



**Leading Practice Mining Acts Review  
Public Submission**

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**Response to Discussion Paper on the Mining Act 1971 and Regulations**

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## **Opening Comment**

Since the settlement of South Australia, farming has played a significant role in the economic and social development of our State. Identifying the existence of arable land for a new colony was of high importance for the requirements of settling. Even then, arable land was highly regarded, and remains so today. Agriculture generates jobs throughout our regional and rural areas, with many directly associated with the industry through supply of machinery and products, a myriad of contractors and workers fulfilling seasonal duties, consultants with expertise in many and varied aspects of agriculture, as well as governing bodies and agencies associated with marketing, research and development. Agriculture generates wealth for our local communities, State and nation, and strives to fulfil the basic global needs of food and clothing.

South Australia highly regards the place agriculture has in our economy, and must demonstrate this by its commitment to support and defend our agricultural areas. Farmers abide by regulations governing the industry; pay levies to their industrial bodies to promote research and development; contribute funds to marketing and promotional opportunities; and adopt practices to protect the integrity and sustainability of the agricultural industry. South Australian regional and rural communities enjoy strong and long-term relationships with agricultural landowners and associated businesses. These very same people are the community; they are among both the drivers of and the beneficiaries of their communities. To disregard their opinions in any way will be a disservice and disrespect to their communities.

## **Concerns**

### **1. Mineral Lands and Exempt Land**

First and foremost, with a complete review of the Mining Act 1971 and Regulations, there needs to be a reworking of the definition as to which land is available for mining and which land is protected from mining. The 'declared mineral lands' definition has to be revisited. Having attended countless meetings and read innumerable pages dealing with the divisive issue of mining on arable land, the heated debates and unresolved issues that landowners have regarding mining on arable land can be resolved simply by redefining 'declared mineral lands'.

At present, South Australia is available for mining operations with exception of certain protected areas, these being specific coastal zones and other

conservation land. Therefore, this means that arable land falls within 'declared mineral lands'. The Mining Act adds a veneer of protection for the arable land by declaring that it is exempt, but this exemption is quite easily overridden. This is borne out by the fact that no landowner has been successful in their argument to stop mining through the available court processes. Always the mining company is granted access with various conditions and some compensation measures attached.

The definition of 'exempt land' is not adequate. The initial reading of the definition appears to reassure the landowner of the exemptions, but upon application of the definition it can be worked around and discarded. This gives farmers, landowners and their communities no certainty in planning for the future within their businesses.

As the exemption is not stringent enough to uphold the landowners stated 'NO' to a waiver of entry and mining on their land, it stands to reason that **the definition of 'declared mineral lands' needs to be changed so that arable land is protected land and falls outside of 'declared mineral lands'**. This then would grant the protections of which landowners are desirous, which in turn would give the agricultural industry and associated businesses the protection that needs to be afforded them.

## 2. Legal Advocate

Farmers have a fulltime workload as primary producers. When farmers receive a Notice of Entry under the Mining Act, their lives are immediately filled with incredible stress. Within 21 days these already time poor landowners have to educate themselves in all manner of legalese and logistics that will impact their lives and businesses. Decisions are made under pressure. For this reason the access regime fails to strike a fair balance, with the landowner out of their depth and often confused and overwhelmed.

The Department of State Development is the regulator as well as the promoter of mining in this State. **Landowners need an independent advocate**, who can give the assistance and information required. The advocate would perform a much needed supportive role offering advice to ensure that discussion with and explanations from the company are pertinent to and unambiguous for the landowner. When the landowner is empowered to question, comment and negotiate with confidence, then open and genuine engagement can be established.

### 3. Exploration Licences and Timelines

It is unfortunate that a landowner's first knowledge of the granting of an exploration tenement over their land can be by reading it in the local newspaper's Notices. The Mining Act needs to be altered to stipulate **direct notification to landowners concerning any grant of tenement over their land**. The landowner then has the opportunity to begin their investigation into the implications for their future before a Notice of Entry is foisted upon them.

**The 21 day Notice of Entry timeframe needs to be extended.** The serving of this notice in many instances is the first time that a landowner is aware that a mining company intends to explore their land. This is not enough time for the landowner to pursue legal advice and information in order to make a considered decision. The distance from professional advice and the vagaries of communication that those landowners in regional and rural communities experience has to be acknowledged by extending the timeframe.

Landowners need certainty regarding the exploration timelines. At present, an exploration licence can be granted several extensions. Landowners are left in a state of limbo for many years with the threat that their land may become a mine. This uncertainty causes undue hardship to the landowner, with planning for the future under pressure. Financial decisions, both for growth of the business and also upkeep of assets are questioned with no clear answers. The untold stress on the landowner can manifest itself in health and relationship issues. Farmers need the certainty that **an end date** would provide. An end date would also compel the miner to be decisive on their intentions to explore or mine, with the company forfeiting their access rights if unable to be definitive.

