



PROTECTING THE ENVIRONMENT



ENVIRONMENTAL PROTECTION UNDER THE CURRENT MINING ACT

Amendments to the *Mining Act 1971* in 2011 moved South Australia to an outcomes based regulatory system. Modern regulatory practice is focused on explorers and operators achieving certain environmental outcomes, and not prescribing particular activities that need to occur to achieve those outcomes. Outcomes are determined during project assessment by the Regulator (and through community consultation) for leases and Programs for Environment Protection and Rehabilitation (PEPR) and are not prescribed in the Act. An example of an outcome is: "Any extraction or use of groundwater (in accordance with any licence) must not adversely affect third party users or dependent ecosystems." Compliance action can be taken against explorers or operators who do not meet an environmental outcome or condition.

The assessment bilateral agreement under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* between the South Australian and Commonwealth Governments is a clear demonstration that the environmental assessment processes under the Mining Act satisfies the strict requirements of the EPBC Act.

WHAT YOU SAID

Your submissions called for increased oversight and rehabilitation of exploration and mine sites to reduce the risk of mine sites being abandoned.

FUTURE DIRECTIONS BEING CONSIDERED

We have recently updated our compliance and enforcement tracking and monitoring database systems to ensure that we can better track, account for and monitor activity undertaken within the State. The Department will shortly announce new compliance and enforcement programs that will further extend our capacity to track and record compliance and the achievement of outcomes, and new initiatives focused on registering and remediating former mine sites.

There is also an opportunity through the Review to make incremental changes to evidentiary and offence provisions to ensure efficient compliance action can be taken where it is needed. The Review Team will also propose amendments that provide for clear emergency powers to act decisively with companies when large scale emergency situations arise.

We intend to include compliance directions, and notification about actions taken in response to compliance directions, on the Register. The above initiatives, will not only provide companies and the community with greater information at appropriate times, but will establish South Australia as a leading practice transparency jurisdiction, with a legislative scheme compliant with various international standards such as the *Extractive Industry Transparency Initiative (EITI) global standards*, the *International Council on Mining and Minerals Principles*, the *Equator Principles*, and the *UN Principles of Responsible Investment*.

These changes, along with our improved financial assurance model, will ensure the protection of our natural environment into the future.

For further information in relation to these proposed amendments, see *Policy Directions 2: Transparency*, *Policy Directions 5: Compliance*, and *Policy Directions 17: Financial Assurance*.

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TRANSPARENCY



TRANSPARENCY UNDER THE CURRENT MINING ACT

Mining operators must keep records and information in accordance with their lease and licence conditions and the *Mining Act 1971 (SA)*. This information includes surveys, operational records, geological samples, royalty and production returns etc. It is mandatory to provide some of this information to the Department or the Minister for Mineral Resources and Energy at particular times during exploration or production phases. The current set of disclosure obligations under the Act and Regulations are outdated and limit the ability of the Department to release important information at appropriate times about mining projects to the community in accordance with current community standards.

WHAT YOU SAID

Your submissions recommended increasing community access to information so that landowners and communities would have further information at an appropriate time. You need that information so that you can properly consider any proposed operations. A particular theme in your submissions was around ensuring that there was no barrier to disclosing Programs for Environment Protection & Rehabilitation (PEPRs; the 'operation approval' for an exploration or mining project) at an appropriate time, so that there were clear opportunities to provide feedback.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team is considering recommending a new disclosure section under Part 2A of the Act (near the Register provisions) that will allow for the better retention and disclosure of records and samples under the Act, and clearer powers around requests for information such as expert reports. Consistent with modern Commonwealth and State legislative obligations and State policies, information obtained under the new provisions will be able to be disclosed to the public provided that the release of information would not breach a law, and the information did not relate to an incomplete proposal, negotiation, suppositional or indefinite matter, internal management information or a trade secret. Companies must have certainty that market sensitive information will not be disclosed.

The proposed amendments could also allow future companies greater access to geological and survey data of previous tenement holders so that they make the best decisions about where to invest their time and capital.

Amending the Act to allow for this greater level of transparency and disclosure will not only provide companies and the community with greater information at appropriate times, but will establish South Australia as a leading practice transparency jurisdiction, with a legislative scheme compliant with the *Extractive Industry Transparency Initiative (EITI)* global standards, the *Equator Principles*, the *UN Principles of Responsible Investment*, *OECD Guidelines*, the *COAG transparency principles and guidelines*, the *Open Government Partnership Initiative*, *International Council on Mining and Minerals Principles*, and the *International Finance Corporation Sustainability Framework*.

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LANDOWNER ADVICE AND ASSISTANCE



CURRENT LANDOWNER ADVICE AND ASSISTANCE

The *Mining Act 1971* does not require the Department to provide advice to landowners and community members on their rights and obligations relating to possible projects. However, the Department views this a primary function, and proactively provides advice and assistance through the Mineral Resources Division via phone and email, and direct meetings. Currently, the Department receives approximately 700 advice requests from community members per year through its mineral tenement, compliance and policy branches. The Department is also currently reviewing all of its information sheets and brochures written for landowners to make sure that they are clear and useful.

