



RESTRICTED ACCESS LAND



'EXEMPT LAND' UNDER THE CURRENT MINING ACT

'Exempt land' has been afforded special protection in South Australia for over 130 years. These areas of land are given greater protection because they are the places where we live, or rely on, from day to day. Various amendments have been made to strengthen and broaden the types of exempt land protected under the Mining Act over the last 100 years. Some amendments have created confusion, particularly where some of the description of things have become outdated or duplicated (e.g. a 'commercial building worth over \$200'). Also, landowners and operators have had some difficulty understanding the exempt land descriptions when they are not defined, and have had to resort to (sometimes) lengthy court processes to seek the Court's assistance with clarification, (for example, the definition of a 'spring'). There are varied opinions in the community about what is the appropriate balance between land rights and land access for the development of the State's minerals. Some say that there should be compulsory acquisition rights over private land in order to develop mineral resources, while others say that landowners should have a right of veto to stop mining projects going ahead. The current 'exempt land' framework is similar to that used in other Australian jurisdictions.

WHAT YOU SAID

Your submissions recommended improving the definition of 'exempt land' to reduce confusion about its meaning, and location. Some submissions claimed that agriculture and heavy mineral mining can't co-exist, and called for a full exemption of agricultural land. There was also some discussion of expanding the definition to include more conservation sites.

FUTURE DIRECTIONS BEING CONSIDERED

The term 'exempt land' has always signified land that could be accessed pursuant to compensation. The term is misleading, and the Review Team will suggest amendments that change the term to 'restricted access land'.

Outdated definitions, or definitions not in line with recent caselaw, will be updated. For example, in the recent case of *Borthwick & Ors v Australian Graphite P/L [2015] SAWC 1* the Warden held that a 'spring' under section 9 must be of 'commercial value.' This is consistent with section 9 of the Act's historic focus on protecting the assets of landowners.

In order to better buffer landowners from large mineral operations, the Review Team is considering recommending an increase to the protective boundaries for advanced operations around residences by up to 50-100%, and providing more appropriate boundaries for low impact survey operations.

In addition to this, the Review Team is proposing to recommend amendments that will provide faster, cheaper certainty for landowners in 'exempt land' or 'restricted access' proceedings, and is looking at ways to provide a dedicated advice service to landowners so that they can get fast access to advice on their rights. The mandated minimum payment of legal fees for 'exempt land' advice will be increased over five times to \$2,500. The Review Team is also meeting with peak landowner and industry bodies on clearer guidelines and processes relating to compensation.

For further information on advice and support to landowners, see Policy Directions 3: Landowner advice and assistance.

Leading Practice Mining Acts Review — June 2017