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Draft Mining Regulations 2020

Submission to the Department for Energy &
Mining

September, 2020

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1. Introduction

The South Australian Chamber of Mines and Energy (SACOME) is the peak industry body representing companies with interests in the South Australian minerals, energy, extractive, oil and gas sectors and associated service providers.

SACOME welcomes the opportunity to make a submission to this important consultation process. SACOME is a key stakeholder in this consultation process, with development of the new Mining Regulations ('the Regulations') to underpin the amended *Mining Act 1971* ('Mining Act') being of critical importance to a broad section of SACOME's membership.

SACOME recognises that the Department for Energy & Mining's ('DEM') intent is to modernise the statutory framework governing mining, exploration and quarrying activities in South Australia. Many of the draft Regulations signal this intent, with much of the operational detail reflecting contemporary industry practice observed by SACOME's member companies; and otherwise implementing 'quality of life' improvements.

SACOME's submission primarily addresses aspects of the draft Regulations where further detail and clarity is sought, acknowledging that the draft Regulations have general support from SACOME's member companies.

As a general principle, SACOME calls for a flexible approach by DEM in interpreting and applying the Regulations given they apply to a wide variance of exploration and mining operations across the State.

SACOME recognises that the draft Regulations set out detail for a range of new public consultation requirements as a precondition to a grant of licence. These requirements are broadly supported; however, member companies have cautioned that the need to disclose and consult should be balanced with the potential for consultation fatigue among stakeholders. Operators have also noted that increased transparency and reporting requirements may lead to some stakeholders being reluctant to participate in engagement processes due to sensitivities around identification.

The introduction of Social Impact Assessments (SIAs) similarly represent a new engagement and consultation mechanism, the aims of which are broadly supported by SACOME. Some operators have limited their support for this measure on the condition that SIAs do not result in regulatory duplication.

Recognising that there will be some overlap between the existing regulatory structure and that created by enactment of the amended Mining Act and Regulations, member companies have highlighted the importance of 'grandfathering' arrangements so that applications already under assessment are not slowed or compromised from the 1 January 2021 enactment date.

SACOME notes that COVID-19 has significantly impacted on this consultation process, with the originally proposed three-month consultation period being shortened to six weeks. This

has resulted in an intensive effort to meet the submission deadline. We acknowledge DEM's efforts in engaging with SACOME and its member companies across this period.

Nonetheless, SACOME takes the view this shortened consultation process, with the first three weeks comprising release of the draft Regulations for preliminary review, has presented challenges in undertaking full consideration of the new Regulatory framework. This has been exacerbated by important supporting information such as Ministerial Determinations; guidance material around new initiatives like the Scoping process; detail on the operation of the Mining Rehabilitation Fund; and details on the operation of the expanded Mining Register not being sufficiently available to consider alongside the draft Regulations.

While SACOME lends its in-principle support to the framework proposed by DEM, we add the caveat that important detail relevant to the operation of the Regulations has been flagged for provision in 2021 after enactment of the amended Mining Act. As such, SACOME's in-principle support is provided subject to additional detail being made available for consultation and comment.

Recognising the ongoing engagement between SACOME and DEM throughout the consultation process, this submission's primary focus is on identifying aspects of the draft Regulatory packages where outstanding issues remain; and where additional information and clarification is sought.

SACOME's submission provides feedback to DEM in two streams: the first being key issues identified during the consultation process; and the second providing regulation-specific feedback on items not resolved during SACOME/DEM consultation sessions or requiring further clarification.

2. Key Issues

The key issues identified by SACOME and its member companies throughout the consultation process broadly relate to information referred to but not provided alongside the draft Regulations.

SACOME notes that the draft Regulation packages reference a number of instruments, materials and activities that DEM will provide and/or undertake in 2021, after the amended Mining Act comes into effect on January 1, 2021.

SACOME acknowledges statements made by DEM that the amended Mining Act and Regulations represent the first phase of a multi-phase regulatory reform process.

SACOME also notes the impact of COVID-19 on the workload of DEM and Parliamentary Counsel as the principal reasons for the changes in consultation timeframes. This impact has been universally felt and the shortened consultation timeframe has created legitimate time pressures in providing a response.

