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EXPLORATION, MINING, QUARRYING, COMMUNITY AND LAND ACCESS

Thank you for the opportunity to prepare a submission to the Mining Review.

23rd March 2017

Introduction

I am Catherine Pye, a General Practitioner from Mount Gambier and I am a member of the Limestone Coast Protection Alliance. I have previously prepared a submission for the inquiry into unconventional gas in the South East of SA and been heavily involved with the Petroleum side of things. I have been part of a legal appeal through the Environment Resources and Development Court against a Petroleum Company's development plan. I am only familiar with some of the issues relating to appeals through the Wardens Court and the mining legislation. As a community member I am particularly concerned about land holder, neighbour and community notification and consultation. As a General Practitioner, I am concerned about the public health impacts of dust, noise and water contamination and the impact of mining on climate change and our natural environment. I am also concerned about the mental health of communities and individuals from the stress and uncertainty of mining tenements which are on their land or nearby.

I applaud the Government in wanting to improve 'Transparency, to be Flexible, Objective and Inclusive' and think that a review of the Mining Act is needed.

I fully support the aims to :

- improve transparency and land access engagement, negotiation and court resolution processes
- implement flexible financial assurance models that increase community confidence in mine closure and environmental rehabilitation performance and outcomes
- reinforce the existing leading practice environmental protections offered under the *Mining Act 1971* (SA).

Community Consultation

Community consultation is not the same as obtaining social licence.

In the past community consultation appears to consist of the company telling the community what it intends to do and stating that this is safe and environmentally acceptable. When community members raise concerns and objections these are brushed off and the company proceeds to do what it intended to do in the first place.

This is not true and equal consultation, and unless communities see that the companies are genuinely prepared to considerably adapt their procedures in light of community concerns then they are unlikely to get community acceptance.

In my opinion the current process of community consultation is inadequate and unfair. There does not appear any obligation on a mining company to agree/negotiate/satisfy the landholders or communities concerns.

1.1 Terms clarified

Specifically regarding the Mining Act 1971, I have read some of this Act and I have found it hard to understand. I think this is due to the legal wording and complexity of some of the issues. I especially find it hard to follow sentences with double negatives.

I think reduction in complexity of sentence structure by removing double negatives would help in my ability to follow this Act.

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

I agree that 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) and the terms and conditions of grant of a licence or lease.

I would like to see public submissions (and/or summaries of those submissions) and submissions from other government departments made available. I would like to see the response of the mining company to these government submissions and the outcome of this discussion. I base this on the knowledge that I have seen comments/questions by government departments (DEWNR/EPA) to petroleum companies, which appear to be ignored/discounted by petroleum companies for reasons which I don't understand. This has caused me concern and led me to doubt the fairness of the review and submission process in preparation of applications and PEPRs and environmental statements etc.

I strongly support access to approved programs for environment protection and rehabilitation (PEPRs); and compliance and incident reports submitted to the Regulator by explorers and operators. This should be early on and if these documents are modified then the current document needs to be available.

I would like to have access to online information on baseline and ongoing regular testing and monitoring of air, soil and water quality parameters.

I think that a Health Impact Assessments should be required for all mining projects.

1.3 Making sure everyone understands land access processes and expectations

Pastoral Leases

I understand that large areas of SA are pastoral leases and that this land is effectively public land that has been leased.

I am therefore unclear about mining on pastoral leases. Who is notified about a proposed mining tenement on pastoral lease land? How are they notified? What legal standing does the owner of the pastoral lease have and what right of objection? Similarly what standing does the community have or local community groups to object?

Are mining proposals on Pastoral Leases subject to the same regulation and environmental protection? Do they have Programs for environment protection and rehabilitation (PEPRs) the same as freehold land?

1.3.1 Entry to land generally

Notice of Entry

Currently, I don't believe enough time is given; or that the notification process involves 'neighbours' who should know; or that there is enough understanding that you can object and how to do this.

I think that the Notice needs to be given in person and that neighbours need to be informed as well. At least 3 months notice must be given and if the person is away then the Notice can't be served until that person is informed and able to respond in person.

More information needs to be provided to the land owner and neighbours about how to object to entry including legal implications and the time frames.

1.3.2 Entry on to 'exempt land'

I don't think mining tenements should be allowed on 'Exempt' Land.

Terms that need clarifying.

Exempt land is a misnomer if mining is allowed on it.

a) Clarify what is a cultivated field? Is improved pasture a cultivated field? Is pastoral lease a cultivated field?

If mining tenements are allowed on 'Exempt' land, which I don't support, then what are the buffer zones? I hardly think that mining should occur within 400m of a home, or 150m of a spring, well, reservoir or dam. I think this is likely to increase risks to that home owner and the water of contamination. If the law states a wind turbine has to be 1km from a dwelling, then a mine should be at least 1km away and maybe more, depending on wind direction, lie of land and natural water courses.

