Mining Act 1971 Review

Comments on discussion paper, 24/02/2017

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The following comments and discussions are based on my 22 years of working in the mineral exploration industry, by far the majority in South Australia, much of it in greenfields exploration, but some in brownfields and pre-mining operations and resource development, working under the Mining Act and amendments.

These are my own comments and opinions and may not necessarily reflect those of my current employer. These comments are mostly from an EXPLORATION point of view and are operational, i.e. the issues commented on are ones that either directly affect the actual exploration operations or affect the direction of exploration.

I have attempted to follow the sections in the review and comment accordingly. I have refrained from commenting on areas of the review that I feel I have insufficient experience to offer valid comments. Similarly I have refrained from commenting on the blatant and unnecessary promotional aspect of some of the comments in the discussion paper.

Summary of main points

1) **Change the name of the Act to "Mineral Resources Act".**
2) **Either make a clear distinction within the act between Mineral Exploration and Mining OR establish a new Act SPECIFICALLY FOR MINERAL EXPLORATION.**
3) **Bring definitions in-line with those used in PEPRs and ILUAS/NTMA by changing "Notice of Entry" to "Notice of intent to commence early Exploration activities" and "Use of Declared Equipment" to "Notice of intent to conduct Advanced Exploration activities"**

4) **Remove the concept of mineral exploration being a mining operation.**
5) **Clearly define exactly what is defined as "Affecting Native Title".**
6) **"Exempt Lands" to EXCLUDE broadacre crop lands that do not have a harvestable crop- introduce "Seasonal Exemption"**
7) **Mining Warden to adjudicate on all matters regarding land access and other mining act issues. No statutory limit on monetary claims. Part10, section 66A to be revoked.**

Firstly, the Mining Act needs to either be renamed "Mineral Resources Act" to get away from being considered all about MINING. Exploration is NOT Mining (although under definitions in the mining act all operations within a mining tenement (which includes Exploration Licence) are considered to be mining operations).

One Real option is to separate out EXPLORATION from MINING into a completely SEPARATE ACT (much like Opal mining has its own act).

Mineral Exploration and Mining are hugely important to our society, as are other forms of primary production. Mining takes up a tiny proportion of agricultural lands. Agricultural lands take up in excess of 80,000km^2 of the state. ANY proposal to ban mineral exploration and mining from these areas is TOTALLY unacceptable. If any such proposal was brought before Parliament it must be fought against and defeated (Greens party policy-Protect farmers from open cut mining on cropping land.
http://greens.org.au/sa/policies/foodandfarming)

1.1 **"Using simple, accurate terms and language so it makes sense to everyone".** The mining act is a legal document. Who is the mining act for? Who are any Acts of parliament for? "Dumbing it down" so that anyone can understand it is fraught with dangers of misinterpretation or multiple interpretations and the belief that this is necessary is more indicative of the poor education standards in our state. Explanatory notes for the mining act and regulations should be in simple-to understand terms, but not the act nor regulations themselves. The Act itself needs to be in concisely structured language that leaves little room for interpretations other than that which is intended.

The Mining Act needs to be rewritten in such a way as to clearly distinguish between MINING (i.e. extracting mineral wealth from the ground) and MINERAL EXPLORATION (i.e. looking for mineral wealth beneath the ground) to avoid the confusion by landholders receiving Notice of Entry under the Mining Act. Quite simply, the "Notice of Entry" itself needs to be changed to remove all references to MINING , MINERS and MINE OPERATORS, to be replaced with Mineral Exploration, Mineral Explorers and Mineral Exploration licence holders, as do a number of the other forms that mineral explorers deal with.

"Notice of entry" needs to be changed to **"Notice of Intent to Commence Early Exploration Activities"**. This then brings it in-line with the Exploration Licence and Mining Licence. The terms "Exploration Licence" and "Mining Licence" MUST be kept.

