mine life (up to a maximum of 99 years);
 - allowing extended terms for exploration licences (see paragraph 3.5.5); and
 - balancing any extended terms by ensuring rigorous forfeiture or ‘use it or lose it’ principles (as discussed in paragraph 3.5.6); and
 - ensuring flexibility of operations during extended tenure (see change of operations paragraph 3.7);
 - any simplified grant process for leases where the environmental assessment of any operations is left to the PEPR stage (with appropriate assessment processes being introduced for that stage).
- What other opportunities are there to provide improved security of tenure?

Cross reference: section 30A(1) *Mining Act 1971*; section 38(1), *Mining Act 1971*; section 41D(1), *Mining Act 1971*; section 55(1), *Mining Act 1971*; section 70B, *Mining Act 1971*



3.9 Creating consistent processes for the surrender, suspension and cancellation of tenements

Under the Mining Act there are different legislative processes for the surrender, cancellation and suspension of different tenement types.

Surrender of a tenement is a voluntary application to cancel all or part of the tenement area. A surrender application requires the consent of the Minister. When considering whether to approve an application for surrender the Minister will consider whether all rents, royalties and fees have been paid, all land has been properly rehabilitated, and all other requirements of the Mining Act have been complied with.

The Minister or Mining Registrar (in the case of MCs) may cancel or suspend a tenement for various contraventions of the Mining Act or Regulations.

There are also different procedures and requirements for the cancellation or suspension of the various tenements. These processes could be streamlined so that there is a single consistent process for surrender, and a single consistent process for suspensions and cancellation.

DISCUSSION

- Would consistent surrender, cancellation and suspension processes improve the current framework (subject to appropriate environmental, social and economic accountability obligations)?
- How can the current surrender processes be updated to ensure that environmental and financial liabilities are appropriately addressed before a surrender application is accepted?
- What opportunities are there to improve surrender, cancellation or suspension processes?

Cross reference: section 26(4) *Mining Act 1971*; section 33, *Mining Act 1971*; section 56, *Mining Act 1971*; section 62, *Mining Act 1971*; section 82, *Mining Act 1971*; reg. 45, *Mining Regulations 2011*; reg. 59, *Mining Regulations 2011*



3.10 Regulating moss rock removal

Moss rocks are large ornamental stones that are commonly used as garden pavers, water features, landscape wall or pool features. Moss rocks are extractive minerals under the Mining Act, and so their commercial removal requires an extractive mineral lease (EML).

The harvesting of moss rocks may also be able to be regulated in accordance with the duty arising under Chapter 2, Part 2 of the *Natural Resources Management Act 2004* (NRM Act).

The unregulated removal of moss rocks can have negative effects on the visual amenity and/or environmental diversity of an area.

It is difficult to regulate the industry under the Mining Act because of the nature of the short run campaign mining operations, which are not easily compatible with the complex, long term operations normally regulated under the Mining Act.

Given these challenges, the harvesting of moss rocks may be more appropriately regulated under the environment protection elements of the NRM Act, which promotes ecologically sustainable development principles in relation to the use of natural resources ('natural resources' includes soil and water resources; geological features and landscapes; native vegetation, native animals and other native organisms, and ecosystems).

The Department has engaged with DEWNR to consider options for collaborating on a proposed future policy or regulatory code for the extraction of moss rocks under the NRM Act.

If the proposal proceeds, the Mining Act would be amended to clarify that moss rocks are no longer considered an extractive mineral under the Act.

DISCUSSION

- Do you agree that the NRM Act provides a more appropriate framework for the regulation of moss rocks in South Australia?

3.11 Making sure that appropriate statutory powers are held by the Director of Mines and the Chief Inspector of Mines

The Minister, the Director of Mines and the Mining Registrar are given various powers under the Act (statutory powers). In practice, these powers are delegated to public servants who are experts in their relevant field.

For example, assessments of environmental matters are delegated to environmental officers or engineers. A delegate exercises the same power as the delegator. The delegation of statutory powers is common in all legislation.

Some of the delegation processes under the Act are now outdated, and should be streamlined. For example, the Director of Mines can only sub-delegate his powers with the Minister's consent. Requiring consent each time the Director wishes to change a sub-delegation generates inefficient inter-governmental communications processes.