I also think buffer zones need to exist around parklands, reserves, forests and water reserves taking into account visual amenity and health. Plus environmental factors such as prevailing wind direction, lie of the land, natural water flow patterns and flood plains.

1.3.3 Notices to landowners under the Mining Act

Three (3) months notice should be given to landowners to allow for careful and informed understanding; discussion with community, neighbours; allow time to seek legal advice and to clarify further points with mining company.

As I have stated notice should be given in person. Neighbours should be informed as well.

The landowner should continue to have to sign document to give approval of Notice of Entry.

I understand that the Notice of Entry goes with the land so that if the landholder sells the land then the new landowner is under the same obligation to the mining company. I think this needs to be made very clear and that any Notice of Entry document needs to be part of the property sale documents so that the new owners understand this.

If not done so already, it should be made clear at sale of land that a mining tenement covers the land.

I am also concerned about the time frame of the Notice of Entry and would like this clarified. How many years is it for and how many times can an exploration or production licence be renewed? Under what circumstance and when (if ever) does the landholder have the right for review? What length of time is allowed for a Retention Licence? It would seem indefinite, in which case there is ***ONLY one time*** that a landholder can appeal a Notice of Entry and that is at the start before anything happens. This is not reasonable as the full extent and impact will be unknown to the landholder at that time.

If the Mining company has the right to renew every 5 years then I strongly support that the landholder has a similar right to review the Notice of Entry and conditions of licence every 5 years. And similarly with a production license there should be right of review.

I also feel that ***new landowners*** should have the right to review the terms and conditions of the licence.

Under the current Mining Act, explorers and operators have a statutory right to commence negotiations in relation to exempt land by issuing a notice under section 9AA(1) of the Mining Act.

I don't know how hard or easy it is for mining companies to gain access to Exempt Land, and it concerns me that they can do this at all. As I have stated, I don't think that mining should occur on Exempt land and I think that the law should be changed to reflect this.

As this appears to be currently allowed under the law, and if this is to be continued, then I support landholders having the same rights as mining companies with respect to issuing a Notice under Section 9AA(1) of the Mining Act.

Landholders should have the right to refuse mining on exempt land. This should not have to go through the Court system, in other words, mining companies should have no rights of appeal against a landholder's decision.

I don't agree with compulsory acquisition rights over exempt or private land.

DRONES

This section also makes reference to aerial vehicles which I assume are drones. If these are to be used then the dates, times and locations of their ongoing use must be provided to the

landholder and agreed upon. I am aware that there have been issues with drones and eagles and other birds, and I would like to know if there impact is being monitored.

Declared equipment

I think that this should be retained and expanded. What are the reasons that no one has objected ? Is this because no one is aware of this legislation; or that it costs too much to go to court and object.

1.3.4 Fast and fair court processes and access to justice

In my opinion the Act and therefore the Court system is stacked in favour of miners and it is clear to me that it is there to provide monetary compensation to land owners. There is an expectation that 'money' can compensate for loss of farm and livelihood.

This is unjust and simplistic, as a farm has much more value than just 'the money'. There are some things that will never be able to be covered by compensation. Such as lifestyle, a farm that has been in family for years, loss for future generations, independence, security, peace and quiet.

I think it should be possible to prevent mining on your land if this will impact on your water, air, health or ability to farm.

My further understanding is that if the Warden's Court rules that compensation was available and reasonable, then the land owner is expected to accept this ruling and ***has to pay*** for taking the matter to the Wardens Court.

I don't think this is fair or reasonable.

I believe that the Wardens Court needs to have the powers to consider values and beliefs outside of their monetary value. This would help to bring the landholder/community towards an equal footing with the mining company and provide a real avenue for objection.

A system that allows a mining company to win every land access dispute is not fair. Nor is a system which allows the person with the most money to win and that does not place a value on things that have no monetary worth.

I am concerned that the existing system is unfair and biased in favour of mining companies. Landholders, neighbours and communities need to be provided with more time, information, education, and access and improved availability to legal advice to improve the inequity and unfairness of the system.

Access to a court system should be retained and expanded. Funding and availability of environmental legal service is needed. Access to highly trained and skilled environmental lawyers is essential.

I don't think the focus should be on fast access for miners to land. In my opinion this will create conflict as corners are likely to be cut. I think landowners should be given adequate time and information and I suggest at least 3 months to consider the pros and cons of the proposal.

All details of the proposal need to be forthcoming when a mining company applies for land access. And if these details are not forthcoming at that time, then a new Notice of Entry needs to be served when they are available.

