LEADING PRACTICE MINING ACTS REVIEW

MINING ACT 1971 AND REGULATIONS

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SPECIAL FEATURES OF MINERAL BEARING LAND

Minerals have to be mined from where nature has placed them, not from where the public or land user managers would want.

It has been estimated that less than 1% of the Australian land surface has been or will be disturbed by mining.

All of the minerals needed in the future have already been placed in the ground by geological events of the past.

Many of these lie undiscovered well below the surface. They will be the targets of future exploration and access to land is essential for explorers to find them, wherever they may be.

This mineral bearing land is usually owned by other parties for a variety of uses until it is required for production of essential mineral and energy products. It is usually returned for other uses when mining and re-instatement have finished

In the beginning of human time, the few minerals needed to support life were seen to be owned by the people for the benefit of the people.

Later, as precious metals and other minerals became valuable for trade, they were claimed to be the property of the owner of the land in which they occurred.

These two systems of mineral ownership, public or private, are used today but it is commonly accepted that the former is better able to resolve the usually conflicting interests of the owner and user of the land surface, a mining company needing access to the minerals beneath the surface and the community whose amenity is potentially threatened by the adverse environmental impacts of exploration and mining operations.

COMMENTS ON SELECTED PROPOSALS IN THE DISCUSSION PAPER.

In my opinion, the current South Australian Mining Act 1971, as amended, deals very effectively with the fundamental issue of access to other persons land for exploration and mining and the potentially conflicting interests of the affected parties.

However the following comments on some of the matters raised by the review team are submitted for consideration.

These are based on my experience with mining legislation as summarised below.

- in administration of the Mining Act 1971 and Regulations when I was Chief Geologist of the Registration and Resource Management Branch of the then Department of Mines in the 1970's and 80's.

Many of the amendments to the Act listed in the Annual Report of the Director of Mines for 1981-82 were initiated by me during this period as well as the Mining Production Tenement Regulations under the then Planning Act, which eliminated the anomaly of a mining operator being refused a planning consent by the State Planning Authority for extractive mineral operations on the area of a mining lease granted by the Minister of Mines authorising the conduct of such operations.

- research on mining and land use planning legislation for a thesis submitted in partial fulfilment of the requirements for the Graduate Diploma in Town Planning. School of Architecture and Building, South Australian Institute of Technology, October 1976. Available as Department of State Development. Report book RB 77/00049.
- presentation of a lecture series on mining and environmental legislation to the Bachelor of Mining Engineering course, University of South Australia.
- an understanding of the needs of the mining industry for secure mining tenements during my tenure as Director of the South Australian Chamber of Mines and Energy from 1988 - 1996

MINERAL CLAIM.

A mining company needs to protect its investment in exploration by having an exclusive right to apply for a mining lease in the event of a discovery being made,

Such security is available indirectly to the holder of an Exploration Licence granted under the SA Act through the simultaneous tenement provisions of Section 80 (1) but it would be simpler to insert a clause giving this right in the Part of the Act dealing with exploration licences.

A prospector making a discovery or a miner intending to reopen a known deposit also need to have the same security while the Section 35 requirements are being prepared and the Minister is considering an application for a mining lease.

This is one of the benefits of the present a mineral claim and should be retained in the Act.

In my opinion, a mineral claim should initially be pegged over the land so that parties interested in the area can see exactly which ground is still available for application.

However, because claim pegs have been known to walk in the night, it is essential for GPS co-ordinates of the pegs (under an appropriate system) should be a statutory requirement of an application for registration of the claim.

I am at a loss to understand the reasons for repealing the provisions for a Miner's Right, which provided a convenient identification on the claim posts of the owner of the claim .

RETENTION LEASE

Several sedimentary uranium bodies had been discovered in the Frome Embayment before the Government of the day implemented its policy of banning the mining of radioactive minerals through Section 10A of the Mining Act.

The concept of a Retention lease was devised to protect the right of the discoverers to a mining lease if the anti-uranium mining policy was changed.

This was also seen as a mechanism for a holding type tenure for discoveries like the Lake Phillipson coal deposit, for which no market was immediately available, rather than granting a mining lease and suspending the labour conditions to preserve the tenure .

The proposal in the discussion paper for a Western Australian type tenement does not appear to be any different to the SA retention lease provisions.

If there is a problem with 'land banking', the conditions for renewal of existing retention leases should be amended and applied.

MISCELLANEOUS PURPOSE LICENCE

There is an occasional need, like the Mount Gunson townsite established some distance from the mining leases over the deposit, to provide ownership of improvements installed exclusively for a mining operation.

The present provisions in the Act appear to be adequate to superimpose a short term title to valuable infrastructure relating to a mine, over an existing land title until mining operations have finished

This appears to be preferable to excising the site of a town or other infrastructure from an existing surface title, and restoring it again to the original owner after the mine has closed.

THE PRIVATE MINE

In my opinion, much of the introductory passage on private mines in the discussion paper is inaccurate.

As a background, under an Act of the-Parliament of the United Kingdom, (the South Australia Colonisation Act 1834 (4 & 5 Will. IV c. 95)) to empower His Majesty to erect South Australia into a British Province or Provinces and to provide for the Colonisation and Government thereof .,

Clause 5 of the initial Rules and Regulations of the South Australian Commission (undated) directed that "The land shall be sold in fee simple, with all mines of minerals, metals &tc, subject to the laws of the province"

This was followed by Clause 6 of the 1839 Orders and Regulations of the Board of Commissioners which prescribed that. "The sole condition of purchase shall be the payment of money at the rate of one pound sterling per acre; and nothing, whether above or below the surface of the land, will be reserved by the Crown"

And by Clause of 20 of Regulations of 15 May 1843 under the Imperial Act, regulating the Sale of Waste Lands in the Australian Colonies, (5 and 6 Victoria, chapter 36) "Deeds of grant from the Crown will be issued to the purchasers of Crown land, conveying to them all that is above and all that is beneath the surface, and without any reservations, except- in particular cases, when such may be rendered necessary by peculiar circumstances."