"Notice of intent to use Declared Equipment" Needs to be changed to **"Notice of intent to conduct advanced exploration activities".** This then brings it into line with the definition in the ILUAS, NTMAs and PEPRs. Advanced Exploration activities are any activities that use "Declared Equipment"

As for the Extractive minerals for personal use by the landholder, this should be changed to come in line with the requirements for environmental protection and rehabilitation. If there is no regulation for Landholders Personal Use, there is no rehab of these diggings etc. Landholders requiring extractive minerals for personal use should be subject to the same regulations and requirements as the rest of the mining industry, including reporting, rehab and royalties where appropriate. Freehold ownership does not mean free-for-all to do whatever they like with the land. Perhaps a restriction on the volume of material extracted for personal use could be applied e.g. no more than $20m^3$ in any one hectare (except if it is specifically for the excavation of a turkey-nest dam- who has jurisdiction over this?)? Exceed this volume and it becomes an extractive mining/quarrying operation with all of the mining, safety, environmental and native title regulations and compliance kicking in.

Discussion point 1) Terms that need clarifying-those relating to MINERAL EXPLORATION still being referred to as MINING. To replace mining with mineral exploration in the act and associated regulations, plus the various forms, would be a big step in the right direction to reduce confusion and concerns of landholders. Landholders instant response is often "I don't want mining on my land", but it is difficult to explain the there is a big difference between mining and exploration when the word MINING appears over every document they see. In an ideal world, MINING and MINERAL EXPLORATION would have their own distinct acts, in the same way that Opal Mining has its own act.

Discussion point 2) personal uses for extractive minerals should be scrapped. All extractive operations should be classed as mining and come under the mining act. Small extractive minerals pits on farms should be fast-tracked, however there must be a requirement for rehab, i.e. infilling, re-contouring etc of any pits/excavations. More often than not these end up as a rubbish pit on the farms (from personal observations)being filled with a large variety of rubbish- THIS IS NOT PERMITTED ON AN EXPLORATION LICENCE without all sorts of approvals, so why should it be OK for farmers to do?, - does the EPA get involved here?

Discussion point 3) Defining new terms-
PLEASE CLEARLY DEFINE exactly what affects enjoyment and amenity of the land i.e. part 9B)
Define Mineral Exploration as being distinct from Mining Operations.
Mineral exploration- All activities intended to discover and define mineral occurrences beneath the surface of the land up to and including the application of a mining lease application or MPL..
Mining Activities- all activities within or concerning a Mining Lease or a Mining Lease Application.

1.2**"Technical assessment processes are Transparent"** Is this referring to Mining Lease Applications or Exploration Licence Application, or BOTH? Where is the transparency with the assessment of ERA applications? With

undergoes its first renewal (usually two years).This gives the exploration company enough time to utilise any in-house-developed advantages in its first term of exploration tenure. ELas, MPLs, MLAs MCs are all on SARIG, with the applicant's name and other details
Public submissions should be publically available without having been edited. They should be available as complete documents or not at all. They should all be made available or none at all. They can be summarised, but the original submissions should also be available on-line as downloadable PDF scans of original documents, with the contributor's names and contact details available to all, as a condition of submission, to guarantee authenticity and to allow readers to assess the true bias of submissions.
All approved PEPRS should become public documents to allow stakeholders to know where they stand in relation to environmental concerns.
Exploration compliance reports should also be public documents once they have been assessed and accepted. This demonstrates that the Exploration/mining companies are complying with the regulations and PEPRs.
More details on what is referred to in "Incident Reports" needs to be provided- What type of incident- Environmental presumably, but does this also include OH&S incidents?

Discussion point 2, Release of data. Operators are already required to release data. Annual reports contain all of the new technical data. This data is held confidential until the licence expires or the operator agrees to release the data. The Minister has the right to release this data, with the operator's approval, after five years. There is no need to change this in the mining act. The statement regarding "Traditional owners, it helps them get a better understanding...rather than having to wait five years" Are they really interested in the geology and how it might affect their Native title claims, or their dreamtime stories or their sites of significance? This is immaterial to any discussion. The TOs have their cultural sites and are independent from any geological information that the explorers may supply. Let them wait just like the rest of us...There is no need to change the current regulations regarding release of exploration data.

assessment of PEPRs? With assessment of PACE proposals, with Exploration Compliance Reports?