1.4 Ensuring that payments and fees are recovered

I understand that SA Mineral mining royalties are a maximum of 5% and under a three tiered system. The last review of this appears to be in 2010 when they were increased. http://www.abc.net.au/news/2010-05-03/royalties-review-could-take-more-from-sa-mining/419762

There is a wealth of information on the internet about royalties and much has been written, and many reviews have been done.

WA is a state which has vast mineral resources and yet appears bankrupt, I hope that SA does not follow a similar pattern.

I therefore strongly suggest that the State review Australian and Worldwide policies on royalties. I think this needs to be increased, as the amount of money that the public receives for allowing mining on public land seems very small compared to the amount that the companies are earning.

For instance please explain why companies get $4.5 billion and the governments only gets $145 million in royalties which is not even 3%?

It would appear that this government is failing to collect royalties while allowing companies to grow rich.

> *Norway operates a rent-based tax on the petroleum sector. It is based on the company income tax system, but utilises an uplift on expenditure to exempt the normal return and reimburses the tax value of exploration expenditure for companies in a loss position.*
>
> ***The total tax rate on resource rents is 78 per cent, consisting of a 50 per cent rent-based tax rate and company income tax of 28 per cent, with no deduction at the company tax level for the rent-based tax paid.***

Norway have used royalty payments from their resources for a Government Pension Fund Global to ensure ongoing benefit for future generations who miss out on benefit of the resources. http://www.abc.net.au/radionational/programs/latenightlive/what-australia-could-have-learnt-from-norway-sovereign-wealth/7797560

I believe that underselling our State assets will undermine the future of our State, to the detriment of the current and future generation.

Mineral wealth will remain in the ground, but once removed it is gone and cannot be used again to provide any material benefit to the State.

In my opinion SA should increase royalty payments and consider setting up a fund such as Norway has done.

Non payment of fees, rents or royalties to the Government should be treated very seriously. These payments should be seen as a high priority, number two after workers entitlements.

If not paid then the Board of Directors should be held personally responsible and made to pay back the fees without needing to be taken to court.

If fees are not paid then the individuals should be blacklisted and not be allowed to run any other company in Australia. They certainly should not be allowed to take out any EL or EML or any tenements in the future anywhere else in Australia.

A National Register of individuals who are on the Board of Companies who fail to pay fees, rents or royalties should be maintained.

Penalties for breeches of the Act are inadequate.

1.5 Ensuring that the community is informed of any changes

Any change in mine size, depth, noise level, air pollution, amount of dust, changes in amount of water to be used, or where the water comes from. This should be notified to landholder and the landholder given the right to object. If any of these changes occur then landholders should be consulted and given right to object. Plus other government departments such as DEWNR and EPA need to be informed and be allowed to respond.

Any change should be notified.

Any significant change - need to consult.

Otherwise if changes occur then this in my view is not transparent and I feel I have been misled by the company and government allowing the change without notification or consultation.

As stated above consultation must be a two way process with the mining company prepared to genuinely make considerable change in light of community and landholder objections.

Sustainable futures

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

Our environment must be healthy for us to live healthy and full lives.

Therefore, a health impact assessment must be included in the triple bottom line to assess impact on health.

A Climate change impact assessment needs to be performed with the expectation that carbon neutrality is mandatory for all projects.

The company should be expected to pay the full cost of land rehabilitation, with a percentage of expenditure put in a trust fund for rehabilitation each and every year.

Environmental insurance needs to be taken out by companies to pay for environmental accidents and protect landholders and communities.

PEPR

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

Low impact projects should require full community consultation. Community and landholders should be able to assess PEPR and comment on this for low impact projects.

All details and impacts should be made available at the time of community consultation and it should be made clear that this is Community Consultation and that it is a requirement of Law.

Submissions by other government departments into low impact projects should be made available online and to those who request these documents.

2.1.1 The scope of preventative regulatory measures

Operators previous experience should be taken into account.

If the director of company or any members of Board of Directors or major shareholder, has previously been involved with a company that is under investigation for environmental harm; financial mismanagement; or failure of rehabilitation then they should not be deemed fit to operate in SA.

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

I support amendments under the Mining Act to allow for the pursuit of an operator, or management, in relation to any environmental damage that has occurred on a site after the tenement has expired.

I support the delay of approval of a PEPR, or other approvals under the Mining Act, if that particular operator has non-compliant operations elsewhere in Australia, the World, or other non-compliances under the Act.

I 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).

I agree that the Department should be able to prohibit or delay the expiry of a tenement until an explorer or operator has complied with all outstanding obligations.

I agree that the Department should 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.

I agree that the process should be open for public comment (3months) 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.

2.1.2 The scope of compulsive tools

I 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.

I support preventing these 'blacklisted' companies and directors from taking out future tenements in SA and interstate. A national register of directors of companies for non compliance.

I don't see that the penalties are sufficient, given the large amounts of money being made by these directors and companies.

