



**Department of State Development - The Executive Director, Mineral Resources
Division**

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Mining Act Review Submission

The Government of South Australia should be responsible when updating the Mining Act to ensure our water, food, agriculture and environment is protected as they are an important part of our state's healthy economy.

South Australia has only 4% prime agricultural land and should be exempted from Mining. South Australia is the driest state in the driest inhabited continent in the world which means safeguarding our precious aquifers and fresh water from Mining is crucial.

My recommendations for change to the Mining Act Review.

EXPLORATION, MINING, QUARRYING, COMMUNITY AND LAND ACCESS

Discussion page 24 to 25

Q1 What terms in the Mining Act and Regulations need clarifying?

Section 6(4)(a) Should include native flora, agricultural flora and fauna

Section 6(4)(c) The definition of existing or permissible land use (agricultural land maybe lying fallow or resting), should include grazing land for livestock as well as other agricultural land uses

Other: 59(6) of the Mining Act. Definitions of severe or unjustified hardship or substantial damage to the land need defining in the Mining Act. The definition of proclamation needs to be included to make clear the meaning of exploration license, mining lease, and mining operator.

Q2 What are appropriate 'personal uses' for extractive minerals?

Should include Gardening, Road Construction, Art, Pottery, Footpaths, Buildings, Walls, Ramps, Lining drains or dams with clay.

Q3 What opportunities are there to define new terms?

Should include size of mining

Discussion page 25 to 27

Q1 Should there be, at a minimum, an open, free, and online access to the documents listed above, at appropriate times?

Yes

Q2 Should operators be required to disclose geological information for the benefit of the public at appropriate times (if that information is no longer deemed commercially sensitive)?

Yes

Q3 What other information do you think should be disclosed and at what times?

Previous history of non-compliance by operator, any fines, failure to pay royalties and tax returns for past 5 years. The information should be provided to the public to assess and comment prior to the Minister of Mining granting an exploration or mining license.

Q4 What restrictions should be placed on disclosure, and should different types of information be restricted in different ways?

No restrictions should be placed on disclosure of information.

Discussion page 28 to 29

Q1 What opportunities are there to improve the entry to land processes?

Section 57 (b) Should state - may enter any mineral land except exempt land for the purpose of pegging out or otherwise identifying a claim.

Section 58 (a) Should state if the mining operator has an agreement with the owner of the land, provided there are no objections from owners of adjacent land, or local communities, authorising the mining operator to enter the land to carry out mining operations on the land.

58A (1) Should make clear if the mining operator is an explorer or has a right to mine including the size of the potential mine: area and depth and any potential environmental, public or individual health, and individual or wider community economic impacts the mine is likely to cause over the course of its life.

58A (7) Should include - provided there are no objections from owners of adjacent land or local communities.

58A (7) Should be subject to an approved Program for Environmental Protection and Rehabilitation.

Discussion page 29 to 30

Q1 What terms need to be better defined to better clarify what is 'exempt land'?

Exempt land should mean **exempt land**.

Q2 What opportunities are there to clarify or amend the exempt land provisions in the Mining Act?

Section 9 (1) (c) Should be amended to state that Local Council zoning laws, and the determination of whether it is allowed or not must include public consultation and an approved Program for Environmental Protection and Rehabilitation must govern Mining operations. It should also be restricted to small scale Extractive Mineral Mining.

Section 9 (1) (d) (i) and (ii) and (A) and (B) The size and type of the mine should be taken into consideration. A big open cut mine should be at least 5km from a place of residence, a boundary of a town, a commercial or industrial business, spring, well, reservoir or dam, compared to a quarry for gravel, which should be at least 500 meters away. Exempt land should be exempt and the mining operator should not be allowed to request a waiver of the exemption. Agricultural land needs better protection under the Act – and the landowner's right to reject the application to waiver the exemption should be final.

Discussion page 31 to 34

Q1 Do you think that landowners should have equivalent rights to commence negotiations with an operator in relation to 'exempt land' by issuing a notice under section 9AA of the Mining Act? If so, at what time should this right arise?

No

Q2 Do you agree that it seems reasonable that a landowner's right to commence negotiations should arise at the time the operator has enough information about the scope, location and likely impacts of mining operations? What time should that be?

The mining operator must provide all available proposed mining operation information as early as possible and should be available to all potential affected parties. Information should include the detrimental impacts and negative economic impacts on the landowner, adjacent landowners and local community impacted by the proposed mine.

