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Submission

Mining Act Review

Thank you for the opportunity to participate in the Mining Act Review. I acknowledge that mining is important to South Australia's economy, but so are the environment, agriculture and water. A healthy environment underpins a healthy economy. Agriculture depends upon a healthy environment for its existence, and water is essential for all life.

The Mining Act and Regulations do not cover environmental protections particularly well, nor does it consider the needs of the Agricultural sector particularly well. Agricultural land is not in great abundance in South Australia, and therefore should be exempt from Mining with the exception of council quarries for gravel. Mining is a 24/7 operation, competes for water and is disruptive; interfering with agricultural land management and production.

With regard to water the Mining Act and its Regulations are antiquated.

Fresh water worldwide is going into decline, as aquifers are depleted and polluted.

Desalination is very expensive and there are issues in the Gulf States where desalination plants are used extensively for fresh water supplies. They are creating saltier seawater. The more they desalinate, the more brine is pumped back into the sea; and as the Gulf becomes saltier, desalination becomes more expensive.

South Australia cannot afford to rely upon desalination to ensure its future water supplies, hence the importance of protecting the surface and ground supplies in our very dry state. Aquifers are complex systems and not yet well understood, yet the Mining Act allows dewatering of aquifers.

With respect to the economy, mining royalties are an important source of wealth for the state, but it is not a great source of jobs, as the Mining Act Review seemed to imply with respect to the numbers of people employed in mining. The employment numbers from mining has never been substantial. Even during the mining boom years the true figures from the Australian Bureau of Statistics were 1.9% for all Mining and Petroleum activities Australia wide. And, future employment opportunities in the Mining sector are expected to go into decline due to increased automation.

Below I have commented on various discussion points in the Mining Act Review and made recommendations for change.

DISCUSSION Part 1 EXPLORATION, MINING, QUARRYING, COMMUNITY AND LAND ACCES

DISCUSSION p24 to p25

Q1 What terms in the Mining Act and Regulations need clarifying?

Interpretation: Section 6 (4)(a) should also include native flora

An additional section 6(4) (aa) should include bees and dung beetles - both are non native and play an important role in the agricultural sector. Bees also play an important role independently of the agricultural sector. Dung beetles are used for breaking down livestock manure.

Another additional section 6(4) (aaa) under environment should also include agricultural vegetation, and agricultural livestock and fish stock. It could be termed agricultural flora and fauna.

Agricultural land use should be included as it is such an import part of the existing environment, and dependent upon a healthy and sustainable environment for its existence.

Agricultural land use examples, but not limited to, are: livestock – sheep, alpacas, goats, beef cattle, dairy cattle, deer, pigs, poultry; aquiculture (freshwater fish); cropping (cereals, legumes, pulses); hay production; horticulture (fruit , vegetables, flowers); vineyards, organic farming and biodynamic farming etc.

Section 6(4)(c) should state existing or permissible land use including agricultural land use;

Section 6(4)(c) Definition of existing or permissible land use - agricultural land maybe lying fallow or resting, which should include grazing land for livestock as well as other agricultural land uses – is that considered as existing land use under the Mining Act and Regulations currently ? – if not it should be included.

Other: 59(6) of the Mining Act. Definitions of severe or unjustified hardship or substantial damage to the land need defining in the Mining Act, following public consultation particularly with the Agricultural sector on how those terms should be defined in the Mining Act. (Hardship should include negative impacts on vendor declarations, and negative mental health impacts).

What is definition of **proclamation** by the Governor? Does it override the Minister of Mining and Parliament? The definition of proclamation needs to be included in Section 6 - Interpretation

Clarity around the use of the terms; exploration license, mining lease, and mining operator is necessary to avoid confusion. For example the specific term of exploration license or mining lease should be used instead of the generic term of mining tenement. If the mining operator is an explorer yet to gain a mining lease, that should be made clear in all relevant documentation on the matter.

Q2 What are appropriate 'personal uses' for extractive minerals?

Examples of some personal uses are - Art, Pottery, Road Construction, Footpaths, Gardening, Buildings, Walls, Ramps, Lining drains or dams with clay.

Q3 What opportunities are there to define new terms?

New terms should include size of mining allowable or at least a reasonable estimate

- minimum and maximum size (area) and depth for Extractive Minerals
- minimum and maximum size (area) and depth for Mineral Mining

Currently under the Act a mine could be of any size if approved by the Minister of Mining.

