



From: [REDACTED]
Sent: Friday, 24 February 2017 4:05 PM
To: DSD:Mining Act Review
Subject: Mining Act Review

Dr Ted Tyne
Executive Director Mineral Resources
Department of State Development

Friday 24th February 2017

Dear Ted,

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

The Mining Act 1971 and associated Acts and Regulations are out of date and certainly in need of wholesale revision. However I have serious concerns over the ability of the Department of State Development to undertake the type of impartial, comprehensive review that is needed.

Is this review independent?

In my 27 years involvement in conservation, environmental law and politics in South Australia I believe that the succession of agencies administering the Mining Act over the years have all suffered from the phenomena of "regulator capture". In short, I believe that the agencies have been too close to industry and have blurred the roles of "industry development and support" on the one hand, with "industry regulation" on the other. This has resulted in biases towards the mining industry at the expense of the environment and broader community. In my view, these biases have translated into a regulatory and administrative regime that is incapable of balancing broader social, environmental and economic objectives with the promotion of mining. This is best exemplified by the position routinely taken by the Department that mining is compatible with almost every other land use including conservation and farming. This has resulted in around 95% of South Australia being categorised as "mining land". I strongly disagree with the premise that mining and other land uses can co-exist. Sometimes they can, but often they can't. The Department rarely acknowledges this fact.

To remove actual and perceived bias, I would urge that the further conduct of significant parts of this review should be handed to either another agency (eg. the EPA) or outsourced to consultants who are independent of both government and the mining industry. The Department may be well placed to manage the review of some of the administrative matters, but not the threshold questions of access to land and protection of the environment.

A new Mining Act

In relation to the Mining Act itself, I note that the discussion paper does not propose specific legislative reforms. 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.

Regulation of Mining

I support the creation of a new mining environmental regulator independent of the Department of State Development. The DSD role should be limited to industry promotion and support as well as some administrative functions such royalty collection, technical matters and maybe occupational health and safety. A new mining environmental regulatory body attached to the EPA would be my preferred model.

Public participation

The public have very limited “soft” rights of participation and almost no “hard” rights. This means that the public may have the right to make comment on a small range of proposed decisions, but have no right to challenge any decisions before an impartial umpire.

In my submission, the “soft” rights should be extended to a wider range of decisions (especially those concerned with environmental matters) with decision-makers legally obliged to have regard to representations and to give reasons for decisions. Where affected parties or third parties believe that incorrect decisions have been made or where proper processes have not been followed, then the right to access an independent umpire should be enshrined in law.

In my experience, these types of rights are rarely exercised in practice, however their mere existence is an encouragement to better decision-making. In a nutshell, if a decision-maker knows that their decision can be challenged on its merits, there is a greater incentive to make good decisions. A lack of accountability leads to shoddy decision-making. Third party rights are already enshrined in other land-use legislation including the Development Act, Environment Protection Act and the Natural Resources Management Act.

Access to land – Landholder rights

This is one of the key problems in the Act. The access to land provisions are stacked in favour of mining companies at the expense of other land uses. I strongly disagree with the position of the Department in the discussion paper that: “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...”. It hasn’t.

In my submission, the access to land provisions, particularly in relation to exempt land should be reformed along the lines of a Bill that I introduced into Parliament in 2014:
[https://www.legislation.sa.gov.au/LZ/B/ARCHIVE/MINING%20\(PROTECTION%20OF%20EXEMPT%20LAND%20FROM%20MINING%20OPERATIONS\)%20AMENDMENT%20BILL%202014_HON%20MARK%20PARNELL%20MLC.a.spx](https://www.legislation.sa.gov.au/LZ/B/ARCHIVE/MINING%20(PROTECTION%20OF%20EXEMPT%20LAND%20FROM%20MINING%20OPERATIONS)%20AMENDMENT%20BILL%202014_HON%20MARK%20PARNELL%20MLC.a.spx). My second reading speech is here:

I understand that the Department is keen to undo amendments to the Mining Act that I moved to transfer jurisdiction from the Mining Wardens’ Court to the Environment Resources and Development Court. I reject that change. I think the Act needs to be expanded to allow a greater range of applications to the ERD Court, including from third parties, whether those third parties are directly affected by mining activity or where they seek to intervene in the public interest.

Neighbouring community rights over mining activities

My 2014 Bill (see above) provides for those who are directly or indirectly impacted by mining operations to have standing to argue their case before an independent umpire before any waiver of exemption over exempt land is activated. The Act needs to recognise that legitimate stakeholders include neighbours and others in the community as well as the landholder whose property is targeted for mining activity. At present, these stakeholders have no rights.

Environmental Assessment

The process of issuing Mineral Exploration Licences is almost entirely devoid of environmental assessment. The exercise is primarily a desk-based administrative one that has no regard for the sensitivities of or variation in the environment that invariably exists across the massive areas that comprise these licences. There should be an audit of all land in South Australia to determine areas over which mining tenements will not be granted. This would provide certainty to industry and avoid wasting resources exploring areas they will never be allowed to mine.

Environmental management

Responsibility for setting environmental standards and monitoring compliance with those standards should be transferred away from DSD to an independent environmental regulator.

Mine rehabilitation

Responsibility for managing mine rehabilitation should be transferred to an independent environmental regulator.

National Parks


Three quarters of the area of reserves under the National Parks and Wildlife Act is available for mining. Most of these parks deserve a much higher level of protection. I propose the deletion of the "joint proclamation" provisions of the National Parks and Wildlife Act. I also submit that existing Mineral Exploration Licences in National Parks and Wildlife Act Reserves should be expired as they are relinquished and not re-issued. There is currently no legal obligation on the part of the State to grant MELs over any particular area if it chooses not to do so. It is legitimate and desirable for the State to have a policy of no mining in National Parks.

Yours faithfully,
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