To deal with this, the delegation powers could be amended to ensure the Minister's consent is not required for sub-delegations of powers. For

consistency, it may be appropriate to amend the delegation sections of the Mining Act to align with the delegation mechanism in the *Petroleum and Geothermal Energy Act 2000* (SA).

The Minister is often required to exercise his powers as the Minister responsible for administering the Mining Act under corresponding Acts such as the *Aboriginal Lands Trust Act 2013* (SA), *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA) and *Maralinga Tjarutja Land Rights Act 1984* (SA). Currently, there is no legal mechanism for delegating these powers to relevant officers and expert teams, resulting in unnecessary administrative burden on Government and delays to investment in the State.

Finally, the Chief Inspector of Mines is granted certain regulatory powers under the *Mines and Works Inspection Act 1920*. These are outlined in the first Discussion Paper. If the Mines and Works Inspection Act is repealed or amended, the relevance of these powers and their transfer to other legislation, would need to be considered.

DISCUSSION

- What opportunities are there to improve the delegation of statutory powers, and to improve the suite of powers granted under the various mining acts?

Cross reference: section 12 *Mining Act 1971*

3.12 Making sure that the Department's cost recovery is competitive and sufficient

For South Australia to remain competitive, it must adapt its fee structure so that it strikes the best balance between cost effectiveness and cost recovery.

The Department is committed to providing efficient services and pursuing transparent and equitable cost recovery.

The Mining Registrar and Exploration and Mining Regulation branches continue to move towards fee structures that ensure that the fees levied are referable to the appropriate administrative costs of the particular assessment or registration process.

Fees play an important role in the regulation and administration of the Mining Act. It is appropriate to require applicants to contribute to the substantial costs of regulating the mining industry. Fees help balance regulatory demands, encourage applicants to lodge

Research and development expenditure by the mining industry in 2013-14 represented 10% of all Australia's R & D spend.

Source: The whole story: Mining Contribution to the Australian community, 2016 Minerals Council of Australia

high standard applications, and provide the resources needed to undertake measured assessments. On the other hand, full cost-recovery across all services and regulation may be impractical, and inhibit investment in the State.

Currently, the fees collected by the Department do not represent a full cost recovery model, but are comparable to other States. The Review Team is interested in your views on how the Department can best administer the Mining Act and facilitate explorers' and operators' needs, whilst balancing the need to recover costs.

DISCUSSION

- What opportunities are there to better balance the Department's cost recovery model?

Cross reference: reg. 109 *Mining Regulations 2011*; schedule 1, *Mining Regulations 2011*

3.13 The collection and use of royalties, and their importance to the State

Royalties are the payment an operator makes for the right to access the State's minerals. Royalty returns are submitted by the operator on a 6 monthly basis, and represent their self-assessment of the royalty payable for that period. It is similar to lodging a tax return with the Australian Tax Office.

Royalty payments are determined by applying either a per tonne rate to the quantity of minerals sold, or a percentage (ad valorem) to the sales value less relevant deductions. As commercial sale arrangements have developed over time, some of the calculation processes have become out of step with industry practice and may lead to differing royalty outcomes between similar operators.

The time to determine the value of the minerals is at the time the mineral or extractive mineral leaves the mine or quarry. This is known as the ex-mine gate value. However, under common sales contracts, the value of the mineral or extractive mineral is not often known at that time, making it difficult for many operators to calculate royalty.

The Review Team seeks your views on whether the value shown on the sales invoice (in 'arm's length' transactions) may be a better point of reference. We understand that this approach would reflect the approach currently taken by many operators. By updating the Mining Act to reflect the contract price from the first sale, the determination of the value of the mineral

would be more objective, and there would be greater consistency between operators in the calculation of royalty.

Where a genuine 'arm's length' sale doesn't occur (including where minerals are transformed) the current process under the Mining Act works well, but could benefit from some minor amendments.

The Mining Act currently provides limited guidance where an operator cannot locate a similar sale for their mineral within the current return period. The Review Team seeks your recommendation on a mechanism to address these situations to ensure an operator can pay royalty on a value that, in their opinion, a willing and knowledgeable buyer would be prepared to pay for the minerals.

Example

Tom sells 90% of his gypsum at \$10 per tonne to arm's length customers.

10% of Tom's gypsum sales are to a related entity at \$2 per tonne.