Community concerns about projects has been the responsibility of the exploration or mining company, as in the "Social Licence to Operate" (another meaningless piece of jargon) that the departments have been pedalling for so long. From an exploration point of view, much of the concerns that landholders have is addressed on a personal basis through one-on-one meetings and discussions. The whole concept of "Social Licence to Operate" is garbage. Exploration and mining companies have a right to operate under the mining act. If the companies operate in compliance with the mining act then that is all that is needed. It is up to the companies to decide whether they use a PR organisation to promote their "Goodwill" to the community or whether they just get on with it and do what they are legally entitled to do, with the knowledge that if they are in breach of the mining act or any specific terms of their licence then the licence can be cancelled. The Act must not become involved with social issues.

What is meant by "Balanced" views? There does not need to be a "Balance", particularly when an argument based on science and facts (rather than general feelings, emotion or popularity) is strongly in favour of one side. Just because something may be popular does not make it right (for example banning exploration and mining on freehold lands), although we live in a society regulated by politicians who generally believe that popularity is what it is all about.

Discussion point 1, Access to documents should be assessed on an as-needs basis, not carte-blanche. Licence applications should be kept confidential until they have at an absolute minimum, been granted. The EL applications, particularly if it is an ERA application, often contain sensitive information regarding exploration concepts and models, plus a proposed work plan and budget. To have these released as public documents may take away competitive advantages that may have been developed in-house. EL application documents should remain confidential until at least the EL

Discussion point 3, Other information disclosed- The overall results of Heritage Clearance Surveys should not be considered confidential. If a survey has identified areas of significance then it should be placed as a layer on SARIG or similar. Also areas that have been subject to an Heritage Clearance Survey and have been assessed as having no significant sites, i.e. if exploratory operations were to be conducted they would not affect native Title, should also be available on SARIG as a polygon layer. Costs of unnecessary Heritage Clearance surveys will increace over time as subsequent companies currently are forced to conduct clearance surveys over areas that have already been surveyed for previous explorers. Exploration being used by NT groups as a "Cash Cow".

1.3 Land Access process and expectations

1.3.1 Land access

Discussion point 1, Opportunities to improve the entry to land process- FREE ACCESS TO THE LAND TITLE OFFICE DATABASE. In non-pastoral areas gaining the landholder's details is a major job if an exploration licence is in an area of many titles. This time-consuming job would be simplified if exploration companies had direct access to the LTO database through SARIG. and could do a search by the EL boundary.

1.3.2 Entry to exempt land

Most mineral explorers would disagree with the Department not wanting to change the foundations of this framework. The whole exempt lands clause needs re-writing to get rid of the concept of Cultivated Fields and Plantations land being exempt and then having to gain a Waiver to allow the mining act to apply. These terms need to be removed from this part of the act, to allow easier access to the huge areas of the state covered for six months of the year by wheat, barley etc and then barren for the other six months, but still with all of the access difficulties imposed by the Exempt status. Introduce another term e.g "broadacre lands" which have their own status, not exempt but still requiring some form of access agreement IF exploration activities are conducted between seeding and harvest time. It is

important that the broadacre farms have some form of status, so that the farmers still feel special. Many farmers seem to believe that their farm is VITAL to the survival of the human race and often use the expression "You cannot eat rocks" (Conversely, you cannot drive a loaf of bread) and believe that mining is going to destroy food production in the state. Campaigns such as "Lock The Gate" and others spread misinformation ("Alternative truth??) and lies about mining and the way the Mining Act currently works, as well as other lies. The mining industry needs some good PR people to spread the word about how VITAL mining is to the future of our society (SACOME do not seem to be as active as perhaps they should be), and that mineral deposits are not just confined to "somewhere else" (Typical NIMBY reaction by some farmers to exploration access requests). There seems to be no recognition of the amount of environmental damage done by agriculture, considering that the 80,000 km^2+ of farmlands has been stripped of most native vegetation and associated fauna. Compared to the minimal amount of environmental damage done by exploration and mining, Agriculture gets it easy. Both are essential for society but exploration and mining get far disproportionate attacks regarding environmental impact. In my role as Exploration Geologist In S.A. I have negotiated a number of access agreements in "Exempt Lands" and the initial reaction is nearly always "I don't want to lose my farm, so you can stick your paperwork up your arse". Trying to negotiate access to take a small number (50 or so) soil samples and do a gravity survey on marginal wheat lands near Kimba, one farmer's written reply was along the lines of "You can buy my farm for $1,000,000 with an option on the farm equipment, Otherwise there is NO WAY IN HELL I'm letting you onto my farm".

