The Executive Director
Mineral Resources Division
Department of State Development
Level 7, 101 Grenfell Street
Adelaide SA 5001

DSD.miningactreview@sa.gov.au

Mining Act Review – Submission by John Brook and Merilyn Paxton

We thank you for the opportunity to express our opinion as to changes required to the Mining Act 1971. As landholders and farmers we are most concerned about the effect of mining on prime agricultural land.

As stated on Page 1 of the Discussion Paper **"In all Australian jurisdictions, mineral rights are held by the State or Territory for the benefit of all citizens and communities."**

As the mineral resources of South Australia are owned by the Crown, in this case the Government of South Australia, they are held in trust for the people of South Australia by the government of the day. Mining laws should take in to account the best interests of the people of South Australia, and the government of the day should be mindful of the wishes of the electorate as a whole. The mineral resources of the state should be shared with the population.

The royalties from Mineral Resources belong to the people of South Australia and again are collected in trust for the people of South Australia. The collection and use of royalties are a matter for serious revision under the Mining Act and should much more reflect the fact that these resources DO belong to the people of South Australia and are not a pittance paid by mining companies in royalties.

With payments listed as 55 cents in the tonne for extracted minerals, and between 3.5% to 5% for other minerals, totalling $146 M, they do not compensate for the loss of production on our prime agricultural land that is host to mines.

We believe that royalties should be fixed at a much higher percentage (10%+) in line with royalties charged in many overseas countries.

The income from royalties is further susceptible to erosion by the fact that the Minister has the ability to discount or waive royalties. Under the Mining Act 1971 Section **17 (10)** "The Treasurer may, after consultation with the Minister and on application of a person liable to pay royalty under this section, having regard to the effect that payment of such royalty would be likely to have on the viability of profitability of mining operations carried on by the person, waive payment of royalty wholly or in part, or reduce the rate at which royalty is payable, on minerals recovered in the course of these operations."

No other business in the State of South Australia is given this support or dispensation from paying debts in order to trade profitably and it is to the extreme disadvantage of state income,

and therefore the people of South Australia, who are entitled to share in the rewards of mining of their mineral reserves, *particularly* in regions where their own business or lifestyle is affected by mining.

To continue any practice of discounting or waiving royalties is to act only in the interest of mining companies to the detriment of all of South Australians.

The need for the government to stream off .25% of these royalties to the EARF means than another $36.5 M is siphoned away from the disposable income from royalties leaving only about $109.5M in revenue to the State. This amount of .25% should be **added** to royalties as an insurance hedge against any operator not fulfilling its obligations regarding rehabilitation.

In regions that have existing and thriving industries mining should not be allowed in any way to detract or impede the businesses that are carried out in the region. Page 22 of the Discussion Paper clearly illustrates the very small part of the state that is the arable land of South Australia and we strongly believe that these regions should be completely exempt from large scale mining of any sort.

Exempt land is described in the Discussion Paper as "land that is lawfully and genuinely used – as a yard, garden, cultivated field, plantation, orchard or vineyard; . . .". ALL arable land comes under this description as all arable land has been cultivated and can be described as a "cultivated field". We are sure our forebears believed that this description of arable land would have protected it from mining.

As agriculture was the highest export market for Australia last year we should seriously consider the rights of our landholders, and their neighbours, who wish to continue their usual occupation uninterrupted. They must have **the right of veto to any mining company.** For this reason all information pertaining to plans for mining should be provided to landholders, and their neighbours, as it becomes available, in order for the affected landholders to be able to invoke their right of veto *prior* to the issue of a Notice of Entry to Land form to enable them to avoid expensive legal fees.

Under the Mining Act Section 61-Compensation (1) "The owner of any land upon which mining operations are carried out in pursuance of this Act shall be entitled to receive compensation for any **economic loss, hardship and inconvenience suffered by him in consequence of mining operations.**

It puts landholders at a disadvantage to have to calculate this up front without knowing exactly what their financial losses may be, including the devaluation of their property which often is not known for many years until they wish to sell it, or borrow against it.