SACOME emphasises that relevant operational detail on significant reform measures has not been included alongside the draft Regulations, making fully informed comment difficult. SACOME does acknowledge DEM's efforts to provide supplementary briefings on key issues throughout the consultation process, however, key stakeholders have been asked to provide comment on the draft Regulations without full information available.

SACOME provides its feedback on key issues identified through its Mining Regulations Working Group and in discussion with member companies below.

2.1 Operation of the Mining Register

SACOME recognises that DEM's emphasis on greater transparency and accountability under the Mining Act and draft Regulations is a key theme of this regulatory reform process.

The Mining Register remains central to administration of the Mining Act, and has been significantly expanded under the revised Act, incorporating a broader range of dealings affecting tenement and information related to tenement.

SACOME notes that the revised Act gives the Mining Registrar broad discretion to control the level of information contained on the Mining Register and encourages public access to a broader range of information.

Feedback from SACOME members has been unanimous in the need to categorically resolve the type of information that will be publicly listed on the Register, with the concern that commercially sensitive and technical information is safeguarded; and that information placed on the Register is used for its intended purpose. SACOME submits that resolving the list of items for inclusion in Schedule 1 of the draft Regulations should be a key outcome from this consultation process.

Further, the limits on release of documents to the public should be enshrined in the Regulations, not just internal DEM policy.

Power to Challenge Registrar's Decisions/Request Rectification of the Register

A key concern that has emerged during the consultation is the lack of mechanism to review or challenge the Mining Registrar's decision to place information on the Mining Register. SACOME submits that disclosure of information needs to consider the commercial, community and cultural sensitivities attached to documentation prior to making determinations about its public availability.

Some members have suggested that there is a need for a specific right to seek rectification of the Register to both add and to remove documents. Precedent for this exists with some privacy legislation providing the ability to, for example, correct personal information held by Government bodies. A process to allow this should be specifically included in the draft Regulations.

It would be useful to allow a mining lease holder to add information, particularly where it is in response to a direction from the regulator. This would assist the mining lease holder in demonstrating their responsible approach to meeting reporting/compliance obligations.

The legal status of documents on the Register; and the Registrar's obligation to ensure that information on the Register is correct and up to date have also been identified as a point for further clarification.

SACOME notes that there is a broad obligation under Part 5, section 13 of the *State Records Act 1997* for every agency to ensure that the official records in its custody are maintained in good order and condition. The touted benefits of a comprehensive Register to promote the 'value' of tenements would be significantly undermined by a Register that is poorly managed, inaccurate or out of date and SACOME emphasises the importance of careful and diligent administration of the Register by DEM.

SACOME submits that greater consideration should be given to how information will be represented on the Register to avoid any unintended consequences, and to provide industry with clarity on the Register's operation, as well as industry's reporting obligations.

Sunset on Non-compliance Disclosures

A sunset provision relating to non-compliance declarations was discussed with DEM during the consultation process, with a notional period of five years suggested by DEM staff. Given this information will be public, SACOME suggests that provision should exist to remove "expired" non-compliance declarations at their time of sunset.

Some members have suggested a statute of limitations be applied to limit the historical period attached to disclosures of non-compliance.

Members have also noted that the potential for this reporting obligation to favour new proponents with no Australian operating history.

Noting that the Register is concerned with tenement, rather than being categorised by tenement holder, SACOME submits that public information about past non-compliance of a previous tenement holder should either be removed from the Register altogether, or some other mechanism be used to identify these issues as historical in nature and de-link them from a new tenement holder.

Timeframe for publishing on the Register

The draft Regulations are not clear about when DEM-generated notices (particularly of a serious nature) will be uploaded to a public platform.

DEM did confirm during consultation that a notice would not be uploaded prior to formal service of the notice; however, this is not clear in the draft Regulations.

For example, DEM could "serve" a significant notice by email at 5.48pm on a Friday and then post the notice on the Register at 5.59pm, leaving the company without the ability to meet continuous disclosure obligations to the market until the following Monday morning after the information has already become public.

Notices where a respondent has the legal right to dispute their validity or enforceability should not become part of the public record until the relevant time periods for challenge, response or appeal have elapsed.

Consideration should be given to the serious reputational damage that can be done by precipitously making documents public in circumstances that may lead to serious civil or even criminal penalties. Companies should be afforded procedural fairness rights to challenge the allegations or findings before such notices are published.

The timing of publication of serious notices also links with concerns about ASX Continuous Disclosure obligations.