There was an abortive attempt to raise royalty from mining of privately owned minerals on freehold land by Regulation in the SA Government Gazette of 5 March 1846 but was withdrawn after strong public opposition by a Notice in the Gazette of 17 August 1848

This concept of minerals being alienated from the Crown on fee-simple titles was re-affirmed by Act No 88 of 1877 declaring " that all Grants in Fee Simple of land in the Province of South Australia heretofore made or hereafter to be made shall be construed to include all Minerals and Metals, including Gold and Silver, on or under such lands.

However this situation was varied by Section 9 of the Crown Lands Consolidation Act, 1886. by asserting unequivocally that future fee simple grants from 1886 onwards were not to be construed to include any property in any gold above or below the surface "the same being reserved by the Crown."

And again by Section 9 of The Crown Lands Act, 1888 that

The grant in fee-simple of any land hereafter granted (except grants in pursuance: of any agreement for sale made before the seventeenth day of November, one thousand eight hundred and eighty-six), shall not be construed to include or to convey any property in any gold, silver, copper, tin, or other metals, ore, mineral, or other substances containing; metals, or any gems or precious stones, or any coal or mineral oil in or upon such land, the same being reserved by the Crown

Thus until the Mining Act 1971, when Section 16 reserved all minerals to the Crown, the situation in relation to mineral ownership was;

- pre 1886 freehold land on which all minerals were privately owned
- pre 1888 freehold land on which all minerals except gold were privately owned,
- freehold land granted in fee simple after 1888 on which all minerals were reserved to the Crown.
- leasehold land on which all minerals were reserved to the Crown from the beginning of settlement of the Province.

This confusing situation was one of the many reasons for the new 1971 Mining Act which, inter alia, aimed to improve the existing system for access to land for exploration and mining and to introduce powers to manage the potential adverse impacts of these operations.

A key tool in the Act for achieving these objectives was the new Section 16 which resumed all minerals to the Crown through the following;

16. (1) Notwithstanding the provisions of any other Act or law. or of any land grant or other instrument, the property in all minerals is vested in the Crown.

(2) This section shall apply in respect of all mineral lands and in respect of all other lands (including reserved lands) in the State.

(Note that the words or 'under coastal waters on the landward side of the baseline'. have subsequently been added at the end of sub-clause (2).

From my knowledge at the time, the primary purpose of the now repealed Section 19 on Private Mines was to restrict compensation for the Section 16 resumption of private minerals to that land on which mining operations (which by definition included prospecting and explorations) had actually been conducted and to exclude the very large area of freehold land with private minerals which had never been explored or worked.

This concession was made available only to those persons divested of their property in minerals by the Section 16 resumption, for three years from proclamation of the new Act.

It did not, as stated in the discussion paper, "require- that operations commence within 3 years (or risk losing the right)" but that an application for a private mine had to be made in writing to the Minister within three years after the commencement of this Act in July 1972

An applicant for a private mine was required to establish that "mining operations (as defined in the Act) have been commenced before or after the commencement of this Act for the recovery of any of those minerals or for the purpose of ascertaining whether any of them may be profitably exploited."

I am aware that most of the major metropolitan quarries qualified and many other parcels of land on which only cursory mapping had been conducted were also approved.

Some of these were revoked in accordance with the former Section 19(7) and (8) provisions (now the Section 73M) in the 1980's but I am not aware of how many remain and are liable to revocation under Section 73M.

There does not appear to be any reason why the revocation provisions of Section 73M of the current Act cannot be applied to those private mines which are no longer being worked

The provisions in the current Act for approved work programs etc are an appropriate means of managing the environmental impacts of these operations in lieu of doing it through the planning legislation.

MOSS ROCKS

I agree that the Mining Act is not an appropriate vehicle for the management of operations for the recovery of surface moss rocks but the suggested Natural Resources Act is about water and living resources and is not a practical means of managing the impacts of once only harvesting of moss rocks

It would be a simple matter to specifically exclude moss rocks from the Section 6 Mining Act definition of minerals and make these operations a consent use under the current land use planning legislation.

EXTRACTIVE MINERALS

The category of extractive mineral was, in my opinion, introduced soley for the purpose of directing royalty from construction materials workings into the Extractive Areas Rehabilitation Fund.

Adoption of an Extractive Minerals lease, and the requirement for a superimposed mineral lease if some of the product, such as a limestone suitable for both concrete aggregate (extractive mineral) and glass manufacture(industrial mineral) was produced from the same workings seems to be unnecessary.

In my opinion it would be sufficient to have only one class of mineral lease but provide that royalty on extractive minerals (as defined) won from it be paid to the EARFund and that on non-extractives to go, as usual, to general revenue.

THE GEOLOGICAL SURVEY

All of the benefits of an active progressive State Geological Survey,(established in 1886 under HYL Brown), described in the discussion paper are endorsed.

I am not aware of any need to amend the Section 14 and 15 provisions but would support any proposal to maintain the existence and quality of the current Survey, including Government funding from royalties.

M.N Hiern

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