The Act should be amended to include a clause where Compensation can be revised during the life of the mine to ensure that the landholder does not suffer unforeseen economic loss.

Discussion Paper

1. EXPLORATION, MINING, QUARRYING, COMMUNITY AND LAND ACCESS

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

1. What terms in the Mining Act and Regulations need clarifying?

The term exempt land needs clarifying. Arable land are "cultivated fields". Apart from that I am unsure of many expressions in the Mining Act. Too many to list.

2. What are the appropriate 'personal uses' for extractive minerals

Gardening, driveways, building, roadways, footpaths.

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

All relevant information should be made available to any landholder who may be approached by a mining company as soon as the information is available to give the landholder enough time to see what is proposed well in advance of any approach by a "mining officer". Restrictions on release of information should be removed to allow transparency and engagement with community.

1. **There should be, at a minimum, open free and online access to the document listed immediately they are available to government officers.**
2. **Operators should be required to disclose geological information for the benefit of the public. There should not be a definition of 'commercially sensitive' if we want to maintain transparency.**
3. **Any information relating to mining proposals, immediately they are raised.**
4. **No restrictions should be placed on disclosure.**

1.3.1 Making sure everyone understands land access processes and expectations

What opportunites are there to improve the entry to land process?

- 21 days notice is not sufficient time to give notice. Taking in to account the remote locations of many landholders who may not collect or receive mail on a daily basis this should be extended to 42 days, or 30 days at a minimum to give a landholder time to receive and understand what is proposed.
- In addition the notice should be accompanied by any Regulation or Section of the Act that is relevant to what is taking place. (Form 21 – Notice of Entry on Land)
- The mining officer should also advise the landholder of his right to object, of his right to compensation, of his right to *negotiate* compensation and that he should seek legal advice before he signs any agreement with the mining company.

1.3.2 Entry on to Exempt Land:

9AA- Waiver of exemption (including cooling-off)

(1) A mining operator may, by written notice given personally or by post to a person who has the benefit of an exemption under section 9, request the person to enter into an agreement with the operator to waive the benefit of the exemption.

- Exempt land should be just that exempt, and no mining operator should have the right to request an exemption be waived.
- Compulsory acquisition of private land, particularly on South Australia's arable land and

exempt land, in order to develop mineral resources is not an option as this will decrease agricultural production altogether. Instead landholders should have a right of veto to stop mining projects going ahead and interfering with their businesses.

- Mining should not occur within 5 kilometres of any place of residence. 400 metres is dangerous and a threat to the health of any occupants, and 150 metres from a building or structure used for industrial or commercial purposes, or a spring, well, reservoir or dam is also a dangerous proximity. For any occupier to have to work so close to a mine is again a serious health hazard.

1.3.3.Notices to landowners under the Mining Act:

- As stated before information should be forwarded to landholders well in advance of any Form 21 – Notice of Entry on Land.
- Explorers and operators should forward information and meet with landholders prior to serving the Form 21.
- Notice of use of 'declared equipment' such as drill rigs, excavators, loaders, graders and bulldozers (Form 22) should continue to be used even if there has been little respons to it in the past. It is possible that landholders have not understood this and more explanation should accompany it.
- Landholder neighbours must receive the same notification of any proposed work on adjacent land.

1.3.4 Fast and fair court processes and access to justice

- There must be fast, cheap and clear court processes available to landowners to resolve Any issues.
- Landholders who find themselves defending their property through no fault of their own should have all, or the majority, of their costs paid by the instigator of legal proceedings as the costs may be a serious liability for a landholder.
- The amount of $500 as described in the Act is completely inadequate for any sort of legal advice.

1. **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?** Yes, definitely.
2. **Do you agree that an appropriate time for a landowner to issue proceedings is at a time the operator has enough information on the proposed operations?** Yes, and this should be prior to the Notice of Entry on Land has been issued.
3. **What other opportunities do you see to provide fast and fair access to justice for all?**
   - Landholders and their neighbours should be provided with notice of intention to consider mining before the Notice of Entry issued.
   - Landholders and their neighbours should be able to commence legal proceedings to veto entry prior to the Notice of Entry being issued.