See Mining Act **Section 23—Area of claim** (1) The area of a mineral claim must not exceed the maximum permissible area stipulated by the regulations. (2) Despite subsection (1), the area of a mineral claim may exceed the maximum permissible area with the approval of the Minister.

DISCUSSION p 25 to p27

1.2 Ensuring you have the information you need at the right time, and that our technical assessment processes are transparent**Q1 Should there be, at a minimum, an open, free, and online access to the documents listed above, at appropriate times?**

Yes, however commercially sensitive information should be clearly defined, to prevent mining operators from avoiding disclosure.

Q2 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)?

Yes

Q3 What other information do you think should be disclosed and at what times?

Past history of non-compliance by operator, any fines, failure to pay royalties, tax returns for past 5 years, and for that information to be provided to the public to assess and comment on via community consultation processes prior to the Minister of Mining granting a exploration or mining license.

Third party independent persons/organisations, should assess the economic benefits of the mine and its potential impacts on other businesses.

Q4 What restrictions should be placed on disclosure, and should different types of information be restricted in different ways?

No restrictions should be placed on disclosure of information.

DISCUSSION p28 to p29

1.3.1 Entry to land generally**Q1 What opportunities are there to improve the entry to land processes?**

Section 57 (b) may enter exempt land for the purpose of pegging out or otherwise identifying a claim.
This should state - may enter any mineral land except exempt land for the purpose of pegging out or otherwise identifying a claim.

Section 58 (a) if the mining operator has an agreement with the owner of the land authorising the mining operator to enter the land to carry out mining operations on the land;

This should state if the mining operator has an agreement with the owner of the land, **provided there are no objections from owners of adjacent land, or local communities,** authorising the mining operator to enter the land to carry out mining operations on the land;

58A (1) A mining operator must, at least 21 days before first entering land to carry out mining operations, serve on the owner of the land notice of intention to enter the land (the prescribed notice of entry) describing the nature of the operations to be carried out on the land. The notice of Entry should make clear whether the mining operator is an explorer or has a right to mine.

This notice should include the size of the potential mine: area and depth and any potential environmental, public or individual health, and individual or wider community economic impacts the mine is likely to cause over the course of its life. This should apply to 58A(1) and 58(3)

58A (7) The prescribed notice of entry is not required if (b) the mining operator is authorised to enter the land by agreement with the owner of the land... This should include provided there are no objections from owners of adjacent land or local communities.

58A (7) The prescribed notice of entry is not required if (d) the mining operator enters the land to continue mining operations that had been lawfully commenced on the land before the commencement of this section. This should be subject to an approved Program for Environmental Protection and Rehabilitation.

DISCUSSION p29 to p30

1.3.2 Entry on to 'exempt land'

Q1 What terms need to be better defined to better clarify what is 'exempt land'?

Exempt land should mean exempt land.

9—Exempt land

(1) Subject to this section—

(a) land that is lawfully and genuinely used—

(i) as a yard, garden, cultivated field, plantation, orchard or vineyard;

Section 9 (1) (a) (i) should also include land for Agricultural use, because it encompasses more than cultivated fields, orchards or vineyards.

In addition **Section 9 - Exempt land,** should include a section covering land not accessible to mining operators under any circumstances and should include: National Parks, RAMSA areas, UNESCO listed areas, Conservation Parks, Sanctuaries, Coastal areas, Habitat 141 Degree areas, and Water Catchment areas for Aquifers.

Q2 What opportunities are there to clarify or amend the exempt land provisions in the Mining Act?

Section 9 (1) (c) any separate parcel of land of less than 2000 square metres within any city, town or township;... What if it's 2100 square meters? How is this supposed to be interpreted? This should be

altered to state that Mining operations in those circumstances must be governed by Local Council zoning laws, and the determination of whether it is allowed or not must include public consultation and an approved Program for Environmental Protection and Rehabilitation. It should also be restricted to small scale Extractive Mineral Mining, and appropriate safe distances from businesses and residential properties should apply.

Section 9 (1) (d) (i) and (ii) and (A) and (B) need refining.

(d) land that is situated—

(i) 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

(ii) within 150 metres of—

(A) a building or structure, with a value of \$200 or more, used for an industrial or commercial purpose; or

(B) a spring, well, reservoir or dam,

The value of a building or structure is irrelevant regarding distance from a mine.