Get rid of "Cultivated Fields" and introduce "Seasonally Exempt Broadacre lands", with the definition changed to "Exempt between the start of seeding and the end of harvest" and not exempt between the end of harvest and the start of seeding, i.e the intent is to make broadacre farmlands available for exploration when there is no crop planted without having to negotiate a lengthy access and compensation agreement, yet still

have the option of access during crop season by negotiation of an agreement.

The mining act as it stands ensures that landholders are entitled to compensation for losses due to exploration and mining activities and any subsequent losses or damage.

Discussion point 2) Opportunities to clarify or amend exempt land provisions? Isn't this what this review is all about, an opportunity to amend and clarify what is meant by Exempt land? See above!

1.3.3 Notices

Notices to Landowners- the NoE needs to be changed, the Use of Declared equipment needs to go. The concepts of Early and Advanced exploration need to be used. Early exploration is non-ground disturbing under the existing legislation and this could be the initial Notice of entry, "Notice of Intent to Commence Early Exploration Activities", followed by the "Notice of Intent to Commence Advanced Exploration Activities". This then brings it into line with the definitions in the ILUAs and PEPRs. Early activities do not necessarily need an ILUA, as they are considered not to be affecting native title, more of that later....Also early exploration activities can be conducted under the generic PEPR.

1.3.4 Court processes

Discussion point 1) Landowners' equivalent rights to commence negotiations? From an exploration point of view, landholders are kept fully informed at each stage of an exploration program about what will happen. The Landholder's questions and any concerns are discussed, solutions are agreed upon, based on prior experience in the region. The landholder cannot commence negotiations with the exploration company as they do not know what the proposed exploration program will be until the exploration company commences discussions and negotiations. This is a rubbish discussion point, from an exploration point of view. From a mining point of view the negotiations should have got to a very advanced point before actual mining commences, if not then there is something seriously

wrong with either the mining company or the landholder....Discussion point 2 follows on in the same vein, not really relevant.
Discussion point 3 regarding notice of use of declared equipment, see the discussion points in the previous section "notices".
Discussion point 4, Are Notices of Declared equipment relevant? No! replace them with "Notice of Intent to Commence Advanced Exploration", which is in line with the requirements of initiating a PEPR, Native Title Heritage Survey and NTMA.

Discussion point 5), What information do Landowners want and when? It depends on the landowner, some want a lot of detail, some are not too fussed. This cannot be regulated with specific time-lines, as each landholder is different and has different expectations.

Discussion point 6) Access to court proceedings- The Mining Wardens Court should be re-introduced for the purposes of determining land access terms and conditions.

Discussion point 7). Appropriate time for Landholders to issue proceedings? Surely it is up to the exploration and mining companies to determine this, if/when plans change. The companies should have an access and compensation agreement with the landholder, which sets out as best as possible the impact that the operations will have on the land, on the landholder's business and on the landholder's amenity. If the program/operations change or are modified, the original agreement should have been written to accommodate this. If not, then the landholder and company should negotiate an addendum to the original agreement or through the mining Warden's court.

1.3.5 Engagement and information to Aboriginal communities
Engaged and well informed about what, precisely?

Discussion point 1) What opportunities are there to work together...Native title needs some changes, continuity within the ILUAs, the concept of early

exploration activities needs to be emphasised as not affecting Native title, and this needs to be consistent across the state. Some ILUA/NTMAs are written/interpreted such that explorers need an agreement/ILUA before setting foot anywhere in the tenement, let alone taking any samples, even from an old mine. DSD Minerals needs t sort this out, to give explorers/miners the consistency such that they know where they stand regarding Access, before they peg an exploration licence.
Discussion point 2 Do we need better access to information? SARIG and the Minerals website has plenty of information to help understand the Native title process and mineral exploration/mining.