1.3.5 Ensuring that Aboriginal communities are engaged and well informed

1. **What opportunities are there to work together to design and build a better system for land access to benefit everyone?**
   Native title should be fully respected and Native Title Land should be exempt from mining.

2. **Do we need better access to information and tools to make sure everyone has the best opportunity to understand the South Australia native title process and learn more about mining and exploration? How would you like to access information?**
   We were not aware that South Australia had it own native title legislation and this information should be included in any Community workshop, and posted on-line at the Department for State Development website.

1.4 Ensuring that payments and fees are recovered

- Royalties should be paid in full and on time.
- Unpaid royalties should lead to a heavy fine and immediate suspension of production licences.
- The system of mining company self-assessment should be subjected to rigorous audit.
- Bonds should be paid upfront to ensure rehabilitation. It is suggested that this is a liability and ties up funds for the mining operator. It is much more of a liability to the State of South Australia if the rehabilitation is not completed satisfactorily and has to be paid for by the EARF. In these matters the interests of our citizens should be considered before the interests of largely overseas owned corporations.

1. **Do you agree that payments due to the South Australian government, for the benefit of the community, should have priority over other obligations?**
   Yes, and if unpaid the licence should be suspended.
2. **What other opportunities do you see to ensure that explorer and operators pay outstanding amounts when due?**
   Fines and/or high interest applied to all outstanding payments.

1.5 Ensuring that the community is informed of any changes.

1. **What changes to approved mining operations should give rise to a statutory right for a landowner to be notified?**
   Full community, landholder and neighbour consultation should take place before any changes to the original permit are made in much the same way as consultation takes place before the first permit is issued. This would apply whether there is to be a change of the manner of mining, equipment to be used, roadways, water use, extension of the mining area, operations to cease for some time, mining to cease altogether and rehabilitation to begin.
2. **What changes to approved mining operations should give rise to a statutory right for a landowner to be consulted on the proposed change?**
   All changes.
3. **What type of information should landowners and the community receive during any change of operation process?**
   Every piece of information available. Information that includes new risks or threatens health, water, air or environment and information that shows any further works that may impede or restrict the landholder from carrying out his normal work, and therefore causing the landholder further financial loss.

2. SUSTAINABLE FUTURE

- There is plenty of evidence that contamination of properties by declared weeds and existing weeds and pests does occur from mining activities.
- Soil and vegetation contamination also occurs frequently on mine sites.
- Permanent loss of native flora and fauna and diversity will occur from vegetation clearing for mining operations; the extent will be dependent on the length of the mining operation and the extent of the rehabilitation stage.
- Extraction of groundwater always affects other users, usually the primary users who have lost their supply, and downgrades dependent ecosystems.
- No approval should ever be given to any disturbance of declared Aboriginal significant sites
- Public health and public nuisance will occur from air emissions and dust from mining operations.
- Triple Bottom Line – a combined social, environmental and economic assessment, if performed impartially and accurately, will always advise against mining activities.
- Legislation cannot prevent any of these things occurring to a greater or less degree.
- Through Federal government interference the EPA and the EPBC Act have lost their strong voice to protect our environment.
- Independent health experts need to be included in the assessment process.
- Mines need to be kept at a distance from residential areas, work buildings and communities.

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

- No mining activity should ever be considered a "low impact activity".
- Generic PEPRs would be risky as every individual mining activity should be assessed separately.

1. **How can we make the PEPR development and assessment process, and transparency after approval, better for the community, the environment, landowner, explorers and operators?**

By listening to the community and landowners and addressing their concerns *before approval.* Instead of conducting community forums where the operator *tells* the community what they are doing, listen and try to seriously minimise impacts on communities, landholders and the environment.

