

# DSD - Mining Act Review



Executive Director

Mineral Resources Division via [DSD.miningactreview@sa.gov.au](mailto:DSD.miningactreview@sa.gov.au)

NB: My email address to remain confidential.

Thank you for giving me the opportunity to provide comment on your discussion paper.

## 1. Department of State Development (DSD)

- (a) Firstly, I question why DSD did not see the need to visit the Barossa/Freeling/Kapunda area to discuss this review given DSD were in the process of assessing Kara Resources proposal to have a quarry at Nain.
- (b) DSD failed to provide "procedural fairness" as they held meetings in other areas within SA.
- (c) If DSD demonstrates an inability to undertake effective community consultation then what hope have we got to ensure miners carry out this important task.
- (d) DSD knew about the conduct of this Review last year and had plenty of time to plan visits to relevant areas. They failed the people of the Barossa, Freeling and Kapunda.
- (e) DSD failed to demonstrate commitment and pro-activeness to community members who submitted feedback about the proposed Nain Quarry in September 2016. The letters they sent to them in early 2017 should have advised these individuals of the Mining Review and provided further information.
- (f) DSD is too "stove-piped" and therefore does not work effectively or efficiently as a team.
- (g) DSD has demonstrated through the Nain Quarry process that they do not have the capability to question their current processes and practices let alone undertake a Review of their Act, Regulations and Policies.
- (h) This Review is important and it is not just about "nuts and bolts" issues - it is about the BIG PICTURE matters of this State including its people. DSD are not impartial and there are serious concerns about their ability to conduct and assess this comprehensive Review.
- (i) DSD to ensure their internal Mining Practice Guidelines address no bias or perceived bias in mining processes and that DSD personnel are not involved in any capacity in mining processes with whom they are or have been in a personal or business relationship.
- (j) DSD have demonstrated previously that their processes would not meet the pub/media test.

## 2. DSD Website

- (a) DSD Website needs to be more "user friendly" – DSD staff has problems finding information.
- (b) DSD are too reliant on their website and formal communication to the community is not provided in full and/or contradicts website information.
- (c) DSD Website to provide greater transparency and improved accountability by including:
  - All correspondence to and from DSD regarding a mining proposal/tenement
  - Environmental and operational compliance audits/reports
  - Rehabilitation and compliance directions/reports
  - Incident and infringement reports
  - Yearly inspection Report and Non Compliance
  - Insurance compliance certificates
  - Notices for failure to comply
  - Ongoing capability assessments
  - Bond amounts
  - Expected rehabilitation costs
  - Insurance including Public Liability Certificates
  - Expenditure reports containing actual exploration expenditure
  - Statutory closure insurance

## DSD - Mining Act Review

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### 3. Mining Proposals and Regulatory Recommendations

- (a) As part of the assessment process, companies must be required to provide an accurate detailed cost/benefit analysis.
- (b) DSD to compile and implement an online checklist similar to that of the '2016 Mining Proposal Checklist' of Western Australia.
- (c) Incomplete MLPs and those that fail to supply required supportive tests/ data, consultation documentation to be immediately returned to the applicant.
- (d) Independent agronomic impact statements must be contained in the proposal.
- (e) Proposals must include baseline data on soils and soil profiles. Identification of possible adverse parameters such as low or high pH, high salinity, nutrient/trace element deficiencies, poorly structured soils, dispersive or sodic soils and any potentially hazardous compounds.
- (f) If the mine or quarry has a water catchment on or within 500 m proximity to the site then the proposal must contain baseline data tests for turbidity, mineral content, pH levels, salinity and toxicity both upstream and downstream. Further quarterly tests must be conducted both upstream and downstream for these elements once operational.
- (g) If the operator/explorer is non-compliant elsewhere in the state and submits another mine proposal for assessment then the new proposal is returned to the miner until non-compliance issues elsewhere are remedied.
- (h) There must be time limits imposed and rigorous, on-site Government monitoring of exploration/mining operations, specific penalties for breaches, and regular reporting by the regulators to the community on each exploration/mining project.
- (i) As community members have to live with the impacts associated with mining in their area, they must have the right to agree with or reject proposed changes to PEPR's for increased operational hours, noise, dust or traffic levels, or changes in utilization of heavier equipment or increased environmental impact on flora, fauna or water.