The size and operations of the proposed mine would impact upon Section 6(4) of the Act, and therefore the size and type of the mine should be taken into consideration. A big open cut mine should be at least 5km from a place of residence, a boundary of a town, a commercial or industrial business, spring, well, reservoir or dam, compared to a quarry for gravel, which should be at least 500 meters away. Some types of extractive mineral mines may need to be further away even if on a small scale, Eg silica sand mining; the public health impacts need to be taken into consideration with regard to the silica and potential silicosis, and therefore may need to be further away than 500 metres. The safe distance should include the possibility of a fire in the mine that may burn for days giving off toxic smoke.

There should be guidelines available for Mining operators and the public as an addendum to this Act regarding distances and depths for various types of mines. Mines produce noise, light, and dust, and other health hazards and may be a 24/7 operation, and if Section 6(4) of the Act is to have any meaning Section 9 (1) (d) (i) and (ii) and (A) and (B) needs to be amended to include appropriate distances.

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

The Act states - 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 exempt and the mining operator **should not be allowed** to request a waiver of the exemption, except with regard to small scale Extractive Minerals Mining. Local councils need quarries for road building for example. Agricultural land however, needs better protection under the Act – and the land-owner's right to reject the application to waive the exemption should be final.

DISCUSSION p31 to p34

1.3.3 Notices to Landowners under the Mining Act

1.3.4 Fast and fair court processes and access to justice

Q1 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?

No, because the proposed mining operation may impact on other parties other than the property owner. All affected parties such as adjacent landholders, and local communities need to be able to object to the proposed mining operation if they have concerns about the impacts.

There is no advantage to the landowner based on the Act to object to a waiver of exempt land if they initiate the process or not. Substantial hardship or substantial damage 58(a)(5) and with least detriment to the interests of the owner and least damage of the land 58(a)(5)(b) are not clearly defined terms in the Mining Act and open to interpretation by the court. Mining dominates Agriculture in South Australia's Strategic Plan and therefore the 'public interest' would influence the court's decision. Mining, and Agriculture should have equal weight in South Australia's Strategic Plan: Mining should not override the importance of Agriculture.

Q2 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 time should that be?

The mining operator wishing to gain access to land should initiate the process and provide all available information, as early as practicably possible, about the proposed mining operation. This information should be made available to all potential affected parties, and also generic information of the potential impacts if specific information is not yet available regarding the detrimental impacts with respect to Section 6 (4) and also any negative economic impacts on the landowner, adjacent landowners and local community impacted by the proposed mine.

Q3 What opportunities do you see to streamline the notice of declared equipment process, and the other notification processes?

The Act is unfair regarding declared equipment and impinges upon the landholder's rights to object. **62—Agreement to use declared equipment (1) An agreement between a mining operator and an owner of land for the purposes of section 59(8)(b) of the Act— (a) must be in writing; and (b) must include a statement by the owner of the land that the owner acknowledges that, by entering into the agreement, the owner will waive the ability to lodge an objection under section 59 of the Act;**

The landholder should still be allowed to lodge an objection to the Warden's Court or ERD court if their land or property including buildings are harmed in an unanticipated manner by the declared equipment, or if their lives are negatively impacted upon by issues such as excessive noise or dust. The Mining Act does not allow for objections from neighbors or community if they have issues with declared equipment. They should also have the right to object.

Q4 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?

Yes

Q5 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?

The size (area and depth) of the mining operations, including buildings , equipment, road construction, rail , pipes, easements, machinery. What will be mined? Is it Mineral mining or Extractive Minerals? How will the mining waste be managed. The source of the water required and how much? The expected life of the mine, and any potential environmental, public health or individual health, and economic impacts the mine is likely to cause. How will the operator mitigate and/or prevent environmental damage, public health or individual health impacts and economic impacts on those potentially affected by the mining operations.

All information concerning the mining operations, should be made available as early as practicably possible.

Other: There should not be allowed more than one tenement at a time on any property.

DISCUSSION p35 to p36

Q1 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, but 'substantial impacts' should be better defined in the Act.

Q2 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?

The mining operator should be the party responsible for initiating proceedings once they have sufficient information for the landholder and other affected parties (adjacent landholders, and local community) to make informed decisions.

Q3 What other opportunities do you see to provide fast and fair access to justice for all?