ERD and Other Court proceedings.

Members have queried whether the "interested party" status enlivens the requirement to put information on the Register, advising that a clear distinction should be made between DEM as an interested party or in its role as *amicus curiae*; and the rarer instances where it may be an active party to proceedings.

Public registration of documents in this category should be limited to *final* judgements or *final* orders. Orders or declarations of an interlocutory or interim nature should not be included on the Register. Orders acknowledging and potentially recording the terms of (often confidential) settlements would also be a problematic category of document to go on the Register.

Members advise that any ERD matter relating to Part 9B native title matters should be specifically excluded. Similarly, the existence of *ex parte* ERD Court applications brought under s63N should not form any part of the Register.

List of Instruments to appear on the Mining Register

While DEM has provided a draft 'List of Instruments to appear on the Mining Register' for review and comment to SACOME on 3 September 2020 (noting the formal close of consultation on 11 September 2020), this was provided comparatively late in the consultation process and is still being considered by stakeholders.

SACOME strongly recommends that DEM extend consultation with industry stakeholders on the operation of the Mining Register prior to finalising the draft Regulations. SACOME further submits that DEM should consider delaying implementation of this part of the Regulations until such time as a framework is finalised and full consultation has occurred.

2.2 Ministerial Determinations

The draft Regulations and guidance material repeatedly reference Ministerial Determinations which have not been provided for review and comment as part of the consultation process. DEM's advice is that this information will be developed in 2021, after the amended Mining Act has been enacted.

SACOME's preliminary analysis identified reference to Ministerial Determinations in twenty-six of the eighty-eight draft Regulations. A summary of draft Regulations that appear to reference Ministerial Determinations and/or additional regulatory guidance is provided as **Appendix 1**.

SACOME acknowledges DEM's request during consultation sessions for input from industry stakeholders to assist in drafting Ministerial Determinations referenced in the draft Regulations; and DEM's efforts to provide greater clarity in relation to the Ministerial Determinations supporting the draft Regulations. SACOME also thanks DEM for the opportunity to meet and discuss this issue on 2 September 2020.

During this meeting it was explained that some of these Regulations refer to policy guidelines, forms or notices rather than Ministerial Determinations. Further, SACOME was advised that other Ministerial Determinations will consolidate information set out across existing Ministerial Determinations with the outcome being that the Ministerial Determinations to be provided in 2021 will be similar to those already in effect, with the intent to consolidate licencing arrangements in line with the operation of the Regulations.

SACOME notes that during this meeting, DEM also advised that major assessment decisions will be tied to 'larger Ministerial Determinations' as is the existing practice. In addition, greater clarity was provided as to the meaning of 'Ministerial Determination', whereby the term is used variably, sometimes meaning 'Ministerial Determination' as a delegated legislative instrument; and sometimes meaning a more perfunctory administrative function.

As previously advised, SACOME's issue is chiefly one of process in that operational aspects of these legislative instruments cannot be fully assessed by stakeholders as the relevant Ministerial Determinations have not been provided for consideration.

As a general principle and in the interest of providing constructive feedback, where new Ministerial Determinations are concerned with consolidating and/or streamlining administrative arrangements, SACOME is generally supportive.

Noting that existing Ministerial Determinations set out considerations such as 'minimum information' requirements for licence applications, reporting and compliance obligations/requirements, SACOME provides does not raise issues with mechanical/administrative changes that align with the draft Regulations.

Practical difficulties arise where the draft Regulations and guidance material refers to new regulatory requirements such as Social Impact Assessments/Reports; the Scoping process; and specific details of the assessment process and required information relevant to licence applications. Without understanding the operational detail of these processes, it is difficult to provide meaningful input on their efficacy.

We respectfully submit that a practical approach to resolving the question of Ministerial Determinations would be to provide summary advice regarding amendments to existing Ministerial Determinations reflecting changes arising from the draft Regulations. Where new Ministerial Determinations are contemplated, SACOME suggests providing them in draft form for consideration and input.

This would also afford DEM the opportunity to provide advice on whether specific draft Regulations refer to a Ministerial Determination, policy guidelines or information sheets as an aid to industry stakeholder understanding.

SACOME reiterates comments made directly to DEM about the importance of consultation as these new Ministerial Determinations are developed and implemented in 2021, with our strong preference being to review these instruments as soon as possible in 2020 prior to enactment of the amended Mining Act.