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 sites

What other mechanisms should the Department consider to promote or mandate leading practice mine closure and progressive rehabilitation behaviours?

In respect to 2.3 and 2.4 I understand that currently the Australian Senate is reviewing rehabilitation of mine sites across Australia.

I would urge the State to review the recommendations arising from this inquiry and consider their implementation.

I am aware that in April 2016 Queensland enacted the 'Chain of responsibility Laws' following the failure of nickel mine in that state (Clive Palmer Law) http://www.brisbanetimes.com.au/queensland/queensland-passes-clive-palmer-law-to-protect-state-from-resource-cleanups-20160421-goccy3.html

So it is clearly an Australia wide problem.

In June 2016, the Australian Conservation Foundation (ACF) released two reports into the problem of over 50,000 abandoned mines across Australia. It is worth noting that 75% of mines close unexpectedly or with no plan for rehabilitation. https://www.acf.org.au/mine_rehabilitation_overhaul_needed

The report from the Mineral Policy Institute (MPI) "Ground Truths" Taking responsibility for Australia's mining legacies states that

> *Recent regulatory changes in Western Australia, Queensland and the Northern Territory, and the findings of the Hazelwood Inquiry all provide further evidence to show that closure reform is clearly needed. The transition to successful mine closure demands coordinated action, a requirement that has been stated frequently and emphatically for more than a decade. The way forward is for states to implement locally specific rules within a national framework; where risks are acknowledged, impacts reduced and closure and management activities covered by adequate and secure financial instruments. Encouraged and guided by these changes, the mining industry can then improve on current practices, address the mistakes of the past and ultimately leave a positive legacy.*

2.5 The regulation of private mines

I agree that revocation of private mines should occur without the expense of the Wardens Court.

I support the regulatory provisions relating to operations on private mines to move in line with other types of mining tenements. This may include the application of provision relating to PEPRs, compliance and enforcement, transparency, bonds and royalties (with transitional exemptions).

I further support revoking inactive private mines by way of introduction of transitional provisions that will automatically revoke private mines deemed inactive (or seek an appropriate determination by the Governor) in order to avoid the incursion of legal costs by the Government in the current Warden's Court processes.

2.6 The Extractive Areas Rehabilitation Fund

I urge the State to review this policy in light of the Senate inquiry and the work being done by MPI and ACF see above.

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

I think that the transfer of ownership and responsibility for rehabilitation needs to be carefully considered and adequately provided for in the Act.

I believe that there needs to be indefinite and ongoing monitoring of groundwater quantity and quality after the mine has ended.

Any cases of soil, air or water contamination needs to be recorded and publically available such as in a national online register. This information should be made known to other government departments, councils and the commonwealth.

New purchasers of land should have access to this register and be made aware of any contamination issues or liabilities arising from such.

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

3.2 A modern, accurate and easy to access Mining Register

I support such a Mining Register, and one that allows parties to see a history of dealings, instruments, transfers, tenement changes, caveats and mortgages over the life of the tenement and any subsequent, renewed, substituted, replacement, amalgamated or extended tenements.

I support a modern caveat system and a review process whereby the Department assesses the disputed caveat and determines its validity

3.5.4 The EL renewals process in specially protected areas

How can a specially protected area be protected if mining is allowed in it. for instance Adelaide Dolphin Sanctuary. Exploration and mining is not prohibited within specially protected areas but, if a tenement application relates to an area within or adjacent to a specially protected area, the Minister for Mineral Resources and Energy must refer the application to the Minister for Sustainability, Environment and Conservation and consult with them before making any decision. The minister for environment should have final decision on mining in a specially protected area.

3.5.5 Terms of ELs

I support the maintenance of 5 year terms.

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

I am not in favour of a use it or lose it conflict situation.

Any right to seek forfeiture (and transfer) of an EL should be limited to circumstances where the explorer has materially breached their obligations under the EL, the PEPR or the Mining Act.

3.5.9 Ensuring that lease terms are referable to the mine life

I don't support an increase in mine lease from 21 years.

3.5.12 Special mining enterprises (SMEs) and indenture operations

I believe that indenture operations should be regulated under the Mining Act in the same way and with strict environmental requirements.

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

I support consistent surrender, cancellation and suspension processes subject to appropriate environmental, social and economic accountability obligations.

3.10 Regulating moss rock removal

I don't support the removal of moss rocks.

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

I believe that fees should represent a full cost recovery model.

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

I support a consistent approach between operators in the calculation of royalties.

I am opposed to a profit based approach.

Conclusion

I applaud the State for undertaking a review.

I strongly support increasing time for Notice of Entry assessment for landholders and communities, genuine community consultation and improved access to legal advice.

I urge the State to review royalties, rehabilitation of land post mining and ensure that there is enough money for this to occur.

Furthermore I would like the Courts to take into account other things apart from money when an appeal by landholder is made.