Section 9AA(14) also provides for up to \$500 for landowners for the reasonable costs of obtaining legal advice in relation to exempt land matters. In the *Discussion Paper*, we outlined that this amount should be increased to an appropriate amount, and indexed to remain at a sufficient level moving forward.

WHAT YOU SAID

Your submissions outlined that funds available for landowner legal advice under the Act should be increased to an appropriate level. Some of the submissions advocated for the establishment of an independent Ombudsman, or another organisation that could provide independent advice and assistance to landowners on exploration and mining matters. Several landowners indicated that there needed to be more certainty around what the appropriate tenement grant processes were.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team will be recommending amendments that increase the provision of legal fees to appropriate levels so that landowners can obtain sufficient legal advice on exempt land.

We will also continue to offer free assistance and advice via phone, email and direct meetings for landowners who need further information or clarity around their rights and obligations. Clearer, more relevant, guidelines for landowners and community members are currently in development and will compliment our 'Understanding Mineral Exploration' booklet, the MG4 Guidelines for Landowners, and our Landowner FAQs.

In addition to continuing to provide direct advice to the community, we intend to meet with key organisations such as the agricultural and industry representative bodies, and legal advice groups in the coming months to identify how we could establish and resource an independent advice and/or advocacy service alongside the new Act for all South Australians from 2017/2018. There are many options for possible advice and advocacy services. For example, an independent helpline and advocacy service for landowners could be funded and established within a key landowner representative group, which could be either staffed by a legal officer/officers, or non-legal officers who have access to good legal advice services. Depending on the model, those officers could be based in key regional centres, and could be empowered to directly engage with the Department to advocate for landowners, and seek to resolve or mediate contentious matters both within, and outside of, relevant court processes. Establishing this service for South Australians would provide key help, assistance and 'voice' for landowners - on top of that provided by the Department.

If you have any ideas or comments on how an appropriate advisory and advocacy body could be established, and what organisations could or should house the service, the Review Team looks forward to hearing from you in the coming months.

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NOTIFICATIONS TO LANDOWNERS



NOTIFICATION REQUIREMENTS UNDER THE CURRENT MINING ACT

Under the current Act, explorers and operators must serve notices on landowners about any proposed access to land (a 'notice of entry'); their intention to start negotiations to seek 'waivers of exemption' over exempt land; and any proposed use of 'declared equipment' such as drill rigs, excavators, loaders, graders and dozers.

Sending a notice of entry is the first legislated time that an explorer or operator has to contact a landowner if they want to enter the land (unless they have some other right of access, like an existing agreement with the landowner). Landowners (not including pastoral lessees, or holders of a petroleum or geothermal energy tenement) have the right to formally object to any proposed activities after a 'notice of entry' is served.

The Department is of the view that, for practical reasons, this is the earliest time that an explorer or operator should be required (under legislation) to contact an owner of land. However, the Department continues to encourage explorers and operators to meet with landowners prior to sending the notice of entry, or as soon as possible when they wish to commence negotiations for any waiver of exemption. For further information on 'exempt land' see *Policy Direction 9: Restricted Access Land*.

Landowners who have rights over 'exempt land' can choose to not agree to access, and can oppose any application made to the Environment, Resources and Development Court in relation to exempt land. Owners of land can also object to the use of 'declared equipment' as set out in the notice of declared equipment using the procedures outlined in the Act and Regulations. Department records indicate that no objections to the use of declared equipment have ever progressed to Warden's Court proceedings.

The *Discussion Paper* proposed that there might be an opportunity to make the above processes clearer and create more connection between each of the above processes so that an operator could inform a landowner of all of the relevant details in, say, one form wherever possible.

WHAT YOU SAID

Your submissions discussed the importance of agricultural communities working with exploration companies to improve notices of entry and combining them with the notice of declared equipment. You also provided recommendations for improving access issues (e.g. better engagement and communication, improved legislation, and improvements to notices of entry so that they are clearer).

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team is considering recommending improvements to the notices, and the notification process, including the release of clearer forms for notices related to activity type (eg. low impact operations, advanced exploration, mining operations and ancillary operations) instead of tenure type. Further, when there are clear signed agreements in relation to land access that do not require the service of notices, those statutory requirements should not be mandatory.

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

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COMPLIANCE



COMPLIANCE AND ENFORCEMENT UNDER THE CURRENT MINING ACT

The Act regulates a wide range of activities, from initial exploration through to the extraction of minerals and production into a useable commodity. It also regulates mine rehabilitation once extraction is complete. The Act regulates mines of all sizes, from small extractive or gravel operators, to major metallic, mineral and uranium mines of national and international importance.

There are numerous preventative tools under the Act that can be used to ensure compliance, including powers to: require the lodgement of irrevocable cash bonds and bank guarantees to cover environmental risks; obtain records and conduct investigations; require the production of compliance reports and independent audits; and require the amount of public liability insurance to be held. Alongside the preventative regulatory measures, the Regulator also has compulsive tools available to ensure the protection of our environment, including the powers to amend approval conditions, issue rehabilitation directions and compliance directions, and impose administrative penalties or initiate criminal prosecutions.