Further, as a principle, SACOME supports use of Regulations over Ministerial Determinations so that requirements imposed on tenement holders are certain and both the industry and community can have confidence that standards and expectations will not be changed without scrutiny by Parliament.

2.3 Scoping Process

SACOME lends its in-principle support to the Scoping process set out in the draft Regulations recognising that it aligns closely with Recommendation 1 of SACOME's submission to the Leading Practice Mining Acts Review in 2017, which called for redesign of the approvals process to including 'a scoping document at the beginning of the (approvals) process to assist in developing Terms of Reference to guide the Mining Lease Application process'.

SACOME supports the intent of the Scoping process to provide applicants for a mining lease, retention lease or miscellaneous purpose licence with greater certainty in relation to government and community expectations for the scope of works; and the level and extent of assessment relating to environmental and social impacts.

Further, SACOME supports the aim of creating a mechanism to ensure that projects are assessed within a scheme that promotes efficiencies, transparency and clarity between industry and the regulator in relation to approval pathways and technical assessments.

Some member companies have requested additional advice on how DEM intends to apply the Scoping process, recognising that it is a discretionary in nature (i.e. 'the Minister may require a designated person to provide a report'). SACOME supports the view of member companies that further explanation is required to understand how and when this discretionary power will be exercised.

SACOME recognises that the 'Scoping Process for Application' diagram provides a high-level understanding of how DEM intends the process to operate. Further to advice provided by DEM, SACOME notes that the operational detail of the Scoping process is still being developed and that DEM intends to provide detailed guidance in 2021.

Given Scoping represents a significant addition to the regulatory process, member companies have expressed a strong desire to fully understand DEM's intent and their own obligations in greater detail. As a streamlining measure, members have suggested incorporating an offset elsewhere in the application process to allow for the additional step that the Scoping process creates.

SACOME submits that operational detail of the Scoping process should be provided for full consideration prior to implementation. To the extent that this detail is/will be set out in a Ministerial Determination, SACOME requests the opportunity to review and provide comment. SACOME further submits that DEM should consider delaying implementation of this part of the Regulations until such time as a framework is finalised and full consultation has occurred.

2.4 Mining Rehabilitation Fund & Financial Assurance Mechanism

SACOME called for consultation on and implementation of leading practice financial assessment models in its submission to the Leading Practice Mining Acts Review in 2017 and again in 2018/19 when the *Statutes Amendment (Mineral Resources) Bill 2018* was reintroduced to Parliament.

SACOME has made repeated efforts to prompt dialogue on reform of mine closure, mine rehabilitation and modernisation of financial assurance mechanisms, including commissioning a comparative study of closure practices across Australia in 2019 which was provided to DEM in January 2019; and repeatedly directing correspondence to DEM to

progress reform in this area, both prior to and following passage of the *Statutes Amendment (Mineral Resources) Act 2019*.

An issue raised by operators in relation to existing financial assurance/environmental bond mechanism is that it captures capital in the early stages of a project that could be otherwise directed toward productive use. SACOME advocates on behalf of our members for a progressive mechanism that better balances risk with facilitating project development.

As set out in correspondence directed to DEM dated 4 May 2020, Section 62AA of the *Statutes Amendment (Mineral Resources) Act 2019* created the Mining Rehabilitation Fund (MRF), with the MRF being the statutory vehicle through which financial assurance for mine closure and rehabilitation would be managed.

In this correspondence, SACOME called for adoption of a Western Australian two-part financial assurance model comprising:

1. Full financial security if there is a high risk of the rehabilitation liability reverting to the State, based on criteria such as finances of the operator, location, potential risks or past performance; and
2. Mandatory payment into a mining rehabilitation fund based on a percentage of calculated rehabilitation cost.

Based on advice from DEM in May 2020, SACOME was of the understanding that the full operational detail of the MRF would be set out in the draft Mining Regulations, which is not the case.

Per the guidance material provided with Package 2 of the draft Regulations, SACOME notes that DEM will 'prepare and release a discussion paper proposing options for funding the fund (e.g. a levy or insurance options)', and that this discussion paper has been tabled for consideration post 1 January 2021, with a 'project plan for the application of the MRF and the current bond provisions for rehabilitation financial assurance'.