Sandra, the nearest gypsum operator to Tom, sells gypsum for \$14 per tonne.

There is no market gazetted by the Minister for gypsum.

The proposed amendments would require Tom to apply \$10 per tonne to his non-arm's length sales for the period as opposed to his competitor's price of \$14 a tonne.

In the above example, it is expected that the operator would consider all information available to them, including supply, demand and other market factors, the last known arm's length sale, and any other relevant factors. If a similar sale could not be identified, detailed supporting information would be required demonstrating the factors considered in determining the value used.

The Review Team is seeking to implement a calculation method that would allow industry to promptly fulfil their royalty return obligations, and to engage with the Department around the particular circumstances of their operations and mineral sales. This engagement would ensure that contentious valuation issues are identified and addressed in a timely manner, providing clarity to operators at an early stage that they are correctly calculating royalty.

Under the Mining Act, the Department can conduct royalty audits to verify the accuracy of a royalty return submission. This process is fairly straight forward when records are made available for review and operators are willing to comply with enquiries, but not all tenement holders comply with these obligations.

The Review Team seeks your thoughts on allowing the Minister to make an estimated assessment, similar to that of an estimate on your water or power bill when the meter cannot be accessed. In the event that an operator fails to lodge a royalty return, raising an estimated assessment could instigate a faster and far cheaper turnaround of the non-compliance as compared to the other compliance mechanisms (such as expert reports) currently available. The existing appeal processes could apply to any changes.

DISCUSSION

- Should an estimated assessment process be adopted?
- Should any changes be made to the 'similar sales' royalty provisions?
- Where 'similar sales' cannot be identified, how should operators determine an appropriate value for the mineral?
- What other opportunities are there to modernise and improve the royalty scheme?

Cross reference: part 3 *Mining Act 1971*; section 76, *Mining Act 1971*; part 2, *Mining Regulations 2011*

3.14 Ensuring we have up-to-date and relevant scientific data

As outlined in the introduction to Chapter 3, the Department continues to upgrade and update its world-leading SARIG online information system so that it is easier to use, and contains the most current and relevant geological, environmental, planning and regional information.

The Department is currently working with its interstate colleagues and the Commonwealth to expand the breadth of shared data to ensure

we have a single, information rich, user-friendly portal. There is also information collated by industry through environmental surveys (e.g. water) and Aboriginal heritage surveys and clearances that the Department receives (or may receive) that could also enrich the comprehensiveness of SARIG. The information may also assist certain groups to understand what work has been done in their area (such as traditional owners).

The Review Team seeks your views on the expansion of powers to collect and disseminate information, and any restrictions on those activities. Of course, no legislative changes would be proposed in respect of the collection or use of Aboriginal heritage information without relevant consents from appropriate agencies and traditional owner groups.

DISCUSSION

- What opportunities are there to collect and share important geological, environmental, planning and regional information to ensure we have a fully informed industry, community and landowners?
- What protections or consultation requirements should exist around the collection and sharing of sensitive information, e.g. commercially confidential information, or information relating to Aboriginal heritage surveys or clearances.