These tools are necessary in order to proactively and continually assess an operator's capability to carry out the approved mining operations. We aim for our compliance system and actions to be targeted, proportionate, transparent, consistent, accountable, inclusive, efficient, and aimed at minimising harm. In the *Discussion Paper* we invited your comments on how the system could be improved to better meet these aims.

WHAT YOU SAID

Your submissions called for increased oversight and compliance enforcement of exploration and mine sites to reduce risks to community. You recommended that there should be greater transparency about enforcement action taken against operators, and better ways for community members to know whether an operator is non-compliant.

FUTURE DIRECTIONS BEING CONSIDERED

We have recently updated our compliance and enforcement tracking and monitoring database systems to ensure that we can better track, account for and monitor activity undertaken within the State. Over the coming months the Department will announce new compliance and enforcement programs that will further extend our capacity to track and record compliance data and outcomes. For further information on this see *Fast Facts: Compliance in the Regions 2016-2017*. The Review Team also intends to suggest amendments that will allow for the publication of compliance directions, and the notification of responses to compliance directions, on the Register. There is also an opportunity through the *Review* to make incremental changes to evidentiary and offence provisions to ensure efficient compliance action can be taken if needed. The Review Team is also considering recommending that the Regulator be given clear powers to act decisively (with companies) in the unlikely event a large scale emergency situation arose.

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MINING REGISTER AND CAVEATS



THE MINING REGISTER UNDER THE CURRENT MINING ACT

Mineral claims, leases, licences and 'instruments' can be registered under the *Mining Act 1971*. The term 'instruments' is not defined in the Act, but it is interpreted to mean (amongst other things) mortgages, renewals, transfers, some agreements, and caveats. The current limitations on registration causes difficulties for operators, as it is now common commercial practice to farm out an 'equitable' interest, or negotiate contractual interests such as interests payable in reference to production tonnage from a tenement. By not having a clear legislative framework for recognising these interests, explorers and operators are unable to register caveats to seek to protect their interests, or register their agreements to put others on notice of their interest in a tenement. These limitations on registration can be a barrier to commercial activity in South Australia.

WHAT YOU SAID

Submissions recommended that the Register should be used as a tool for recording, and electronically searching the entire history of a tenement (with the exception of public submissions during public consultation processes) including mortgages, caveats, transfers of proprietary interests in a mining tenements, and compliance history. However, some submissions recommended that the full information should only be made available to tenement holders and registered operators where information is not 'commercial in confidence' or 'market sensitive.' Some submissions also recommended that the Register be linked to relevant websites such as SARIG and the Lands Titles Office.

FUTURE DIRECTIONS BEING CONSIDERED

The Review is an opportunity to broaden the scope of documents that can be registered to allow for the registration of modern contractual agreements and other dealings that may not give rise to a 'proprietary' interest in tenements. Appropriate land access documentation, and various notices, could also be lodged on the Register where the parties were not opposed to the lodgement. A 'memorial' of a transaction or agreement could also appear on the Register where those documents were 'commercial in confidence' or 'market sensitive' (if appropriate). Depending on the nature of the document being registered, there could be appropriate requirements in relation to the content of the documents or notices, and/or an obligation on the Registrar to validate certain documents.

Amendments could also expand the use of the Mining Register to include an array of documents which demonstrate compliance with the Mining Act and Regulations. It is intended that the logging of this information will lead to better accountability, and act as a deterrent to unauthorised behavior. The Review Team is also considering better ways to make the Register easier and cheaper to access online. These changes would result in a leading practice mining Register that would allow parties and community members to see a history of dealings, instruments, transfers, tenement changes, compliance actions, caveats and mortgages over the life of the tenement and any subsequent, renewed, substituted, replacement, amalgamated or extended tenement.

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PRIVATE MINES



PRIVATE MINES UNDER THE CURRENT MINING ACT

Over the last 175 years, the Mining Acts regulating mineral production have dealt with the possession of minerals in various ways. For significant periods of our history, the rights to minerals have been held by the Crown, on behalf of citizens, as is the case under the current Act. At other times, the rights to certain minerals were held by the particular freehold owners of the property. Usually, this system would be in place for short periods, before Parliament would return the rights to the Crown and the citizens of South Australia. The debates in Parliament around those transitions back to the Crown ownership system clearly indicate that, when mineral rights were placed into the hands of property owners (and not the community) there was substantial loss of employment across the State, and the minerals were not adequately mined to meet the construction and economic needs of the State.

In 1971, full mineral rights for the community were resumed, with significant extractive minerals operators being granted a perpetual statutory right to continue mineral extraction under the new Act. A large number of these 'private mines' are now inactive and not worked. However, our key strategic 'private mines' provide important extractive minerals to metropolitan and regional areas, and have kept construction and infrastructure costs down across South Australia for decades. The savings on transport and other costs on these extractives is somewhere in the order of \$20-\$40 per tonne at point of sale to the community (when compared with material costs on the eastern seaboard). These lower costs have flow on effects for extractive construction products such as concrete, cement, and plasterboard, and the cost of housing.

In the *Discussion Paper*, the Review Team indicated that there would be no move to change the underlying tenure of 'private mines' in South Australia.