What exactly do Native title holders want to know from the mining industry? The answers are all there on SARIG, on the Minerals website and on the individual companies' websites. In an ideal world, public meetings with NT claimants on a regular basis would be a good idea, but in reality they may be difficult and expensive to organise, as they may all want their payments as "Specialists", as they do on Heritage Surveys. Travelling time/kilometre rates, food and accommodation? More unnecessary expenses for the exploration companies.
Experience with NT Heritage surveys seems to be that they are run on a very ad-hoc basis, very unprofessionally organised for the money that the "Specialists" get paid per day. On a recent survey one elder was saying that he didn't know why other members were on the survey, as they know nothing about the area... How about a bit more transparency from the NT claimants rather than them just milking the Exploration/Mining Industry cash-cow?

1.4 Payments and fees recovery

The proposal here seems to be the payment of environmental rehab BONDS before any exploration starts. This is TOTALLY UNACCEPTABLE, more milking of the Exploration/Mining Cash-cow. Penalty interest or statutory debt? Jargon for squeeze every drop we can.

Slippery-slope argument, if bonds are demanded for some projects prior to approving PEPRs, then how long will it be for them to become required before granting ANY PEPRS?

Discussion point 1, Payments due to the Gov't should not necessarily have priority over other obligations. Primary obligation of mining companies (including exploration companies) is to the shareholders. If the imposition of penalty interest and /or statutory debt will cause a project to undergo financial hardship (ie project runs in the red) then these fines should not be recovered until the company is more financially secure.

2 Sustainable Futures

Sustainability in mining is an oxymoron, Mining is not sustainable, there are only finite resources....

2.1 PEPR

The PEPR Process was supposed to be to REDUCE RED TAPE, however each PEPR that I have submitted seems to be returned asking for more details, even PEPRs for drilling programs in a tenement with an already approved PEPR from a previous identical drilling program. Although it is in the Act, the way it now seems to work is not as intended. The Act is OK, but it is the way that the PEPRs are assessed and etc that does not seem to be working. The ePEPR seems to work in a technical sense, but still seem to get demands for more details, even though the proposed drilling program may be quite minor and really of low impact.

2.1.1 Preventative regulatory measures.

This section brings up the possibility of Security Bonds. Although this is in the Act, this must not be allowed to be made compulsory for exploration. According to the blurb "Since 2011 ALL compliance directions...have been complied with", so it would seem that there is NO NEED to strengthen the preventative measures.

Discussion point 1, Bonds on explorers before commencing activities.

NO! Pre-exploration expenses are high enough. This will further discourage exploration in SA. I have worked on a project in which a bond was required, it took several YEARS after the (small)drilling program was finished to get the inspectors to sign off and release the bond, even though there was no problem with compliance with the Exploration Work Approval (Pre-PEPR days).

Discussion point 2, Delay expiry of a tenement until a bond is paid- NO, this will further delay other explorers from applying for it. There is enough of a delay as it is in the process, with the time to assess an application, advertising, etc, particularly if it is through an ERA process, the outcome is significantly delayed.

Discussion point 3, Adopting a more streamlined process- YES. IF a tenement is surrendered without satisfactory PEPR/ECR compliance, then the tenement holder (or manager, or whoever was responsible) should be black-listed from applying for or renewing other tenements until the non-compliance has been redressed.

2.2 Greater Environmental transparency

Discussion point 1, Publishing of relevant documents. The key word is relevant---Who decides what is relevant? All PEPRs should be released as public documents once the Exploration Compliance report has been accepted, then the public can see that any problems have been rectified. This includes any compliance directions etc and the compliance reports. Discussion point 3, Timely payment of rent- if rent is more than, say three months behind, the licence should be cancelled, and prohibiting renewals, yes, black list companies from applying or renewing tenements if they have not complied with their Licence obligations.

2.5 Regulation of Private Mines

Discussion point 1 Regulation of Private mines. Private Mines should be revoked if there is no provable and significant production from the mine over a period of (say) five years. This will then allow other companies to apply for the area, and to then use modern exploration and assessment methods to perhaps define a new resource. If private mines are still in

production, any new production/operations should be under the same regulatory regime as any other mine, i.e. comply with Safework SA, have a PEPR (and comply with it), EPA, DEWNR, Native Title etc, all of the usual hoops that Mining-Act-compliant mining and exploration have to go through, including payment of royalties.

