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Family First welcomes the review of the Mining Act 1971 and the Mining Regulations 2011 ('the Review').

Mining activities affect a broad range of parties including rural landowners, farmers and producers.

Although Family First is supportive of legislation enabling mining practices in South Australia, mining interests should not override other legitimate land rights and interests.

Legislation covering mining practices and land access is comprehensive and broad. Without assistance from a solicitor, interpreting mining legislation is a difficult task for landowners. As a result, landowners do not fully understand their legal rights, especially concerning land access. In addition, landowners are not confident in the process of appealing a decision relating to land access. Therefore, it is important an independent, fair and accessible dispute resolution process exists, which is adequately equipped to deal with land access disputes.

This issue is canvassed in the Discussion Paper disseminated by the Department of State Development. Page 23 of the Discussion Paper states:

"If landowners and operators are not in agreement about access for a project (or the appropriate requirements for land access) there must also be fast, cheap and clear court processes available to landowners to resolve any issues."

Family First agrees with this statement and the need for a dispute resolution process that is timely, inexpensive and accessible.

To accompany such a dispute resolution system, Family First also recommends the development of a strategic plan to educate the public, and particularly farmers and landowners, on legal rights with regard to land access and mining practices.

Family First proposes the Review further investigate and explore the possibility of establishing an independent body, such as an Ombudsman, who is equipped to resolve disputes involving resource operations.

Ideally, an Ombudsman dealing with matters regarding resource operations would have capacity to provide advice to all stakeholders on legal rights and obligations in relation to mining and land access. An Ombudsman should further serve an advisory role and provide advice to industry and government on areas which could be improved through development of policies and standards.

The key role of the Ombudsman, however, should be to receive and investigate complaints, settle disputes and provide detailed recommendations to the parties involved. To enable a dispute resolution process that is timely, accessible, predictable, equitable and transparent, it is important the Ombudsman receive sufficient funding and resources.

Furthermore, it is also important the Ombudsman possesses adequate powers to ensure compliance with recommendations and compliance with regulatory requirements, best practices for mining and obligations under mining leases or licences and the Act.

Family First emphasises the need for the mediator and regulator to be independent from government, industry and other parties. The independent mediator and regulator must also be transparent and accountable. The independent body should periodically report to Parliament and provide public disclosure of findings from its investigations.

Family First believes a resource operations Ombudsman would greatly benefit landowners and the general public through minimising the cost and time spent on disputes regarding mining. Moreover, an Ombudsman would reduce the need for litigation; providing relief to the overworked judicial system.

In addition to an independent mediator and regulator, Family First recommends the development of a "no-go zone" for mining to protect and preserve prime agricultural land, based on the principle of "right to farm". There may be an exception to this rule where mining is necessary to obtain building material or materials for roads and other important public infrastructure projects. Importantly, however, the Review should be undertaken with the principle of right to farm as a core consideration.

Furthermore, in circumstances where mining activity affects land use to the point where the land is no longer viable for its intended purposes (i.e. farming), the landowner should be able to claim adequate compensation for the income loss caused by the mining activity, or alternatively, require compulsory acquisition of the property.

In addition, compulsory acquisition of the property should not only take into account the land value of the property, but also the property's capacity to generate income from farming or other activity. This would ensure fairer compensation for farmers who are adversely affected by mining activity, and no longer able to operate their business.

Family First trusts that the recommendations put forward in this submission will be given consideration, and we look forward to the findings of the Review.

Yours sincerely

Hon Robert Brokenshire MLC