SACOME further notes that this discussion paper will also consider procedures for 'residual risk payments' into the MRF, with no detail on the operation of this discretionary power provided in the draft Regulations.

SACOME expresses some concern that the details around the operation of the MRF have not been provided with the draft Regulations and submits that when consultation on operation of the MRF occurs in 2021, reform of financial assurance mechanisms in line with the model proposed above should be considered. SACOME further submits that DEM should consider delaying implementation of this part of the Regulations until such time as a framework is finalised and full consultation has occurred.

3. Additional Comment on Draft Regulations

SACOME provides additional comment on the draft Regulations as set out in the table below. These comments are provided further to direct consultation with DEM through SACOME’s Mining Regulations Working Group and incorporate feedback received from member companies subsequent to direct consultation sessions.

Draft Regulation	SACOME comment
<p>Reg. 6 – Waiver of exemption</p>	<p>Draft Reg sets out requirement to include a copy of the waiver agreement with the tenement application.</p> <p>Waiver agreements are a long lead-time item. Being unable to commence the formal negotiation process until after the PEPR process is complete is impractical and will lead to further regulatory delay.</p> <p>Some members have suggested that Waivers should be dealt with concurrent to finalisation of the PEPR and negotiated prior to the ML being granted.</p> <p>PEPR documentation requires the applicant to make statements about the nature and extent of consultation with landowners and the status of any agreements with them. Some members advise that new requirement will lead to a <i>cart and horse</i> dilemma.</p> <p>Many landowners are already frustrated, intimidated and /or confused by receiving lengthy, legalistic Waiver notices and draft agreement documentation.</p> <p>Given that PEPRs (including at exploration stage) will now be on Register, requiring formal service of these document appears to be adding an administrative burden on companies without adding to DEM’s objective of transparency.</p> <p>The Reg could be modified to require companies to provide:</p> <ul style="list-style-type: none"> - Information about where PEPR documents can be accessed on-line – perhaps including a URL address in the Waiver Request (where the PEPR is approved at the time of service); and/or - Including an obligation to provide copy documents, (on USB or in hardcopy depending on their size), on specific request by the landowner.

<p>Reg. 14 – Other matters to be placed on the Register</p>	<p>Greater clarity on the operation of the Mining Register is sought, particularly in relation to the public availability of items listed in Schedule 1.</p> <p>DEM advised during consultation that different levels of public accessibility will be applied; and DEM policy regarding protection of commercially sensitive information will be applied.</p> <p>DEM also advised that there will be no mechanism available in the Regs to challenge what is placed on the Mining Register. Noting the broad discretionary powers the draft Regs grant the Mining Registrar, this is flagged as a concern.</p> <p>SACOME recommends inclusion of a challenge mechanism.</p> <p>SACOME emphasises the need to resolve operation of the Mining Register prior to enactment of the amended Mining Act. Further consultation on this issue is recommended.</p>
<p>Reg. 17 – Release of Material</p>	<p>During consultation SACOME members asked whether it was possible to request confidentiality with regard to release of Technical Reports; and how the release of information under this section aligned with information to be listed on the Mining Register.</p> <p>DEM advised that this would depend on what is meant by 'Technical Report', noting that a Technical Exploration Report (TER) will not be published on the Mining Register.</p> <p>DEM advised that TERs will be released after four years under the draft Regs, compared to the current requirement of five years; and that reports would not be published verbatim or include commercially sensitive information.</p> <p>DEM advised that there is an onus on industry not to provide commercially sensitive material for publication.</p> <p>Member companies reiterate the need to ensure that commercially sensitive information is protected.</p> <p>Member companies have asked whether DEM can confirm that these details will be kept confidential/redacted in the release of any report until the cessation of a tenement, even after the 4-year period.</p>
<p>Reg. 23 – Application for Licence</p>	<p>Reg references Ministerial Determination ('MD') which was not provided for comment.</p>

