



The Executive Director,  
Mineral Resources Division  
Department of State Development  
Re Mining Act Review

22-2-17

Dear Sir/Madam,

I would firstly like to applaud the initiative to undertake this review and to seek input from the community. My response will be largely based on experiences as a landowner whose property was under threat of exploration drilling in 2012. I will therefore respond to discussion points noted in the review which concern issues with which I have some familiarity or desire to see change in the act.

1. I applaud the intent to improve the clarity of language used and access to information as suggested (Discussion Paper Sect 1.1 and 1.2)

#### Exempt Land

2. I strongly support the policy of Grain Producers SA requesting removal of Section 9AA of the Mining Act, so waivers to exploration and mining on cultivated land cannot be used to access farmland. Farmers must feel secure in their capacity to continue farming into the long term, so they and their families can manage their properties with the three tenets of sustainability underpinning their operations – economic, environmental and social. Trying to operate under a cloud of uncertainty generated by the potential for mining companies to access one's land, erodes all three sustainability criteria. Farmer's, their families and the community are the backbone of our regions, they have a huge economic impact on the state's economy with very little government support and don't need the stress and anxiety (there's plenty of that freely available from natural sources) associated with miners expecting property access.
3. Further to the above is the issue of exempt land (Sect 9-9A of the Mining Act), which should be extended to areas of high conservation value or benefit to the landscape. In our case, it was a 200 acre Heritage listed block of bush in the Koppio Hills on which the exploration company wanted to drill 16 holes. The heritage listing is not provided flippantly, but recognizes the area to have high conservation value. In the case of our property this means some 100 plant species and 40 vertebrates in a rare part of the southern Eyre Peninsula landscape that has not been grazed by ungulates for a very long time. As landowners committed to the protection of the land, we were forced to write many letters and engage a lawyer to prevent exploration access. This came at some considerable financial and emotional cost, as we must recognize that many people have very strong ties to their land, its flora and fauna, that have no voice but do have considerable private and public values. As shown by numerous scientific papers (eg. Faustian bargains? Restoration realities in the context of biodiversity offset policies. 2012. Martine Maron, Richard J. Hobbs, Atte Moilanen, Jeffrey W. Matthews, Kimberly Christie, Toby A. Gardner, David A. Keith, David B. Lindenmayer, Clive A. McAlpine. *Biological Conservation* 155, 141–148) it is virtually impossible, and certainly beyond the shallow pockets of mining companies, to recreate the diversity inherent in a property such as ours. Exemption from exploration and mining is the only option for Heritage Listed and other areas of high conservation value properties (see Beach, R and Ballantyne, M. (2011) *Land Biodiversity and the Law – The Case for Reform*, Environmental Defenders Office, SA).

#### **Fast and Fair court processes and access to justice**

4. I did not proceed down the court process, and was warned by lawyers against doing so due to the obvious bias displayed by judges towards supporting the mining sector rather than the small landholder. As the Act presently stands, the default case remains for the landowner to prevent a waiver of exemption to the Act. This is despite the fact they own the land (hold a right of exclusive possession) which should mean the miners have to provide evidence to the court of why they should have greater rights to the land than the landowner – not the other way around. The Act provides the mining sector with far too much authority over freehold land which the landowners have to fight to retain access to (with all the associated anxiety, time and costs). This part of the Act needs to be amended in favour of the landowner.

#### **Ensuring that payments and fees are recovered**

5. Why are the royalties from mining so small? The miners are exploiting the country's sovereign wealth in a process that cannot be reversed. If the royalties (\$140 million dollars) as a percentage of exports (\$3.8 billion) is 3.6%, and even less on total production, it suggests a rather poor rate of return to the crown and its population. Given the longer term and sustainable nature of farming compared to mining, is it not better to support farming in the arable zone than mining, as the royalties alone don't make it worthwhile exploiting our resources for such small returns.  
Regarding bonds paid by the mining companies, there has to be an up-front payment made to the state with that amount determined by the likely environmental impact and the costs of restoration if it is not undertaken by the miner. If the miner does not have the capacity to provide such a bond, their risk profile would suggest they are likely to default anyway, so they should not be granted permission to proceed with exploration or mining.

#### **Ensuring the community is informed of any changes**

6. This is important, and changes to ensure transparency are strongly supported

#### **Sustainable Futures**

##### **The scope of preventative regulatory measures**

7. I would like to see compliance reports provided every 6 months rather than annually. Miners can do a lot of damage in 6 months if not abiding by the requirements of the Act. Unannounced audits by inspectors will also help ensure compliance with the Act. Maybe once they have gained their social licence to operate this could be extended to 12 months. PEPR's must be complied with before any operations can begin, and at the end of operations all obligations need to be met before their tenement is allowed to expire. All discussion points are supported.

##### **The scope of compulsive tools**

8. Operators who have a strong environmental and ethical code of behaviour should not be phased by increased compulsive tools being placed upon them, so the suggestions are all endorsed.

## Compensation

9. Unfortunately, the important issue to landowners of compensation is not covered in the Review document. In the event of drillers accessing property, under the present Act the compensation payable to landowners is pathetically inadequate and quiet insulting. The Land Access Framework — 12-month review Report of the Land Access Review Panel conducted in Queensland by David Watson et al (2012) noted the issue of compensation payments was regularly raised by farmers, who were concerned about aspects of amenity, diminished property values and the value placed on access to put down a well. The issue of compensation again seems to be very much in favour of the miners rather than the landholders, and needs to be redressed in this review of the Act.

Thankyou for the opportunity to comment on the revisions, and I look forward to seeing the revised Act, one which provides more recognition of the significant contribution made by agriculture and biodiversity to this states prosperity.

Chris Penfold