3.14.1 *The importance of a strong Geological Survey*

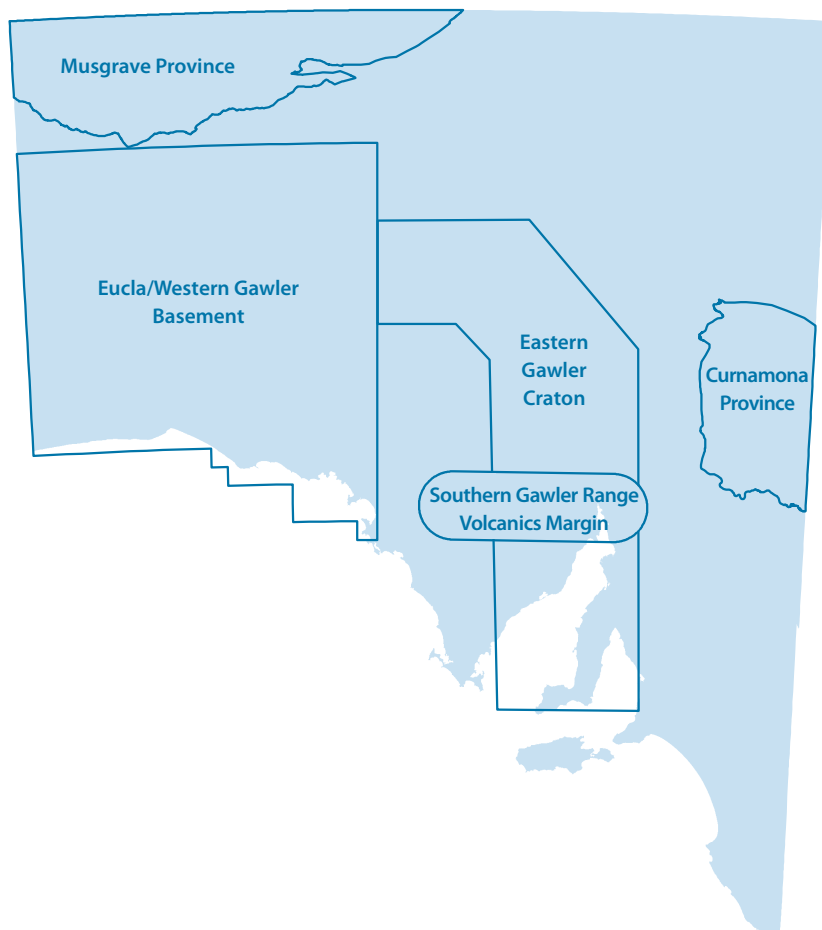
The work of the Geological Survey of South Australia (GSSA) is critical to the continual growth of South Australia's minerals and energy resources sector, and to our understanding of the State's geology and resource potential. The GSSA collect, manage and deliver information and knowledge of South Australia's geology, particularly for its mineral resources prospectivity. This is achieved through five main work programs:

- Regional Geology and Mapping
- Mineral Systems
- Prospectivity and Geophysics
- Resource Evaluation and Planning
- Geoscientific Information Management

The current GSSA project portfolio is designed to reduce exploration risk and cost by providing high-quality precompetitive exploration data, and an improved geological framework and approach, particularly for covered, greenfields regions of South Australia.

This is done by improving the fundamental geological understanding of key provinces, and developing robust geological models. Finding ways to 'see through' and characterise the cover, understanding ore deposit origins and prediction through 4D geodynamic and metallogenic evolution, and recognising geochemical and geophysical 'footprints' of mineral deposits, will assist the minerals industry in unlocking the potential economic benefits from resources hidden within our rocks.

Geological Survey of South Australia projects



Important geophysical, geological and geochemical investigations carried out in South Australia by the Geological Survey are partly undertaken under section 15 of the Mining Act.

In order to continue to effectively provide these services, section 15 could be amended to ensure that its interaction with other legislation is clear, and so that there are no unintended restrictions on this important geological and environmental work.



DISCUSSION

- What other opportunities are there to clarify section 15, and other interacting legislation, to ensure GSSA can optimise their programs?

Cross reference: section 15 *Mining Act 1971*



GLOSSARY



This glossary is written in plain language to assist in reading this document and understanding the Mining Act and Regulations. Some of the below definitions are inconsistent with the terms defined in the Mining Act. For example, this document refers to both mining and quarrying as two separate activities. However, under the Mining Act, the term mining captures both mining for minerals and quarrying for extractive minerals.

Appropriate Court – means the Warden’s Court, the Environment, Resources and Development Court and the Supreme Court. References to Appropriate Court in the Mining Act gives the applicant a choice of courts when filing proceedings.

Chief Inspector of Mines – is a statutory position established under the *Mines and Works Inspection Act 1920*. The Chief Inspector of Mines is responsible for regulating safety of South Australian exploration and mining activities in accordance with the Mines and Works Inspection Act. The Chief Inspector of Mines is a role undertaken by the Director, Mining Regulation, Mineral Resources Division, Department of State Development.

Co-Regulators – of environmental approvals in South Australia are the Department of State Development, the Department of Environment, Water and Natural Resources (DEWNR) and the Environment Protection Authority South Australia (EPA). In undertaking its role as Regulator under the Mining Act, the Department works collaboratively with experts from the EPA and DEWNR during assessments.