WHAT YOU SAID

Some submissions were opposed to any proposal that would diminish the rights of existing private mines, while other submissions agreed with an amendment to the Act to allow for the revocation of inactive private mines (provided that the tenement holder is provided sufficient notice to respond to the revocation proposal). Submissions also recommended that private mines should be regulated like other mining activities (including rehabilitation requirements) and that the Mining Operations Plan (MOP) provisions for 'private mines' and the Program for Environmental Protection and Rehabilitation (PEPR) provisions for extractive mineral leases should be consistent and uniform.

FUTURE DIRECTIONS BEING CONSIDERED

The Department has no intention to change the underlying tenure of private mines as part of this current Review. To deal with the large number of 'private mines' that exist in areas that cannot be worked, such as those now located under large residential estates, we are considering amendments that will allow for the efficient revocation of inactive sites that are 'unable to be mined.' The Review Team is also considering ways to further align regulation requirements with those of other extractive operators, while simultaneously reducing red-tape around unnecessary reporting and application assessment requirements.

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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.

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CHANGES TO OPERATIONS



CHANGES TO OPERATIONS UNDER THE CURRENT MINING ACT

Operators often need the flexibility to make changes to their mining operations during the mine life to adapt their operations to respond to uncontrollable external factors, such as movements in global commodity prices.

Under the *Mining Act 1971* the process around mid-project changes to operations via variation to lease conditions or Program for Environmental Protection and Rehabilitation (PEPR) is not clear, and changes may be made to their approved PEPR and/or to the terms and conditions of their lease, without a need to contact (engage with or inform) relevant landowners (depending on the potential impact of the changes).

WHAT YOU SAID

Your submissions outlined that you agreed that there needs to be a clear, comprehensive and flexible scheme for the assessment of changes to operations and engagement with the community. If changes to operations would have substantially different or increased impacts, you indicated that the community should have a right to be consulted.

FUTURE DIRECTIONS BEING CONSIDERED

We outlined in the *Discussion Paper* that we are committed to appropriate transparency and engagement on any changes to operations during mine life, and so any change of operations regime would need to be balanced with appropriate consultation and engagement, commensurate with the level of change being sought.

We are considering recommending amendments that will ensure that any mid-project changes will be subject to our stringent environmental impact assessment (EIA) process under the current Act, and align further with the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Where there will be significant new environmental impacts for mining operations, comprehensive information in relation to those impacts will have to be provided, including further information in relation to any changes to closure planning, community consultation, or measurement criteria.

Depending on the impact of the proposed changes, consultation requirements will vary below that threshold. Irrespective of the impact of any proposed change, all change processes would be appropriately transparent.

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EXPLORATION LICENCES



EXPLORATION LICENCES UNDER THE CURRENT MINING ACT

Exploration licences are the large initial tenements granted to companies that allow for surveying, sampling and drill-testing (subject to gaining an operational approval) to identify viable mineral deposits and environment baseline levels. If a discovery is made, advanced exploration activities may be undertaken including the more frequent use of drill rigs in a specific area (subject to environmental requirements).

At present, at the expiry of a licence, the holder of an exploration licence may apply for a subsequent licence over the same (or a reduced) area in some circumstances. This process is inefficient, and there is significant legal uncertainty about some of the operation of the exploration provisions in the *Mining Act 1971 (SA)*.

Exploration licences are also reasonably inflexible, and cannot be easily subdivided or amalgamated. Renewal and relinquishment provisions also are also fairly limited, with the result that some explorers can retain a right to explore over the same land for long periods without having to release the ground for others to explore. It is the Department's view that all companies granted tenements in South Australia should be taking steps to progress their work programs at any given time.

WHAT YOU SAID

Submissions expressed various viewpoints on licensing matters relating to digital processes, the retention, removal, forfeiture and sub-division of exploration licences and their size, shape and length of tenure (ranging between 5 and 20 years), third party insurance risks and disclosure of licensing matters to the Lands Title Office and potential purchasers.

FUTURE DIRECTIONS BEING CONSIDERED

The Department is considering proposing amendments that will remove subsequent licences, and provide for a clear renewal regime where land must automatically be progressively relinquished at each 2 year renewal interval after an initial 2 x 5 year term, whilst retaining the same exploration licence number throughout.

The Minister and Director of Mines will also be given clear powers to approve amalgamated expenditure programs, and subdivide, amalgamate and/or cancel licences. The ownership, retention and exploration release area provisions will also be updated to ensure all processes are clear, and there are appropriate levels of flexibility.

Further, the Mining Register entries relating to exploration licences will be more comprehensive.

For further information on recommendations relating to exploration licences, see *Policy Directions 6: Mining Register and Caveats*, and *Policy Directions 19: Cancellation and Suspension* and *Policy Directions 20: Surrender and Forfeiture*.

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MINING LEASES



MINING LEASES UNDER THE CURRENT MINING ACT

A decision to grant or refuse a mining lease under section 34 of the *Mining Act 1971 (SA)* is made on the basis of a comprehensive Environmental Impact Assessment (EIA) and community consultation undertaken in accordance with the Act.

Mining lease terms and conditions are established for the particular site by considering the environmental 'outcomes' that need to be achieved. These outcomes (i.e. statements of the appropriate impact on the environment) are determined during lease assessment by the Regulator and are based on information received during community consultation rather than being prescribed in the Act. This is a best practice approach to regulation, and consistent with all other States and the approach of all modern environmental agencies.