### 4. Programme for Environmental Protection and Rehabilitation (PEPR) and Compliance

The PEPR must be supplied to the landowner with all the access forms as from the initial contact. This information is important to the landowner in their consideration as to whether they wish to agree to a waiver. **The PEPR must be freely available before commencement of exploration and mining** to the impacted community so that open and timely engagement can occur as the mining operator works toward achieving a 'social licence'.

With having access to the PEPR, the landowner and the community would be empowered to report when a miner is operating incorrectly, breaching the guidelines and wrongly accessing areas. DSD are not out at every exploration and mining site at all times, therefore are not able to ensure compliance to the PEPR at all times. This is **an opportunity for improvement to monitoring**

**mining behaviour and enhancing reporting and measuring tools to achieve compliance and the stated environmental outcomes.**

## **5. Royalties**

Royalty payments to the State need to be strictly adhered to. The Minister should not have the power to exempt operators from payment of royalties for periods of time. **There should be no waiver on payment of royalties for new mines.** The mineral deposits belong to the State therefore the operators must pay the royalties to the State, just as a landowner must submit and pay monies calculated through lodgment of tax returns to the Australian Tax Office.

## **6. Impact Assessments**

A Social Impact Assessment (SIA) needs to be mandatory. The SIA must be independent and not generated through collaboration with the mine operators. The SIA must encompass not only jobs created or the dollars generated, but also the impacts on the landowners. **The SIA must acknowledge** not only the mine operator, but also **all those directly and indirectly affected by the operation** (such as the landowners, the community, local farm suppliers and businesses and tourism) by allowing submissions and responses to the SIA during its formulation, without placing monetary constraints on the breadth of the assessment. The SIA needs to assess the impacts on the landowner and the produce from their businesses, acknowledging grain and livestock reputations and the sustainability of the 'clean and green' marketing banner.

## **7. Compensation**

**Fair compensation needs to reflect the impost placed on landowners** through no fault of their own. Current compensation towards legal costs (at present \$500) is too low. At present compensation for the landowner is not defined, and appears to be only negotiated for immediate damage to the land. Compensation needs to take into account long term impacts, such as loss of productivity and devaluation of land. Adjacent landowners would need to have a legal right to compensation as land values reduce and activity related to a mining operation may impact their land. The Mining Act needs to define compensation to the impacted community, for example, a mine can sever access and commodity routes. Clear protocol and guidelines to compensate for these huge impacts need to be identified.

In considering compensation to landowners who have had their right say 'NO' to the mining company overridden and are placed in a situation of having to relinquish their land, the Mining Act must state clearly that compensation

awarded is required to reflect at a minimum; loss of land; loss of partner's career or job; loss of timely access to family and friends and other social networks; loss of work/life balance; loss of recreational networks; loss of preference for living in their rural farming community; loss of family heritage; and include other financial and logistical impacts. Rowan Ramsey (Federal Member for Grey and Chair of the House of Representatives Standing Committee on Agriculture and Industry) discussed with me some time ago the issue of landowners and land payment from mining operators. A notional value of at least more than double and up to 3 times the current land market value needs to be a starting point for negotiations.

Compensation is a contentious issue. No clear and transparent provision is available to landowners or the community. Compensation is often shrouded in secrecy, with often touted 'privacy' being perceived as more important than fairness and justice. **Wider statutory compensation provisions** need diligent deliberation through the Mining Act review process, exacting meaningful definition from which negotiations can be based to reach fair and just conclusions.

#### 8. Rehabilitation Bonds and EARF

**The EARF** should provide funds to the State not as a rate taken from royalties, but as a **stand-alone levy on extracted mineral tonnage**. Royalties need to flow wholly into the government for the benefit of the State.

The Rehabilitation Bond needs to be prescribed so as to make provision for all rehabilitation. In 2016 the ABC reported that in Queensland and NSW rehabilitation bonds were deficient in covering the rehabilitation that is required. In fact, in some cases it fell many millions of dollars short. Rehabilitation Bonds need to take into account all aspects of the operation, and provide protection against insolvency or a mine transferring their asset. The State and communities cannot to be burdened with decades of rehabilitation and associated costs that the operator has failed to achieve despite agreements in place. **The community needs to have absolute confidence in the rehabilitation process**. This confidence is sorely absent at present in my community.

Rehabilitation Bonds need to have contingencies placed in them to cover any occurrences that may impact on neighbouring landowners of either mine sites or mine infrastructure corridors.

## **Closing Comment**

The often quoted figure of somewhere less than 5% of the State being arable land needs to be at the forefront of our minds when considering future planning and development of our State. Our Federal Minister of Agriculture, Barnaby Joyce, makes strong and emphatic statements regarding the importance of agriculture to our Nation's future: *"Our nation should be proud that their presence in the global economy is fundamentally underpinned by the noble pursuit of feeding and clothing people...And those families that do it must therefore be a breed of the most noble people in humanity... agriculture is critical in determining our nation's future prosperity"* (The West Australian 7/3/2017). Through this review of the Mining Act, our State has an opportunity to secure genuine protection of our precious arable land for the future.