Director of Mines – is a statutory position established under the Mining Act. The Director of Mines is responsible, alongside the Minister for Mineral Resources and Energy, for regulating and administering the Mining Act and Mining Regulations. The Director delegates his powers to regulate and

administer to public officers employed by the Mineral Resources Division of the Department of State Development. The Director of Mines is a role undertaken by the Deputy Chief Executive, Resources and Energy Group, Department of State Development.

Expenditure conditions – means the minimum amount of money set by the Regulator that the explorer must spend on exploration activities on their exploration tenement.

Exploration (exploration activity, exploration operations) – is the activity whereby an explorer searches for minerals. Before any exploring can occur, the explorer needs an exploration tenement (exploration licence or mineral claim), an approved exploration PEPR and the right to access the land. The types of activities that can be approved under an exploration PEPR on an exploration tenement can range from discreet activities such as using a hand held detector, or more advanced activities such as exploration drilling.

Explorer – is a person or company exploring for minerals on an exploration licence, or a person or company exploring for extractive minerals on a mineral claim.

Exploration licence (EL) – is a licence granted to an explorer to undertake exploration activities. The grant of an exploration licence gives the explorer exclusive rights to explore for specific minerals within a certain area

for a maximum of 5 years (plus renewal), subject to an approved exploration PEPR, obtaining the required rights to access the land and compliance with the Mining Act and Regulations.

Extractive minerals – includes sand, gravel, stone, shell, shale, clay but does not include minerals used for ‘prescribed purposes’ or fire clay, bentonite or kaolin.

Exempt land – is an area of land in South Australia which is exempt from exploration and mining activities. For the Mining Act definition see page 30 of this document .

Landowner – under the Mining Act has the benefit of their land being exempt from exploration and mining activities if the area of land falls within the above definition of Exempt Land (amongst other rights). The definition of landowner under the Mining Act is more expansive than that of a registered freehold landowner. A landowner includes:

- a person who holds a registered estate or interest in the land conferring a right to immediate possession of the land; or
- a person who holds native title in the land; or
- a person who has, by statute, the care, control or management of the land; or
- a person who is lawfully in occupation of the land.

This definition will extend to include, amongst others, the registered owner of the land, a pastoral lessee, a lease and native title parties.

Mineral claim (MC) – is a tenement registered under the Mining Act, whereby an explorer or prospector pegs an area of land in order

to prospect and explore for minerals and transition to mining activities. Once a mineral claim is registered with the Regulator, the explorer has the exclusive right to apply for a production tenement (a mining lease or a retention lease) and transition from an explorer to an operator within the next 12 months. If the mineral can be effectively and efficiently mined immediately, the explorer may apply for a mining lease. If the mineral can be mined, but not immediately, the explorer may apply for a retention lease.

Mine operations plan (MOP) – is an approved plan to undertake operations on a private mine. A private mine operator cannot commence any mining activities unless and until the Regulator has approved a MOP in accordance with the Mining Act. An approved MOP sets out the environmental outcomes that are expected to occur as a result of the exploration or mining operations.

Mining (mining activities, mining operations) – is an activity whereby the operator explores, extracts and sells minerals. Before any mining can occur, the miner needs a mining lease, an approved mining PEPR and the right to access the land. Mining activities are more invasive than exploration activities, and the types of activities that may be approved under a mining PEPR can include the construction of a multi-million-dollar mineral production facility, or an open cut mining operation.

Mining lease (ML) – is a lease granted to an operator to undertake mining activities. The grant of a mining lease gives the operator exclusive rights to extract and sell specific minerals or extractive minerals within a certain area for a maximum of 21 years (plus renewals), subject to an approved mining

PEPR, and compliance with the Mining Act and Regulations. There are two classes of mining lease; a mineral lease for minerals and an extractive minerals lease for extractive minerals.

Mining lease proposal (MLP) – is an application for a mining lease. The Mining Act and Regulations require an appropriate mining proposal to be prepared and submitted to the Minister (which is delegated to the Regulator) for assessment. The documentation provided must include a comprehensive and detailed description of environmental, social and economic risks and benefits of the proposed operation across all stages of mine life so that stakeholders and the Department of State Development may make an informed, risk-based and balanced judgement about the proposed operation.

Mining Registrar – is a statutory position established under the Mining Act. The Mining Registrar is responsible for managing and updating the Mining Register under the Mining Act and Mining Regulations. The Mining Registrar is a role undertaken by the General Manager Mineral Tenements Program, Mineral Resources Division, Department of State Development.