Operators must achieve their environmental outcomes under their lease, but leases do not set out any 'prescribed activities' that need to occur to achieve those outcomes. An example of an outcome that can be included in a lease is: *"There will be no permanent loss of native flora/fauna abundance or diversity within the licence areas and adjacent areas caused by mining operations and vegetation clearing."* Once outcomes are set, the Regulator can only approve operations that will achieve those outcomes.

A mining lease can be either a 'mineral lease' (metal or metalliferous ore, precious stones, copper, iron ore, gold, silver, graphite etc) or an 'extractive minerals lease' (sand, gravel, stone, shell, shale and clay, but no minerals used for 'prescribed purposes' or fire clay, bentonite or kaolin). A mining operator granted a lease cannot commence operations on that lease until they have all other approvals in place, including operations approvals from the Regulator (Mine Operating Plans/PEPRs), all environmental (eg. water) licences, and land access rights.

WHAT YOU SAID

Most submissions covered the regulation of mining leases, and made comment on the grant of mining leases, community engagement during the lease assessment, timing for public comment, and access to information throughout the process.

FUTURE DIRECTIONS BEING CONSIDERED

There was minimal support in the submissions for a 'generic' lease that would allow both mineral and extractive mineral extraction. However, we need to retain our post-commencement 'endorsement' process for access to extractives and minerals because some 'extractives' are deemed to be 'minerals' mid-operation (or vice versa) and it is unreasonable to require an operator to seek further approval in those circumstances if there are no changes to their operations.

There was general support for tenure being granted commensurate with the mine life, as this then provides certainty to operators, the community and landowners. The Review Team is considering amendments that will allow for the amalgamation of leases, as in some cases there are artificial divisions across one mine site merely due to historical factors. Where possible, there should be able to be one lease for one site so that the Regulator can manage the entire landscape through one set of documents.

The Review Team is also considering amendments that implement clearer public consultation processes, and the publication of important reports - such as project assessment reports.

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MINES AND WORKS INSPECTION ACT



THE CURRENT MINES AND WORKS INSPECTION ACT 1920

The *Mines and Works Inspection Act 1920* and the *Mines and Works Inspection Regulations 2013* establish a regulatory framework for mines and mining operations in South Australia. The Act is very old legislation that implements a prescriptive regulatory framework that mandates specific and stringent requirements. The framework is principally directed toward the protection of property and amenity, the prevention of nuisance, and the health and safety of mine workers and community members who may be affected by mining operations. Most of these matters are now dealt with in more detail in more modern legislation, and the Act is largely outdated and obsolete.

WHAT YOU SAID

While some submissions recommended various options such as retaining and updating the Act and various permeations, the majority of submissions and consultations supported a proposal to repeal the Mines and Works Inspection Act, transferring any remaining relevant provisions into other legislation, and transferring mine manager competency requirements (currently in the Mines and Works Inspection Regulations) into the Work Health and Safety Regulations.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team intends to propose that the Mines and Works Inspection Act be repealed. If the Act is to be repealed, of particular concern is the matter of mine worker health and safety, and the most appropriate means of regulating mine manager competency in the future.

Mines in South Australia are now subject to a comprehensive, nationally harmonised, work health and safety regime through the *Work Health and Safety Act 2012* and the *Work Health and Safety Regulations 2012*. With the exception of the appointment and certification of mine managers, the limited protections previously offered by the *Mines and Works Inspection Act 1920* have now been rendered obsolete by these modern and comprehensive work, health and safety regimes.

If the Act and Regulations are to be repealed, amending the Work Health and Safety Regulations to include specific requirements for the competence of mine managers would ensure these important provisions remain in force.

The Review Team will propose amendments that will comprehensively deal with references to the Act in other legislation, indentures and agreements, to ensure there are no unintended consequences from the proposed repeal.

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OPAL MINING ACT



THE CURRENT OPAL MINING ACT 1995

The Opal Mining Act and Regulations provide the framework for opal prospecting, exploration and mining in South Australia. The Act provides registration, renewal and surrender processes for permits and tenements, and sets out the rights and obligations of the permit and tenement holders. These obligations include safety and environmental duties. The Act also sets out the compliance and enforcement mechanisms that are available to the Department, and gives the Warden's Court the jurisdiction to determine all matters concerning any right claimed in relation to the Act. Only minor amendments have been made to the Act since it commenced in 1995.

WHAT YOU SAID

Submissions were generally supportive of the proposed recommendations to amend the Opal Mining Act, recognising the need to modernise the Act and improve environmental and safety provisions. Some submissions also sought improvements to the management of opal mining tenements outside of proclaimed fields and within opal mining claims, the regulation of native title, the regulation of camp sites, claim working hours, size of claims, penalties and rehabilitation matters.

FUTURE DIRECTIONS BEING CONSIDERED

The opening up of three previously reserved areas to opal mining in March 2017 has sparked a rush of claims and new exploration activity in the Coober Pedy area, demonstrating that enthusiasm for opals is alive and well in South Australia. It is a timely opportunity to take action to modernise the Opal Mining Act and Regulations to support this important regional resource and tourism industry.