	<p>DEM advised during consultation that they will take SACOME's request to review MD; and that they will be using feedback from consultation to draft MDs.</p> <p>SACOME seeks consultation on MD once drafted.</p>
Reg. 30 – Additional information in connection with application for a Mining Lease	<p>During consultation SACOME sought further advice from DEM on the statement outlining a history of non-compliance in relation to authorised operations carried out under corresponding law of other jurisdictions, specifically in relation to how far back in time it this obligation would extend.</p> <p>SACOME recommends that operational nuance should be applied in relation to retrospective non-compliance as it may create a 'blacklist'.</p> <p>SACOME also notes advice provided by DEM that further detail will be provided in MD. SACOME seeks consultation on MD once drafted.</p>
Reg. 31 – Additional information in connection with an application for a Retention Lease	<p>As above.</p> <p>Members have also commented that the option to hold an RL for ground that is uneconomic to proceed to mining needs to be given careful consideration so as to ensure the justification is commercially valid and land is not locked up.</p>
Reg. 34 – Renewal of Retention Lease	As above.
Reg. 37 – Additional information in connection with application for licence	As above.
Reg. 38 – Additional information in connection with infrastructure	<p>SACOME members have suggested that the limited ambit of this Reg as an 'information gathering' mechanism is a missed opportunity in that it could be used to support state-significant infrastructure and not just infrastructure on MPLs. Some members also suggest that DEM consider infrastructure developed through other mechanisms outside the Mining Act (i.e. DIT/Planning approvals).</p> <p>SACOME suggests consideration of how information gathered through this Reg. might be used to facilitate infrastructure discussions and outcomes between proponents.</p>
Part 10 – Scoping Regs. 42 – 45	See 2.3 above.
Reg. 47 – Consultation on Proposed Tenement	Reg references MD which was not provided for comment.

	<p>SACOME sought advice on the objective requirements the Minister/DEM will have regard to in considering whether appropriate consultation has occurred.</p> <p>DEM advised during consultation that this will be outlined in the MD.</p> <p>SACOME seeks consultation on MD once drafted.</p>
<p>Reg. 48 – Social Impact Assessment</p>	<p>Reg creates a new administrative requirement.</p> <p>During consultation SACOME sought clarification on: when the social impact assessment would become enlivened; how the Minister will determine when a SIA is required; how flexible the SIA process is likely to be; and whether operational detail would be set out in the MD.</p> <p>DEM advised that it considers four triggers that would enliven a social impact assessment for a project: extent, duration, severity and sensitivity.</p> <p>These triggers are considered in relation to scale, location, population, current land use (including influx of people), religious and cultural heritage factors.</p> <p>DEM advised that the Minister will determine when an application is required based on these triggers; and that the requirement for an SIA will be identified during the Scoping process.</p> <p>SACOME also notes advice provided by DEM that further detail will be provided in MD. SACOME seeks consultation on MD once drafted.</p> <p>Members seek additional advice on how these triggers will operate; and have advised that DEM should provide 'plain English' guidance materials on SIAs in addition to detail set out in MDs.</p> <p>Members also seek clarification on whether any existing studies can be used in place of an SIA so as to avoid duplication.</p>
<p>Reg. 54 - Information on engagement on application for approval for change in operations</p>	<p>SACOME sought clarification on the rationale/operation of this Reg in relation to how adequacy of consultation will be assessed; and whether further operational detail will be provided in MD.</p> <p>DEM advised that further detail will be provided in MD. SACOME seeks consultation on MD once drafted.</p>
<p>Reg. 58 – Mining Rehabilitation Fund</p>	<p>See section 2.4 above.</p>

	<p>Advice from DEM was that review of the Act was limited and this limits what can be established under the Regs.</p> <p>SACOME notes that DEM intends to undertake consultation on the operation of the MRF in 2021.</p>
<p>Part 15 – Programs for Environmental Protection and Rehabilitation Regs. 61-64</p>	<p>Regs reference MD which was not provided for comment.</p> <p>SACOME sought advice on the objective requirements the Minister/DEM will have regard to in considering whether appropriate consultation has occurred.</p> <p>DEM advised during consultation that this will be outlined in the MD.</p> <p>SACOME seeks consultation on MD once drafted.</p>
<p>Part 17 – Special Mining Enterprises Regs. 66-67</p>	<p>Members have expressed general support for this Reg, but noted the need for DEM to ensure that public information is understandable and available to ensure that major projects are perceived by the public as meeting regulatory requirements.</p>
<p>Reg. 75 – Compliance Report</p>	<p>During consultation SACOME sought clarification on the compliance reporting obligations.</p> <p>DEM advised that the main change in reporting obligation under this Reg relates to the extractives industry, noting that the metallic industry already provides Compliance Reports to DEM.</p> <p>DEM advised that an online Compliance Report form is currently being developed. SACOME seeks the opportunity to review the form once drafted.</p>
<p>Reg. 77 – Incident Report</p>	<p>During consultation further information was sought regarding ‘leading indicator criteria’ requirements.</p> <p>DEM advised that leading indicator criteria are designed as an early warning mechanism and regarded as a proactive measure for the benefit of the industry.</p> <p>Members have advised that lead indicator trigger events should not be listed as ‘reportable incidents’ as they are set by industry to flag operational adjustments to avoid failure, rather than being indicators of failure.</p> <p>A possible unintended consequence of classing leading indicator triggers as ‘reportable incidents’ is that they could be gradually adjusted to be less likely to trigger, diminishing their early warning value.</p>