3.5.1 Flexible sizes and shapes of tenements- This makes absolute sense. With modern GPS systems and digital mapping databases, conforming to a graticule system is redundant. The ridiculous situation in 2002 when I was involved with pegging some 50+ Mineral claims for Southern Titanium over the Mindarie Mineral Sands deposits would have been avoided if the act allowed appropriate flexibility in size and shape of Mineral claims and mining leases to allow the mining leases to follow the shape of the ore body (in this particular case, 300m by 20 km). Similarly for Exploration licences, the geology does not follow a graticule system.

Overlapping ELs for differing commodities is an absolute NO! Many of the Junior companies consider themselves to be multi-commodity explorers, and so if they have to then peg multiple exploration licences for different commodities this will be yet another major pre-exploration expense. Multi-partner Joint-ventures work well in general, as long as the Joint-venture agreement is properly written. The EL system seems complex enough from an administrative aspect, with renewals and reapplications, annual and six-month reports, Annual compliance reports etc. Having multiple ELs over the one area could become an administrative nightmare.

3.5.2 Subsequent Exploration Licences retaining the same EL number YES!
3.5.3 ERAs The ERA system needs to be scrapped and reverted back to the previous system. With SARIG, all explorers can see when an EL is about to expire, can see if the current holder has put an Ela over it and can prepare an Ela accordingly. The real problem with ERA process is that there is no transparency to the process, to the assessment of the applications. There is a general feeling that the company that promises the most in terms of spending will get the tenement. Another problem is not allowing the ERA

application to have any shape other than that of the expired tenement. If, after assessing the previous explorer's data, there is good reason to want to apply for the area and explorer may not want to apply for the whole area, as this reduces the various fees and exploration expenditure requirements.

3.5.5 Terms of ELs EL terms of up to 20 years is, in effect, land banking, and will tie up access for exploration for years. This will effectively prevent the junior companies (the ones that do the majority of greenfield exploration) from being able to peg prospective areas and pretty much force them to essentially become contract explorers for the BHP-B, OZ and Rio through Joint-ventures. This can only stifle competition in the industry, and thus stifle exploration overall.
The 2-year initial grant with renewals up to a five year term followed by re-application is a system that works well and should not be changed. It ensures the turn-over of ground if a company does not explore, thus allowing other companies to have a go. This is good for the exploration industry, good for expenditure, good for the state, good for increasing the prospects of a major new discovery.

3.5.6 Forfeiture of ELs--The current system of minimum expenditure seems to work well enough, especially if the department actually cracked down on it. Allowing other explorers to seek forfeiture would favour the major companies and should not be allowed to happen. Junior companies often have good reason to not be spending money on a specific EL, for example waiting for land access, raising extra cash, busy on other projects but still intending on spending on the EL in question. If the department is not satisfied that there is good enough reason for not keeping up with expenditure and no foreseeable spending, then the tenement should not be renewed or re-granted.

The big question of clarifying Part 9B has not been raised in this review. This is an important point, as it is a very real issue for explorers and miners alike.

Exactly what constitutes "Affecting Native Title" has not been defined.

A comment from a very senior person in DSD Minerals a few years ago was that any exploration using Declared Equipment would affect Native Title and that exploration not using Declared Equipment did not affect Native Title. This interpretation is wrong, or at least is not how it seems to be interpreted in the real world of Mineral Exploration and some Native Title groups.

The ILUA definitions seem to vary between differing claims, or the interpretation varies. Some claimants declare that ANY mineral Exploration Activity affects Native Title. Some are happy with "early exploration" not affecting native title.

This is a major point that needs to be addressed in this review, but has been missed.

Exploration companies need consistency, and consistency is not there. In one case, sending Notices of Entry to the appropriate Landholders in a certain area, including the Native Title holders, resulted in an account for $900 for preparation of documents and an ILUA arriving in the mail, with all of the usual sign-on fees and heritage clearance surveys to be completed BEFORE commencing ANY exploration within the EL. A different area and different claimants has different interpretations, allowing early exploration activities without an ILUA or Heritage Clearance Survey.
The exploration industry demands this clarification.