### 4. Community Participation and Their Rights

- (a) Community consultation to be taken more seriously by DSD and the miners and undertaken at all stages of the mining/quarrying process.
- (b) Community consultation must be proven at all stages of the mining process.
- (c) The consultation process must have clearly defined terms of reference that are agreed upon by the broader community and adhered to by all parties.
- (d) Identification and engagement of all community stakeholders with supportive documentation of consultation to be provided i.e. community consultation newspaper advertisements, minutes of all consultation indicating all those in attendance and signed off by nominated community members and Council Minutes pertaining to Deputations are to be submitted to DSD with the miners proposal.
- (e) A social and community impact assessment is to be conducted as part of the approval process, not on the anticipated jobs created or dollars generated but the personal impacts and harm to individual landowners, neighbours, businesses and local communities are faced with.
- (f) DSD to provide "*procedural fairness*" the same given to miners. The community need at least give (5) months to seek assistance and provide a comprehensive report to DSD based on factual information and concerns given this is done in their own time unlike DSD/miners.
- (g) While the community has the right to make comment they do not have review/appeal rights and this needs to be changed. An Appeal Tribunal to be established to enable concerned individuals to challenge a DSD delegate's decision. DSD Delegates therefore would be required to formally record and where a review is requested the Mining Act would therefore require the decision maker to provide a statement setting out the findings on material questions of fact, giving the reasons for the decision and citing the evidence or other material on which the findings were based.

## DSD - Mining Act Review

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### 5. Mining Act and its Regulations

- (a) The Act must formally acknowledge and endorse the concept of social licence – i.e. that to get approval for a project, the company must demonstrate it has broad community support. Absence of a social licence must constitute grounds for rejecting a proposal.
- (b) I support Mark Parnell's recommendation that ***"When the reform processes reaches the stage of legislative drafting, I would urge that an "exposure draft Bill" be circulated for public comment well before it reaches Parliament"***.
- (c) There is a distinct conflict of interest with DSD being the promoter, arbiter and regulator of the mining industry. The Mining Act and its Regulations is to be reviewed by an independent panel which include a community representative from Eyre Peninsula, York Peninsula, Central South Australia and Eastern South Australia. These members represent their area and communicate back to their community/s. Boundaries for these areas are to be clearly defined.
- (d) I also support Mark Parnell's recommendation that the ***"DSD role to be limited to industry promotion and support as well as some administrative functions such as royalty collection, technical matters and maybe occupational health and safety. A new mining environmental regulatory body attached to the EPA would be the preferred model."***
- (e) The Discussion paper is heavily weighted to secure mining tenure and fast track processes in their favour. This is not *"procedural fairness"* and would not meet the pub/media test.
- (f) DSD discussion paper 2 on page 29 states ***"The Department's view is that the 'exempt land' framework under the Mining Act has been working well at striking the right balance around land access for over a century, and that it is fairer than the frameworks used in other jurisdiction"***. DSD once again is demonstrating bias and conflict of interest. It is neither working well or balanced as court rulings in relation to exempt land go against the land holder.
- (g) Exempt land needs to be mapped out just the same as DSD has done with mining/quarrying in South Australia and included in a glossy booklet. This task to be carried out by the independent panel which includes four (4) community members as outlined in (b) above.
- (h) A mandatory clause to be inserted in the Act for Government to advise potential purchasers through the Form 1 process of any mining tenement on land within a 10k radius.
- (i) Given that mining is also about the environment and development, I support the ERD Court over the Mining Wardens' Court. The ERD Court's jurisdiction to be expanded to include third party interests and real estate disputes which include individuals purchasing property and the Government not advising a mining claim/lease in the vicinity of the land.
- (j) An Ombudsman to be appointed to investigate wrongdoing and maladministration by DSD or any other Government authority that is established with a Charter of mining in the State.
- (k) Compensation towards legal costs in the current Act is too low (\$500). Any farmers, neighbours and community individuals are to have rights to claim costs associated with financial loss and/or damage, contamination to their property, business and products.
- (l) Mining companies to meet all health costs associated with silicosis as a result of negligent conduct with the handling of dust.
- (m) Misleading and false reporting of any process including the consultation phase will not be acceptable with the proposal being sent back to the applicant or referred to the SA Police.