Q3 What opportunities do you see to streamline the notice of declared equipment process, and the other notification processes?

The Act is unjust and interrupts upon the landholder's rights to object. The landholder should have the right to lodge an objection to the Warden's Court or ERD court if their land, building or property is harmed as well as if their lives are negatively impacted. Neighbors/community should also have the right to object as well.

Q4 In light of the fact that no landowner, pastoralist or native title holder has ever exercised their rights under the Mining Act to object to the use of declared equipment, are notices of declared equipment still relevant?

Yes

Q5 What information do landowners want to receive from explorers and operators, and at what point in time during the exploration or production stage should that be provided?

Information should include the sized area and depth of the mining operations, easements, road construction, buildings, equipment, machinery, rail and pipes. Explain what will be mined and how the mining waste will be managed. Provide the source of water required and how much. Detail the life expectancy of the mine, any potential environmental, public health or individual health and economic impacts the mine is likely to cause. Explain how will the mining operator prevent environmental damage, public health or individual health impacts and economic impacts on those who may be affected by the mining operations.

Discussion page 35 to 36

Q1 Do you agree that access to the court process to object to a notice of entry should be retained, so that landowners have a right to object to operations that will have substantial impacts?

Yes

Q2 Do you agree that an appropriate time for a landowner to issue proceedings is at a time when the operator has enough information on the proposed operations?

The mining operator should be responsible for initiating proceedings once they have sufficient information for the landholder and other affected parties to make informed decisions.

Q3 What other opportunities do you see to provide fast and fair access to justice for all?

1. Exempt land should include Arable land from all Mineral Mining operations.
2. Exempt land should include National Parks, RAMSA areas, UNESCO listed areas, Conservation Parks, Sanctuaries, Coastal areas, Habitat 141 areas, and Water Catchment areas for Aquifers, from all mineral mining and extractive mineral operations.
3. For Agricultural land use to be included in the Mining Act under Section 6(4)(c)
4. For the definition of environment to include agricultural flora and fauna.
5. Section 9 (1) (a) (i) should also include land for Agricultural use
6. For Exempt land to mean Exempt Land with no right to waiver the exemption however the landholder should retain the right to refuse to waiver the exemption.

Discussion page 37 to 38

Native Title Land should be **exempt land**, with no access, unless approved by the Native Title Holders.

Discussion page 39 to 40

1.4 Ensuring that payments and fees are recovered.

Q Do you agree that payments due to the South Australian government, for the benefit of the community, should have priority over other obligations?

Yes.

Q What other opportunities do you see to ensure that explorer and operators pay outstanding amounts when due?

Mining operation/s should end until outstanding amounts are paid.

Discussion page 41

Q1 What changes to approved mining operations should give rise to a statutory right for a landowner to be notified?

The landowner and others impacted by the mine should be notified of all approved changes.

Q2 What changes to approved mining operations should give rise to a statutory right for a landowner to be consulted on the proposed change?

All changes

Q3 What type of information should landowners and the community receives during any change of operation process?

All independently assessed information regarding possible negative impacts on public health and/or individual health, the environment, other matters covered in Section 6(4), and the ability of the landowner, and others impacted by the mine, to earn a living, including negative impacts on vendor's declarations.

SUSTAINABLE FUTURE

Discussion page 43 to 46

Q1 How can we make the PEPR development and assessment process, and transparency after approval, better for the community, the environment, landowners, explorers and operators?

The "triple bottom line" referred to on page 44 should include in the economic assessment and the negative impacts on vendor's declarations.

Should include relevant additional words (underlined) for page 43

1. There will be no introduction of new declared weed species, harmful microorganisms, or pests (including feral animals), including an increase in these species on the site.
2. There will be no contamination of water, surface or groundwater, soil and vegetation as a result of activities.
3. There will be no permanent loss or significant decline of native flora/fauna abundance or diversity within the licence areas and adjacent areas caused by mining operations and vegetation clearing.

4. Any extraction or use of groundwater (in accordance with any licence) must not adversely affect third party users or dependent ecosystems. Ground water use should be managed by the Natural Resources Management Act 2004 and subject to Water Allocation Plans. It should therefore be understood there might not be any water for mining. There should be no dewatering of Aquifers, or mining through aquifers, or lowering of water tables from mining activities. The Natural Resources Management Act 2004 should override the Mining Act, and the Natural Resources Management Act 2004 should be amended to reflect that. The Minister of Mining nor Governor Proclamation should be able to override protection of water.

