Local Government Association of South Australia

The voice of local government.

Leading Practice in Mining Acts Review of South Australia's Mining Laws

Submission

February 2017

Draft

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Introduction

Leading Practice in Mining Acts Review of South Australia's Mining Laws

Background

On 27 September 2016 the Minister for Mineral and Energy Resources announced the Leading Practice Mining Acts Review of the *Mines and Works Inspection Act 1920,* the *Mining Act 1971,* and the *Opal Mining Act 1995* with the view to introducing a bill to Parliament in mid-2017[i]. This review will allow for the modernisation of these laws to ensure South Australia stays a leader in adopting modern and efficient practices for exploration and mining activities.

The Resource Land Access Strategy Branch of the Department of State Development has carriage of the project.

Submissions are sought that cover feedback from the THREE discussion papers:

- Mines and Works Inspections Act 1920 and Regulations
- Mining Act 1971 and Regulations[ii]
- Opal Mining Act 1995 and Regulations

For the LGA SA the key themes for the LGA to discuss include:

- Borrow Pits
- "Rubble Royalties"
- Protocols for engagement between councils and mining proponents
- Red Tape Reduction

Discussion

Mines and Works Inspections Act 1920 and Regulations

Discussion Paper 1 is on the *Mines and Works Inspection Act 1920 and Regulations.* The *Mines and Works Inspection Act 1920* is nearly 100 years old and its original intent was around the protection of property and amenity, the prevention of nuisance and the health and safety of mine workers and of the general public who may be affected by mining operations.

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[i] 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.

[ii] section 77D Mining Act 1971; reg. 88 Mining Regulations 2011

However, the functions of this Act have now been largely replaced by more modern legislation offering far greater protections. The Discussion Paper discusses a number of options for reviewing the legislation and we are asked for our views on these options.

1 – Proposal

Support the repealing of the Mines and Works Inspection Act 1920;

Modernise and revise the Mining Act 1971[iii] to include applicable provisions of the Mines and Works Inspection Act 1920;

Consult Local Government on a definition for Borrow Pits that includes provisions to capture inspection, safety and remediation frameworks;

Exclude councils from paying Rubble Royalties;[iv]

The DSD Discussion Paper 1 *Mines and Works Inspection Act 1920 and Regulations* gives three options for stakeholders to choose from with their stated preference being Option B:

Option B

B. Repealing the Mines and Works Inspection Act and Regulations, and incorporating relevant provisions into other appropriate legislation as required (e.g. Mining Act and Work Health and Safety Act). If the Act and Regulations are to be repealed, specific options for mine manager competency (as outlined in the attached Options Paper (Appendix C), include:

B1. Relying upon the safety requirements for mine managers to be covered in the Work Health and Safety Regulations.

B2. Amending the Work Health and Safety Regulations to include specific requirements for the competence of mine managers.

B3. Retaining an assessment process and issuing of certificates of competency.

LGA Comment

To adopt Option B as the DSD suggests would result in one less piece of legislation, red tape reduction, and shifts the still applicable parts to other already established laws. As the Mines and Works Inspection Act and Regulations concentrates on the requirement for Mine Managers and Borrowing Pits are essentially viewed as a mining operation an examination of this relationship is required. That is, are councils obligated to manage their pits the same way a mine owner has to?

[iii] 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.

[iv] 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

It would seem more advantageous for councils if Option C was adopted:

Option C

C. Retaining the Mines and Works Inspection Act to regulate mining operations that lie outside the Mining Act, and updating it to reflect modern mining regulation. A number of other amendments to the Act should be considered, including (but not limited to):

- *Exempting all Mining Act and Opal Mining Act tenements:*
- *Transferring responsibility for safety related issues to the Work Health and Safety Act (an SafeWork SA); and*
- *Exempting local councils and Department of Transport, Infrastructure and Planning mining operations (e.g. borrow pits for road construction) from the Act, subject to suitable provision being made for management and rehabilitation under their respective Acts.*
- *Exempting local councils from paying royalties on extractions from borrow pits as the material extracted will not be sold, not intended for sale, nor utilised, or to be utilised, for any commercial or industrial purpose.*

Adopting this option would mean not repealing the *Mines and Works Inspection Act 1920 and Regulations* and thus little reduction in red tape.