### 6. Waivers for Miners and Explorers.

- (a) Prime agricultural land is to be "exempt" land of which mining tenements will not be granted. FOOD and FIBRE are just as important as mining and exploration and a balanced and common sense approach is required (see also Section 5c above).
- (b) There be a freeze on all property that is defined as "exempt land" until an independent panel formally maps out prime agricultural land which mining tenements will not be granted.
- (c) For landholders not included in this "exemption" to seek independent advice and assistance at the cost of the miner/explorer prior to any formal approach to the land. Acknowledgement of obtaining this independent advice and assistance must be provided with any mining/quarrying proposal.

## DSD - Mining Act Review

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### 7. Environmental Assessment and Management

- (a) An independent Environmental Regulator to be responsible for establishing environmental standards and effectively monitoring compliance with those standards NOT DSD.
- (b) Licences for mineral exploration also needs to be environmental assessed in accordance with the mapping exercise recommended in Section 3(f) above.
- (c) This would avoid wasting government and community resources and provide certainty to miners/farmers and other associated farming industries.

### 8. Real Estate Considerations

- (a) Government Real estate valuations must be provided to landholders within 10 km of the site prior to commencement of operations.
- (b) Adequate financial restitution for compensation and costs must be provided to those whose properties sale values reduced or fail to increase against Government comparable valuations due to impact of proximity to mine/quarry.

### 9. Rehabilitation

- (a) An independent environmental regulator to be responsible for overseeing mine rehabilitation NOT DSD.
- (b) Legislating best practices with regard to successful rehabilitation and penalty measures to ensure tenement holders /operators meet their legal obligation for rehabilitation.
- (c) An independent audit of the current legacy mines/quarries is required with location, mine type, commodity, commodity size or mine footprint. A cost inventory data base for legacy mine rehabilitation is paramount to identify high risk sites and prioritize rehabilitation.
- (d) An independent audit of current mining/quarry bonds is required to ensure there is adequate financial assurance for proper rehabilitation of the site. Olympic Dam, Leigh Creek coal mine and the Middleback Range iron ore to be included in this audit. What steps will be taken to dress the shortfall so that taxpayers are not liable?
- (e) 100% cash bond payment to be reviewed/updated every 3 years - interest used for legacy mines.
- (f) Specialist professional expertise must be utilised in the drafting of a detailed closure plan.
- (g) **I totally oppose the following:**
  - **Page 83:** *One company could search and extract what they want while freeing up rights for other operators to search and recover different minerals in same area.*
  - **Page 89:** *A simplified grant process for leases where the environmental assessment of an operation is left to the PEPR stage (with appropriate assessment processes being introduced at that stage).*
- (h) **I advocate the repealing the exemption from the provisions of the Environment Protection Act and Natural Resource Management Act. Indenture operations must be subject to the same State laws as every other mine. Page 88: What opportunities are there to improve regulation of indentured mining operations in South Australia?**
- (i) I support the establishment of a Government funded Landowners Advisory and Support Committee to provide assistance to community individuals about the mining process, rights/responsibilities; seeking further information; lodging complaints; the court system etc.
- (j) All mining sites to be checked for contamination as per EPA requirements and that the land be returned as closely as possible to pre-mining conditions.

...(Original Signed).....

Walter Cook