Since 2001, relevant powers in the Mining Act have been delegated to local staff in Coober Pedy, improving the quality of services provided to opal miners and the community. The Department considers that it is appropriate to now formalise these arrangements in the Act by creating an Opal Mining Registrar and an Opal Mining Register.

Working conditions would also be amended to provide more flexibility for opal miners, while still ensuring that claims are worked diligently.

The Review Team will propose amendments that will modernise the compliance and enforcement framework in line with proposed changes to the Mining Act, including increased penalties and a framework that enables penalty amounts to be adjusted on a more regular basis over time.

To improve environmental and safety provisions, the Act would be amended to make it clear that residency is not permitted on a proclaimed precious stone field or within a notified claim and authorised officers will be empowered to direct rehabilitation of land.

The Review Team is also proposing to implement a number of largely administrative changes to modernise the Opal Mining Act including removing ambiguous language and terms, enabling electronic submission of forms, and abolishing the bond lodgement fee.

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ACCESS TO JUSTICE AND THE WARDENS COURT



LANDOWNER AND COURT PROCESSES UNDER THE *MINING ACT 1971*

Unless there is some other agreement or right to access, an explorer or operator intending to enter land must provide an owner of land with a notice of entry outlining the nature of operations proposed on the land at least 21 days before entering. Landowners who hold a right of exclusive possession (other than pastoral lessees or petroleum or geothermal licence holders) have the right to formally object to entry in an appropriate court after a notice of entry is served.

An appropriate court under the Mining Act is the Warden's Court, the Environment, Resources and Development Court, or the Supreme Court. A court may uphold a landowner's objection to entry if the court is satisfied that the conduct of the operations on land would likely result in 'substantial hardship' or 'substantial damage.' If a court makes that finding, it then may impose conditions on access, or prevent access. The Department is of the view that this court process should be retained because it provides landowners with an important right to object to operations being undertaken on their land where it is clear that there may be substantial impacts.

There are also court processes relating to 'exempt land' (for further information on 'exempt land,' see *Policy Direction 8: Restricted Access Land*). These areas of land are given greater protection because they are the places where we live, or rely on, from day to day such as the area around our homes, cultivated fields, sources of water, orchards etc etc. A landowner or court must 'waive' their exemption before an operator can access that land. Unlike the 'objection to entry' process outlined above, landowners have never had a right to commence court proceedings relating to 'exempt land' and so landowners have to wait for operators to commence those proceedings before they can put forward evidence about why the 'adverse effects of the proposed operations cannot be addressed by the imposition of conditions (including compensation).'

WHAT YOU SAID

Your submissions called for the Environment, Resources and Development Court to be retained as the key jurisdiction, or the Wardens Court to be reinstated to hear all exploration and mining matters. Some submissions noted the expense of attending court and recommended that mining companies should provide further financial assistance or cover all landowner court costs.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team is considering amendments that will allow land matters to be heard in low-cost, faster courts as well as the Environment Resources and Development Court and the Supreme Court. The mandated minimum payment of fees for 'exempt land' legal advice will be increased over five times to \$2,500, and indexed annually via the Regulations. The Department is also considering establishing an independent landowner advice service (to be housed in an appropriate liaison body) and giving landowners the right to initiate exempt land proceedings if an agreement hasn't been reached by the close of public submissions on a lease application. The close of public submissions is an appropriate time to consider these landowner rights because until that time, the scope, location and likely impacts of the proposed operations are likely to be known.

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ROYALTIES



THE CURRENT ROYALTY SCHEME UNDER THE MINING ACT

Royalties are the payment an operator makes to the State for the right to access the community's minerals. Royalty payments are determined by applying either a per tonne rate to the quantity of minerals sold, or a percentage (ad valorem) to the sales value less relevant deductions. As commercial sale arrangements have developed over time, some of the calculation processes have become out of step with industry practice and may lead to differing royalty outcomes between similar operators. The time to determine the value of the minerals is at the time the mineral or extractive mineral leaves the mine or quarry. This is known as the ex-mine gate value. However, under common sales contracts, the value of the mineral is not often known at that time, making it difficult for many operators to calculate royalty.

In the *Discussion Paper*, we sought your view on whether the value shown on the sales invoice (in 'arm's length' transactions) may be a better point of reference for royalty calculation. We outlined that this approach would reflect the approach currently taken by many operators, and would be consistent with the approach taken in leading practice jurisdictions. By updating the Act to reflect the contract price from the first sale, the determination of the value of the mineral would be more objective, and there would be greater consistency between operators in the calculation of royalty. Where a genuine 'arm's length' sale doesn't occur (including where minerals are transformed) the current process under the Act works well, but could benefit from some minor amendments. The Act currently provides limited guidance where an operator cannot locate a similar sale for their mineral within the current return period, and so we sought your views on a calculation mechanism that would ensure an operator can pay royalty on a value that, in their opinion, a willing and knowledgeable buyer would be prepared to pay for the minerals.

WHAT YOU SAID

Submissions recommended increasing royalties, linking bonds with performance and/or royalties and incorporating other jurisdictional models and assessments for royalties.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team is considering recommending amendments that will introduce a 'first sale' approach to the calculation of royalties that will be levied on the relevant 'arms length' contract price. Where there is no relevant 'arms length' transaction, or where the minerals are 'transformed', royalty will be calculated based on market prices or relevant price determinations. This will bring South Australia in line with other leading practice jurisdictions around the world, and will create certainty for industry and ensure that South Australian's are recovering appropriate value for the extraction of the community's minerals.