Submission

The LGA SA recommends a further option be considered that includes the repealing the Mines and Works Inspection Act and Regulations, and incorporating relevant provisions into other appropriate legislation as required (e.g. Mining Act and Work Health and Safety Act). If the Act and Regulations are to be repealed, specific options for mine manager competency (as outlined in the attached Options Paper (Appendix C), include:

Relying upon the safety requirements for mine managers to be covered in the Work Health and Safety Regulations.

Amending the Work Health and Safety Regulations to include specific requirements for the competence of mine managers.

Retaining an assessment process and issuing of certificates of competency.

A number of other amendments to the Act should be considered, including (but not limited to):

- *Including all Mining Act and Opal Mining Act tenements;*
- *Exempting local councils mining operations (e.g. borrow pits for road construction) from the Act, subject to suitable provision being made for management and rehabilitation under their respective Acts;*
- *Redefine "Borrow Pits" to explain the activity but to only describe it as "Mining" or "Extraction" for the purposes of inspection, safety and rehabilitation; and*
- *Exempting local councils from paying royalties on extractions from borrow pits as the material extracted will not be sold, not intended for sale, nor utilised, or to be utilised, for any commercial or industrial purpose.*

And it is the exploration of "suitable provision being made for management and rehabilitation under their respective Acts" that councils need input into.

Discussion

Mining Act 1971

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.

2 – Proposal

Consult with the Local Government sector to include mandated early and ongoing stakeholder, including councils, and community engagement provisions to be included in a revised Mining Act;[v]

Include as an Appendix the Opal Mining Act 1995 in a revised Mining Act;

Local Government to have greater access to key documents.[vi]

LGA Comment

1.3.3 Notices to landowners under the Mining Act **A** bench-marked "community engagement protocol" **should** be **included in any new legislation.** In terms of maximising the economic development outcomes that could be derived from mining and extraction activities there needs to be new legislation that requires (or an alteration to 1.3.3 Notices to landowners, councils, State and Federal Government under a revised Mining Act) councils to be consulted at the same time as a landowner and also alerted when a tenement and or licence has been granted and that a "taskforce" is set up to meet with the proponents to commence engagement and start the processes to explore the opportunities.[vii]

Submission

The LGA SA believes that the earliest possible engagement from a proponent should be the aim so councils can assist with the community consultation process, commence economic development strategies that both leverage and contribute to the proposal and the proponent. To ensure this occurs local government should be included in an amended piece of legislation.

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

[vi] 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.

[vii] *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). 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.

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 entry. 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).

The Opal Mining Act 1995 be repealed and the provisions added to a revised Mining Act. This would make for simplification and reduce red tape.

In line with local government (Councils) being included in an amended "early engagement" piece of legislation, local government should have greater access to key documents. This access to be timely, mindful of commercial and departmental sensitivities, and will give councils a fuller understanding of the proposals or projects. It would allow councils to influence and thus less reactionary.

Summary

1. **Support the repealing of the Mines and Works Inspection Act 1920;**
2. **Modernise and revise the Mining Act 1971[viii] to include applicable provisions of the Mines and Works Inspection Act 1920;**
3. **Consult Local Government on a definition for Borrow Pits that includes provisions to capture inspection, safety and remediation frameworks;**
4. **Exclude councils from paying Rubble Royalties;[ix] and**
5. **Consult with the Local Government sector to include mandated early and ongoing stakeholder, including councils, and community engagement provisions to be included in a revised Mining Act;[x]**
6. **Include as an Appendix the Opal Mining Act 1995 in a revised Mining Act;**
7. **Local Government to have greater access to key documents.[xi]**

[viii] 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.

[ix] 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

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

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The voice of local government.

148 Frome St
Adelaide SA 5000

GPO Box 2693
Adelaide SA 5001

T (08) 8224 2000

F (08) 8232 6336

E lgasa@lga.sa.gov.au

www.lga.sa.gov.au