1. Exempt land should include Arable land from all Mineral Mining operations.
2. Exempt land should include National Parks, RAMSA areas, UNESCO listed areas, Conservation Parks, Sanctuaries, Coastal areas, Habitat 141 areas, and Water Catchment areas for Aquifers, from all mineral mining and extractive mineral operations.
3. For Agricultural land use to be included in the Mining Act under Section 6(4)(c)
4. For the definition of environment to include agricultural flora and fauna, including bees and dung beetles.
5. Section 9 (1) (a) (i) should also include land for Agricultural use
6. For Exempt land to mean Exempt Land with no right to waiver the exemption, except for small scale Extractive Mineral Mining, however the landholder should retain the right to refuse to waiver the exemption.

The following changes to the Act would make it much clearer to where Mineral Mining and Extractive Minerals operations can and cannot occur, not unlike having Master Plan for the State, and would reduce the need to access the courts to resolve disputes.

DISCUSSION p 37 to p38

Native Title Land should be exempt land, with no access, unless approved by the Native Title Holders.

DISCUSSION p39 to p40

1.4 Ensuring that payments and fees are recovered.

Q Do you agree that payments due to the South Australian government, for the benefit of the community, should have priority over other obligations?

Yes, so long as they meet their environmental obligations and obligations to landholders.

Q What other opportunities do you see to ensure that explorer and operators pay outstanding amounts when due? Mining operation should cease until outstanding amounts are paid.

DISCUSSION p41

1.5 Ensuring that the community is informed of any change

Q1 What changes to approved mining operations should give rise to a statutory right for a landowner to be notified?

The landowner and others impacted by the mine should be notified of all approved changes.

Part 6 – Mining Leases Section 34(9) should be changed so that it reads Without limiting any other provision, the Minister **must** add, vary or revoke a term or condition of a mining lease at any time if, (in the Minister's opinion), the addition, variation or revocation is necessary to prevent, reduce, minimise or eliminate undue damage to the environment associated with mining operations conducted pursuant to the lease. The words underlined and bracketed should be removed.

Q2 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

Q3 What type of information should landowners and the community receive during any change of operation process?

All independently assessed) information regarding possible negative impacts on:-

public health and/or individual health,

the environment,

other matters covered in Section 6(4),

and the ability of the landowner, and others impacted by the mine, to earn a living, including negative impacts on vendor's declarations.

DISCUSSION Part 2 SUSTAINABLE FUTURE

DISCUSSION p43 to p46

2.1 Protecting South Australia's environment through Programs for Environment Protection and Rehabilitation

Q1 How can we make the PEPR development and assessment process, and transparency after approval, better for the community, the environment, landowners, explorers and operators?

The "triple bottom line" referred to on page 44 of the discussion paper should include in the economic assessment, the negative impacts on vendor's declarations.

From regulations: Part 7—Programs for environment protection and rehabilitation 65—Preparation of programs (1)(c) include information on any consultation undertaken in connection with the proposed operations and, insofar as any issue appeared to cause concern to the persons with whom the consultation occurred, the steps (if any) that the holder of the tenement has taken, or proposes to take, to address those concerns; and.....

The words **appeared to cause concern** – are too vague. All concerns from the community, and landholders affected by the mining operation must be in writing and submitted by those parties to the mining operator to be addressed. Otherwise the mining operator may decide there were no causes of concern to be addressed.

As per discussion points on p43.... Agree with discussion points, but have added additional requirements, in bold type.

1. There will be no introduction of new declared weed species, **harmful microorganisms**, or pests (including feral animals), including an increase in these species on the site.
2. There will be no contamination of **water : surface or groundwater**, soil and vegetation as a result of activities.
3. There will be no permanent loss or **significant decline** of native flora/fauna abundance or diversity within the licence areas and adjacent areas caused by mining operations and vegetation clearing.
4. Any extraction or use of groundwater (in accordance with any licence) must not adversely affect third party users or dependent ecosystems. **Ground water use should be managed by the Natural Resources Management Act 2004 and subject to Water Allocation Plans. It should therefore be understood there may not be any water for mining. There should be no dewatering of Aquifers, nor mining through aquifers, nor lowering of water tables from mining activities. The Natural Resources Management Act 2004 should override the Mining Act, and the Natural Resources Management Act 2004 should be amended to reflect that. The Minister of Mining nor Governor Proclamation should be able to override protection of water.**
5. There will be no disturbance to Aboriginal artefacts or sites of significance unless prior approval under relevant legislation is obtained. **This statement is too loose. If SA is going to protect Aboriginal artefacts or sites of significance, then there should be no disturbance allowed at all.**
6. There are no public health or **individual** and/or public nuisance or **individual** impacts from air emissions and/ or dust from mining operations. On rural properties it may only be one family that is

impacted by the mine , but their health and well being is just as important as the general public.