5. Delete unless prior approval under relevant legislation is obtained.

6. There are no public health or individual and/or public nuisance or individual impacts from air emissions and/ or dust from mining operations. On rural properties it may only be one family that is impacted by the mine, but their health and well being is just as important as the general public.

7. The PERP should also include vegetation and livestock on agricultural land; there should be no contamination of agricultural vegetation or livestock.

Discussion page 46 to 48

Q1 Do you 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)?

Yes

Q2 Should the Department be able to prohibit or delay the expiry of a tenement until an explorer or operator has complied with all outstanding obligations?

Yes

Q3 Should the Department 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?

Yes

Q4 Should the process be open for public comment 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?

Yes

Q5 What other preventative tools do you think should be introduced to ensure damage to the environment can be prevented?

Criminal charges should be handed to CEO's and Directors of Companies, if significant environmental harm occurs. The Mining operator must self-insure for environmental damage.

2.1.2 The scope of compulsive tools

Q1 Do you 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.

Yes

Q2 What other compulsive tools do you think should be introduced to ensure explorers and operators comply with their environmental obligations?

Quarterly reports available to public.

Discussion page 50 to 51

Q1 Do you see benefit in publishing relevant government, explorer and operator documents (where appropriate) online to increase government and industry transparency and accountability?

Yes

Q2 What other documents in addition to the above mentioned list should be publically disclosed to improve industry accountability?

Regular inspections by regulators and independent audits of reporting and compliance.

Q3 Do you agree that the Department can increase the accountability of explorer and operators by: – Ensuring the timely payment of rents; – Prohibiting tenement renewals, cancellations, surrenders or transfers until all outstanding obligations are performed?

Yes

Q4 What other opportunities are there to increase Government and industry accountability?

Regulators should be independent of the Mining Department.

Discussion page 52 to 53

Q1 Do you think the current tools and the proposed changes to regulatory tools in paragraph 2.12.1 will be sufficient to ensure leading practice mine closure and progressive rehabilitation (including the progressive rehab of exploration operations)?

Should be greater by increasing penalties to appropriate levels; preventing renewals, cancellations, surrenders and transfers until environmental obligations are complied with; and strengthening the powers available relating to directors where a company has been non-compliant.

THE BENEFITS OF A STREAMLINED, RIGOROUS AND COMPETITIVE REGULATORY ENVIRONMENT

Discussion page 63 to 67

Q3 What other opportunities are there to modernise our regulatory services through advances in digital processes?

People interested in being informed of mining interests in their area could be registered to be notified by email or letter of exploration applications.

Discussion page 71 to 73

Q1 What information do you think should be made publically available and at what times?

All information relating to the tenement should be made public as soon as realistically possible.

Q2 What restrictions should be placed on disclosure and on what type of information?

No restrictions

Discussion page 75 to 76

Q5 What other opportunities are there to modernise and streamline the tenement structure in South Australia?

Develop a Master Plan for SA, exempting all Arable land from mineral mining. Extractive Mineral mining should not disrupt agricultural activities and therefore the landholder must have the right to refuse to waiver exempt land.

DISCUSSION P 83 to p84

Q1 Would a generic mining lease, which covered both minerals and extractive minerals (with flexibility for change) benefit operators? No change. Should leave as is.

Q2 What issues could a generic mining lease create for landowners? Increased environmental damage, never ending mining on their property. Limited opportunities for land rehabilitation.

Q3 What other opportunities are there to improve or modernise mining leases?
Separate the Mining Act into two parts one for Extractive Minerals and the other for Mineral Mining.

Discussion page 84 to 85

Q3 What other disadvantages or risks are there to granting mining leases for a term that reflects the predicted mine life?
Environmental harm and rehabilitation matters.

Discussion page 89

Q2 What changes to approved operations should give rise to a statutory right for a landowner to be notified, and what changes should give rise to consultation?
Consultation should occur prior to granting an exploration or mining license by the Minister of Mining. However, exempt land should mean exempt land and landholders should have the right to refuse to waive the exemption, and the operator should not have the right to apply to the ERD court for an order to waive the benefits of the exemption.

Discussion page 92

Q1 Do you agree that the NRMA Act provides a more appropriate framework for the regulation of moss rocks in South Australia?
Yes

Submitted by Sue Westgarth

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