2.1.1. The scope of preventative regulatory measures.

We are concerned that this section says "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 environment outcomes under a PEPR.**

- If there is any risk at all of undue damage to the environment the operation should not be approved.
- The secure bond should be an actual deposit of funds (and not a line of credit) to cover final rehabilitation as well as any ongoing accidents or disruptions during extraction.
- Transparency of what will happen and transparency of what has happened can only make for better relationships between operator and community.

- We agree with all the recommendations in this section.

1. **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?** Absolutely.
2. **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?** Yes
3. **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?** Yes and rental payments and any other ongoing fees should continue to accumulate until the Department is satisfied that all monies are paid, and all rehabilitation is in place.
4. **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?** Yes
5. **What other preventative tool do you think should be introduced to ensure damage to the environment can be prevented?**

- Amendments to the Mining Act to revise the Insurance programs that all mining operators have in place to cover them in the case of environmental damage, damage to property, or damage to the health of landholders or their neighbours.
- We believe that current Insurance policies are not adequate to protect landholders, and landholders themselves are not able to avail themselves of Insurance to cover them against accident or damage to their property or their livelihood.
- Regular reporting available to the public (monthly, quarterly?) so that the community is aware as soon as any breach of the licence occurs.

2.1.2 The scope of compulsive tools

We agree with all the suggestions in this section.

1. **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 complies with; and imposing personal liability for directors for company non-compliance?**

- We see particular benefits in making the directors who sign the original agreement responsible for the entire operation of any mine, even when a mine has been "sold on".
- Current directors should also be held liable
- Appropriate Insurance will be quite costly, but not as costly as a mine that is not properly finalised and rehabilitated.

The maximum penalty of $250,000 for failing to comply with a direction within the time stipulated is nowhere near an adequate penalty for wealthy mining companies. This needs to be increased and varied according to the seriousness of the breach.

2.2 Ensuring greater government and industry environmental accountability and transparency.

- Yes, public disclosure achieved by regular publication of relevant government and operator documents will improve transparency.
- Ensure all debts and fees are paid promptly and in full.

1. **Do you see benefit in publishing relevant government, explorer and operator documents (where appropriate) online to increase government and industry transparency and accountability?** Yes, this question has been asked continuously.
2. **What other documents in addition to the above mentioned list should be publicly disclosed to improve industry accountability?**
- Any documents that show variation from the licence.
- Any disclosure of previous defaults or environmental damage, any failure to pay monies owed on the part of the operator before any licence is issued.
3. **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?** Yes, I feel that I have previously answered this question

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

To protect local communities where there is an insolvency event, including preventing explorers and operators (or their administrators or liquidators) from transferrring mine site asset where it would be unsafe or inappropriate to do so or would result in environmental harm or breach of outcomes.

- Insolvency events have already occurred in Australia and left governments with expensive clean-up liabilities.
- As previously stated, the directors of the first company to own the licence should always be held responsible throughout the life of the mine.
- Liability of the current directors should also be addressed.
- Ensuring that bonds are actually "cash up front" and not lines of credit or promissory notes.
- An operator should produce an Insurance Certificate of Currency on an annual basis for an Insurance Policy that has been approved by the Department, and this should be audited for more than adequate cover.

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

Un-rehabilitated mine sites now prove a serious concern throughout Australia.

- Although there were previously outdated systems that did not hold mining companies liable for their mess, there are still many of the mining companies responsible for this mess operating in Australia today.
- A condition of any new licence to these operators should include some willing payment towards the rehabilitation of these old sites.
- This should not be coming out of the EARF. The community should not be paying for these sites to be rehabilitated.

- Current Royalties need to be increased to cover these costs.
- *Secure* bonds today should prevent this occurring in the future, so make sure they are secure.
- Tying up working capital for operators is not nearly as much of a problem for them as it is for the government to have to step in and pay for it.
- Offering incentives to operators is not an option as this costs the community. Government seems to want to look after the mining companies at the expense of the community.
- The government slush fund of $36.5M taken from royalties should not be readily available to operators and should only be used in extreme conditions.
- Constant monitoring of the financial viability of mining companies should be checked continuously, before they opt out through bankrupcy.

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

Apart from suggestions we have made above we believe that these questions should be addressed to your lawyers, accountants and economists.