7. The PERP should also include vegetation and livestock on agricultural land; there should be no contamination of agricultural vegetation or livestock.

DISCUSSION p46 to p48

Q1 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)? Yes

Q2 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

Q3 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

Q4 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

Q5 What other preventative tools do you think should be introduced to ensure damage to the environment can be prevented? Criminal charges should be brought against CEO's and Directors of Companies, if significant environmental harm occurs that should have and could have been avoided.

The Mining operator should self-insure for environmental damage, as not likely to be able to obtain insurance from an insurance company for environmental damage.

DISCUSSION p49

2.1.2 The scope of compulsive tools

Q1 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. Yes

Q2 What other compulsive tools do you think should be introduced to ensure explorers and operators comply with their environmental obligations? Quarterly reports available to public.

DISCUSSION p50 to 51

2.2 Ensuring greater government and industry environmental accountability and transparency

Q1 Do you see benefit in publishing relevant government, explorer and operator documents (where appropriate) online to increase government and industry transparency and accountability? Yes information should be released.

Q2 What other documents in addition to the abovementioned list should be publically disclosed to improve industry accountability? Independent audits of reporting and compliance. Frequency of inspections by regulators.

Q3 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

Q4 What other opportunities are there to increase Government and industry accountability? Regulators should be independent of the Mining Department as the Mining Department also promotes Mining and therefore there may be a conflict of interest.

DISCUSSION p52 to 53

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

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

Q1 Do you think the current tools and the proposed changes to regulatory tools in paragraph 2.12.1 will be sufficient to ensure leading practice mine closure and progressive rehabilitation (including the progressive rehab of exploration operations)? I support that the broad compulsive tools discussed on p50 of the Mining Review, should be enhanced 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.

DISCUSSION - PART 3 THE BENEFITS OF A STREAMLINED, RIGOROUS AND COMPETITIVE REGULATORY ENVIRONMENT

DISCUSSION p63 to ps67

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.

Q3 What other opportunities are there to modernise our regulatory services through advances in digital processes?

People interested in being informed of mining interests in their area could be registered to be notified by email or letter of exploration applications.

DISCUSSION P 71 to p73

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

Q1 What information do you think should be made publically available and at what times?

All information relating to the tenement should be made public as soon as practically possible.

Q2 What restrictions should be placed on disclosure and on what type of information?

No restrictions should be placed on disclosure of information.

DISCUSSION P75 to p76

3.5.1 Opportunities to modernise ELs and Exploration Licence Applications (ELA)

Q5 What other opportunities are there to modernise and streamline the tenement structure in South Australia? Develop a Master Plan for SA, exempting all arable land from mineral mining, except small scale extractive mineral mines. Extractive Mineral mining should not disrupt agricultural activities however, and therefore the land holder must have the right to refuse to waiver exempt land.

DISCUSSION P 83 to p84

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

Q1 Would a generic mining lease which covered both minerals and extractive minerals (with flexibility for change) benefit operators? No change. Should leave as is.

Q2 What issues could a generic mining lease create for landowners? Increased environmental damage, never ending mining on their property. Limited opportunities for land rehabilitation.

Q3 What other opportunities are there to improve or modernise mining leases?

Separate the Mining Act into two parts one for Extractive Minerals and the other for Mineral Mining.

DISCUSSION P 84 to p85

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

Q3 What other disadvantages or risks are there to granting mining leases for a term that reflects the predicted mine life?

Environmental harm and rehabilitation issues.

DISCUSSION P 89

3.7 Providing appropriate flexibility for necessary changes to operations.

Q2 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? Consultation should occur prior to granting an exploration or mining license by the Minister of Mining. However, exempt land should mean exempt land and landholders should have the right to refuse to waiver the exemption, and the operator should not have the right to apply to the ERD court for an order to waver the benefits of the exemption.

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