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MISCELLANEOUS PURPOSES LICENCES AND SPECIAL MINING ENTERPRISES

THE CURRENT SYSTEM OF 'ANCILLIARY' AND 'SPECIAL' OPERATIONS APPROVAL

A miscellaneous purposes licence (MPL) can be granted for carrying on any business or purpose that supports the effective conduct of mining operations, including operations such as the building of amenities, a treatment plant, or drainage systems or the storage or processing of mineral process waste or overburden.

MPLs have generally been granted for 'transient' or 'nonpermanent' activities/operations/infrastructure, that relate to a particular mining lease. Although it is not strictly necessary for an MPL applicant to have a mining lease, there would have to be a clear and robust agreement between the miscellaneous purposes licence applicant and a relevant operator for the Minister (or delegate) to be able to grant a miscellaneous purposes licence on reasonable grounds. Some operations, such as constructing power and water infrastructure corridors, can be approved via a miscellaneous purposes licence, or under the *Development Act 1993*.

The Act allows for the grant of special mining enterprises (SMEs), which are mining enterprises of major significance to the economy of the State. SMEs can provide greater security and flexibility of tenure for operators. The only SME that has ever been established in South Australia was for the former Penrice soda ash business: a significant industrial chemical business comprised of the Dry Creek salt fields, the Angaston limestone quarry, and the Osborne soda ash plant. There are currently no special mining enterprises in the State. In the Discussion Paper we sought your views on any improvements that could be made to the special mining enterprise provisions.

WHAT YOU SAID

Your submissions expressed various viewpoints on licensing matters relating to the retention, removal and forfeiture of miscellaneous purpose licences. There were various submissions recommending either removing SMEs from the Act, retaining SMEs or expanding its provisions to allow improved policy outcomes.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team is considering recommending amendments that will clarify the scope of operations that can occur under a 'miscellaneous purposes licence' and clarify that those operations are 'ancillary operations'. Some minor amendments to the SME provisions are being considered, but the Review Team will propose that SMEs are retained because they provide for the regulation of unique operations, where it is in the interest of the community and the State to provide support to those operations.

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FINANCIAL ASSURANCE



BONDS AND ENVIRONMENTAL FUNDS UNDER THE CURRENT MINING ACT

The South Australian mining industry is an important contributor to the economy- it generates \$3.7 billion to the State's economy, raises \$137.5 million in mineral royalties and provided 10,598 jobs in 2016. However, mining activities disturb and change the land. It creates a need to rehabilitate the land for future uses such as conservation, agriculture or infrastructure.

The Department requires a financial security, in the form of a bank guarantee or bond, under the Act. The security protects the Government and taxpayers from bearing the cost of rehabilitation if a mining operator fails to meet its legal obligations. The amount of financial assurance is based on an assessment of the cost for a third party contractor to rehabilitate existing and planned areas of disturbance. The Department is also responsible for rehabilitating historic mines that require rehabilitation and were disclaimed by past operators. These former mines are typically a legacy of outdated regulatory systems where there was no requirement for operators to rehabilitate mining land.

The Department continues to engage with industry, environmental groups, landholders and communities on how our current financial assurance regime and former mines rehabilitation programs can be improved. These concerns are reflected in the Discussion Paper, where the need for adequate powers and funds to manage and rehabilitate existing and former mine sites requiring rehabilitation is highlighted.

There are a range of approaches to financial assurance in Australia and internationally. The Review Team considered recent new approaches and reviews in Western Australia, Northern Territory, New South Wales, Queensland and comparable overseas jurisdictions. We assessed the suitability of features of other financial assurance schemes to deliver a high level of environmental performance, protect the State's financial interest, provide an incentive to invest in the sector, and meet community expectations. A financial assessment approach is currently being modelled so that we can identify a customised solution appropriate for South Australia.

WHAT YOU SAID

Submissions recommended amending the amount of bonds (recommendations to both decrease and increase the amounts), amending the timing of bond payments, linking bonds with performance and/or royalties, incorporating better models for the assessment for bonds and expanding and utilising the Extractive Industries Rehabilitation Fund (EARF) for former mine sites requiring rehabilitation.

FUTURE DIRECTIONS BEING CONSIDERED

The Department is committed to ensuring that all mined land is rehabilitated so it is able to support another future use, where practicable. The Review Team has been proactively engaging with its counterpart regulators from other Australian jurisdictions directly, and through the national COAG Energy Council, to promote national dialogue on financial assurance models and former mines requiring rehabilitation.

The Review Team is examining an appropriate solution for South Australia that recognises the diverse range of operators, relative risk of insolvency, costs to industry, and improved environmental outcomes. Options under consideration include third party sureties, major partner agreements, residual risk payments and a rehabilitation fund. The options assessment will be risk-based, consider feedback from industry, Government and the community and consider evidence from Australia and overseas.