2.5 The regulation of private mines.

- We have only seen a few private mines in remote regions of our region and do not have much problem with them.
- If regulation under the Mining Act is going to make these products more expensive for communities and local governments we would be opposed to them being regulated by the Mining Act.
- If mines are inactive for a number of years we do not have a problem with the Government seeking to close them, provided it is not a mine which is used from time to time.

2.6 The Extractive Areas Rehabilitation Fund

1. **What ways could the EARF be improved to better protect the environment and facilitate operators needs?**

- ADD .25% in Royalties to every new project as a precaution, do not DEDUCT it from the current meagre royalties.
- Government should do all in its power to go back to the original operators and have them contribute to the fund.
- Rehabilitation should ALWAYS be the responsibility of the operator.

2. **Do you think the EARF has performed as a successful fund of 'last resort' for ensuring adequate rehabilitation of extractive mines in South Australia?**

- $34M spent is considerable, and to continue to use EARF calls for an increase in Royalties to support this fund.
- We do not believe that the EARF should be funding these rehabilitation projects

- Mining companies should not get used to the idea that EARF is always there to bail them out.

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

- Most infrastructure associated with any sort of mining is very unattractive and will not be an asset to any community.
- We believe that ALL infrastructure should be dismantled and removed at the end of the tenure and this must be written in to the original licence.

3. THE BENEFITS OF A STREAMLINED, RIGOROUS AND COMPETITIVE REGULATORY ENVIRONMENT.

This section is chiefly for the benefit of the Mining Industry, not landholders, so we will comment on a few items in here.

- 20,000 employed in the Mining Industry is still only 2% of the work force in Australia.
- $1.8 billion dollars is not a very large sum compared to what is spent and generated by agriculture.
- Modern evolving e-commerce and information centres mean we can more easily keep informed about changes in the industry.
- Have no problem with moves to streamline the approval system for the mining industry provided it does not mean that safeguards such as community consultation landholders rights, health and environmental assessment are short-cut.
- All dealings and instruments should be on the Mining Register if the government and the industry is serious about transparency
- All information should be publicly available
- Terms of ELS. This should not be changed. It is already to the advantage of the operator as the existing 5 year terms can only serve to create uncertainty for communities and landholders. A period of up to 20 years is a long time to wait for a mining outcome.
- Forfeiture provisions should relate to exploratory licences as well as mining leases, retention leases and mineral claims.
- Without understanding properly what is proposed by a generic mining lease it seems that it would allow a number of different extractive activities in one area and this is likely to cause serious problems for a landholder.
- We don't believe that any mining lease should be granted for a term 'that reflects the predicted mine life' because this would reduce the opportunity for proper scrutiny. If the operator were to commit transgressions it would be very hard to terminate the lease.
- No mining lease should be created for up to 99 years.
- We think retention status should not be introduced and retention leases should be abolished. A mine may remain idle for up to 10 years and this would again create uncertainty for landholders.
- We repeat, shorter approval times should not encompass short cuts to assessment.
- Probably a good idea to have a national standard for assessment.
- Changes to mining operations should be treated as a new application with prior

consultation with landholders, their neighbours and the community, as well as full environmental and social assessment.

- Landholders should be notified of any changes in mining operations.
- Evironmental assessment should be done very early in the planning process, not left till the PEPR stage.
- Moss Rock would be better protected by the NRM Act.
- We are concerned about the delegation of powers being passed down the line.
- The Mining Industry self-assesment for royalty payments should be frequently audited.
- The system for assessment of royalties needs to be regulated much more closely, with one system of valuation used, preferably the contract price, but NOT just from the first sale. It should be calculated from every invoice. **This is also a problem for your accountants and economists to solve.**
- Failure to lodge an assessment of royalties on time should attract a fine or interest payment.
- If the work of the Geological Survey of South Australia (GSSA) is so critical to the minerals and energy resources section it should funded by the Mining Industry.
- **This information should be available to the public.**

John Brook and Merilyn Paxton
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