Minister for Mineral Resources and Energy – is the Minister responsible for regulating and administering the Mining Act and Regulations. The Minister delegates his powers to regulate and administer to public officers employed by the Mineral Resources Division of the Department of State Development. The role of Minister for Mineral Resources and Energy is held by Hon Tom Koutsantonis.

Miscellaneous purposes licence (MPL) – is granted to an operator to undertake activities

which are ancillary to mining activities. The grant of a miscellaneous purposes licence gives the operator the right to undertake the activities specifically set out in the licence terms within a certain area for a maximum of 21 years (plus renewals), subject to an approved PEPR, and compliance with the Mining Act and Regulations. The types of activities that may be undertaken on a miscellaneous purposes licence may include providing amenities like catering and accommodation for persons engaged in those activities, establishing and operating plant and equipment to treat or process minerals, or providing for the disposal of overburden or waste from mining activities.

Operator – is a miner extracting and selling minerals on a minerals lease, or a quarrier extracting and selling extractive minerals on an extractive minerals lease.

Operation approval - Once a tenement is granted by the Minister (which is delegated to the Regulator), the tenement holder is required to obtain operational approval from the Regulator prior to commencing any operations. An operation approval is granted in the form of a 'program for environment protection and rehabilitation' (PEPR), 'mining operations plan' (MOP) (in the case of private mines), or a 'mining and rehabilitation program' (MARPs) (in the case of pre-2011 operations approvals). In 2011, all MARPs were deemed PEPRs through transitional amendments.

Overburden – is the natural rock and soil that sits above and around the mineral ore body. It is not subject to any chemical processes at the mine but needs to be removed to allow access to the ore.

PEPR – is an abbreviation for a program for environment protection and rehabilitation. An explorer or operator cannot commence any exploration or mining activities unless and until the Regulator has approved a PEPR in accordance with the Mining Act. An approved PEPR sets out the environmental outcomes that are expected to occur as a result of the exploration or mining operations, sets out the criteria to be adopted to measure those environmental outcomes, and incorporates information about the ability of the explorer or operator to achieve the environmental outcomes.

Prospector – is a person or company exploring for minerals or extractive minerals without disturbance of land, or water by machinery or explosives.

Proprietary interest – in the context of this Discussion Paper, means an interest in the tenement which entitles the holder to registered ownership on the Mining Register.

Quarrying – is mining operations for the extraction and sale of extractive minerals.

Regulator – is a team of qualified officers employed across various branches within the Mineral Resources Division of the Department of State Development acting on delegation of the Minister of Mineral Resources and Energy and the Director of Mines. The Regulator includes a broad range of experienced and competent officers to undertake the various roles under the Mining Act and Regulations. For example, the assessment of mining lease application proposals is undertaken by a team of qualified environmental scientists and officers, geologists, mining engineers,

environmental engineers, geomechanics, and geophysical engineers.

Retention lease (RL) – is a lease granted to an operator to prospect for minerals and other rights to conduct operations as determined by the Regulator. The grant of a retention lease gives the operator the exclusive right to apply for a mining lease and to undertake approved activities within a certain area for a maximum of 5 years (plus renewal), subject to an approved PEPR, and compliance with the Mining Act and Regulations.

Royalties – Royalty payments are the monies operators pay to the Government to access and sell the Government owned minerals. Royalty payments are calculated by applying a per tonne rate to the quantity of minerals sold or used, or by applying a percentage (ad valorem) to the purchase price of the minerals less deductions.

Tailings storage facility (TSF) – are reservoirs that store mine tailings, which is waste material discharged from an ore processing plant or preparation plant. A TSF includes pits, dams, ponds, integrated waste landforms, erosion protection bunds, levee banks, diversion channels, spillways and seepage collection trenches associated with the storage of tailings.

The Department of State Development – The Department of State Development is the South Australian Government Department responsible for administering the Mining Act and Regulations on behalf of and on delegation from the Minister of Mineral Resources and Energy. Branches of the Department of State Development operate as the Regulator of the Mining Act and Regulations.

CONTACT

DELIVERY ADDRESS

Department of State Development
Level 7, 101 Grenfell Street
ADELAIDE SA 5001

POSTAL ADDRESS

Department of State Development
GPO Box 320
ADELAIDE SA 5001