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PERSONAL USE



LANDOWNER 'PERSONAL USE' OF EXTRACTIVES UNDER THE CURRENT ACT

Landowner rights to use extractive minerals are preserved under the *Mining Act 1971*. 'Extractive minerals' are sand, gravel, stone, shell, shale and clay, but not minerals used for 'prescribed purposes' or fire clay, bentonite or kaolin. The Act states that claims and leases cannot be granted over land held in fee simple or land where there are exclusive possession native title rights without the written consent of those 'owners of that land.'

The Act also outlines that all owners of land (which is defined as a person holding the registered estate, native title, care and control under legislation, in lawful occupation or a right of immediate possession) can use extractives for their own 'personal use' eg. for infrastructure such as dams, tracks and access roads.

These 'personal use' rights are, of course, restricted by other legislation such as the *Development Act 1993* in some circumstances (depending on the nature and size of the proposed 'personal use').

The key policy behind these usage rights is to protect landowners' rights to use these important minerals (especially in the agricultural sector), while not allowing landowners to extract, use and or sell these minerals as a competitor with companies duly authorised to extract and sell these minerals under the Act.

WHAT YOU SAID

Some submissions recommended that personal use should include gardening, road construction, art, pottery, footpaths, building, walls, ramps, lining drains or dams with clay or material for the construction of a place of residence. Other recommendations suggested that:

- personal use should include all on-site use by the relevant landowner (or mining operator) for any purpose;
- no unregulated personal use of extractive materials should occur where that use is or ultimately serves any commercial purpose; and
- no personal use should occur on freehold land unless the landowner is subject to reporting, rehabilitation and royalties where appropriate.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team is proposing to recommend amendments that will ensure that there is equitable and practical permitted use, and that landowner rights are clearly protected. Any proposed amendments will also ensure that royalties cannot be levied on any 'personal use.' The Review Team will also recommend amendments that clarify the inter-operation of the *Development Act 1993*, *Local Government Act 1999* and the *Highways Act 1926*, among others.

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CANCELLATION AND SUSPENSION

CANCELLATION AND SUSPENSION OF TENEMENTS UNDER THE CURRENT ACT

A mining operator's exploration licence, mining lease, or miscellaneous purposes licence can be cancelled or suspended if they have contravened, or failed to comply, with the Act or their tenement conditions (including a failure to comply with bond requirements).

WHAT YOU SAID

Your submissions supported the position of preventing the surrender and cancellation of tenements until all rents, royalties and fees had been paid, and all relevant land rehabilitated. Some submissions recommended that if full project finance cannot be obtained before the deadline for the submission of the PEPR and/or the mining company fails to meet specific time limits for applications or specific conditions, then the mining lease (and any associated lease tenements) should be cancelled. Some submissions suggested that suspensions should be a separate process, or only enacted on a temporary basis (e.g. no right of re-application or renewal for twelve months from the date of cancellation).

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team will be proposing amendments that consolidate the cancellation and suspension provisions into a streamlined section, and outline clearer notification processes in relation to suspension and cancellation, and the intention to do so. The amendments will also propose more efficient and transparent processes.

Clear powers in relation to entry to sites and removal of equipment after cancellation, and the ability to subject cancelled and surrendered tenements to a commercial tender process will also be recommended.

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SURRENDER AND FORFEITURE



SURRENDER AND FORFEITURE UNDER THE CURRENT ACT

An operator can surrender a lease or licence, in part or in full, by making an application to the Minister. Mineral claims can only be fully surrendered, in accordance with the procedures set out in the *Mining Act 1971* and Regulations.

A surrender application cannot be approved unless all rent, royalties and fees have been paid; the land has been rehabilitated in accordance with the requirements of the Regulator; and all requirements of the Act have been complied with.

Leases can be forfeited in accordance with the Warden's Court process outlined in the Act.

The Court may recommend to the Minister that the tenement be forfeited if the Warden is satisfied that the requirements of the Act have not been complied with in a material respect, or if the matter is of sufficient gravity to justify forfeiture. There is a similar procedure in relation to mineral claims.

The Discussion Paper suggested that one of the ways to ensure greater compliance and competition in the exploration industry could be to introduce a more comprehensive forfeiture process (like that used in relation to leases) so that another explorer could seek to have a licence forfeited and transferred to them for the remainder of the term of the licence if, for example, the required amount of exploration is not being undertaken.

WHAT YOU SAID

Some submissions outlined that they did not support the forfeiture provisions applying to exploration licences as they feared that it may result in vexatious litigation between companies (particularly impacting junior explorers) and potential land grabbing. Other submissions recommended that forfeiture provisions should relate to exploration licences where the explorer has materially breached their licence or PEPR conditions or other Mining Act obligations.

FUTURE DIRECTIONS BEING CONSIDERED

The Review Team is considering recommending amendments that will clarify the process around surrender and forfeiture, and the requirements around providing certainty to the Minister, industry and community that all environmental and rehabilitation requirements have been complied with.

Surrender processes will also interact with new provisions relating to financial assurance (eg. residual risk payments). For further information on financial assurance see *Policy Direction 17: Financial Assurance*

Amendments will also provide for increased enforcement powers relating to surrender and forfeiture, and increased requirements around the Courts assessment of the financial and technical capabilities of a forfeiture applicant.

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