	<p>Logging of leading indicator trigger events should form part of normal compliance reporting, however, as this would demonstrate the effectiveness or need for adjustment of particular lead indicator settings.</p> <p>Further clarification is sought on the intended operation of leading indicator criteria as a matter of priority.</p> <p>Reg 77 (4)(e) lists 'undue damage' to the environment as a reportable incident. Members note that this term is vague, and suggest that it is instead aligned with the 'environmental harm' definition per the <i>Environmental Protection Act 1993 (SA)</i> to provide consistency and clarity.</p> <p>DEM also advised that online forms for Incident Reports are being developed. SACOME seeks the opportunity to review once drafted.</p>
<p>Regs. 84(4) & 84(6)– Ministerial notices in connection with certain prescribed fees</p>	<p>Clarification sought on the meaning of '<i>level 1, level 2, level 3 or level 4 change</i>'.</p> <p>Clarification sought on the meaning of '<i>tier 1, tier 2, tier 3 or tier 4 draft or program for the purposes of a prescribed fee</i>'.</p>

Additional Comments:

Interaction with the *Environment Protection & Biodiversity Conservation Act 1999*

- Members have noted the importance for clarity in relation to interactions between the South Australian and Federal Government regarding approval processes and responsibilities.
- SACOME notes that DEM guidance materials use different terminology where it makes comment on the EPBC Act. For example, in its explanatory note, DEM refers to 'triggering' the EPBC Act, whereas the amended Mining Act uses the term 'constitutes a controlled action'.
- Noting that 'triggering' implies an unintended negative action or event, members emphasise the need for clarity in this regard.

4. Conclusion

SACOME welcomes the opportunity to make this submission to the draft *Mining Regulations 2020* consultation process.

SACOME recognises the importance of modernising the South Australian regulatory framework and continues to represent the interests of its member companies in bringing the amended Mining Act and draft Regulations framework into line with industry best-practice.

SACOME's main concerns are in relation to aspects of the draft Regulations where further information and consultation is sought, namely the: operation of the Mining Register; prospective Ministerial Determinations; the operation of the Scoping process; and the operation of the Mining Rehabilitation Fund.

In seeking this clarification, SACOME's intent is to engage in good faith and for the purpose of providing the informed and considered input DEM has requested. SACOME also wishes to ensure that its member companies have had sufficient time and opportunity to consider how proposed changes to the regulatory framework will impact their own operations.

SACOME remains committed to working collaboratively with DEM and the Minister for Energy & Mining in finalising development of the draft Mining Regulations; and in developing the additional regulatory instruments and guidance material to support the Mining Regulations flagged for implementation in 2021.

Appendix 1

Summary of Draft Regulations referencing Ministerial Determinations or Additional Regulatory Guidance

Regulation
6 - Waiver of exemption
11 – Prescribed costs
23 – Application for licence
26 – Application for retention status
27 – Division of area licence
28 – Renewal of licence
29 – Excise of land for public purposes
30 – Additional information in connection with application for mining lease
31 – Additional information in connection with application for retention lease
34 – Renewal of retention lease
37 – Additional information in connection with application for licence
38 – Additional information in connection with infrastructure
40 – Renewal of miscellaneous purposes licence
45 – Scoping report
46 – Information relating to environmental impact assessment – initial application for tenement
48 – Social impact assessment
53 – Proposal to accompany application
60 – Forfeiture and transfer of mineral tenement
61 – Preparation of program
66 – Concept phase
67- Application phase
75 – Compliance reports
76 – Technical exploration reports
77 – Incident reports
78- Airborne surveys
79 – Public liability insurance