

## Industry Association – Information request, April 2021

The SA Productivity Commission's (the Commission) inquiry on SA's regulatory framework is focussed on regulation that applies to businesses operating in SA. It is very important that the Commission obtains information and data from industry and businesses in SA to help develop and inform the inquiry findings and recommendations.

The Commission has published an inquiry issues paper and interested stakeholders are encouraged to provide a submission in response to the questions and issues raised in that paper. This is a separate request for information – it is designed to obtain information and data that is more specific and relevant to your industry and may not have necessarily been obtained via submissions. In addition to the request for information from industry associations, we intend to seek information from businesses via a survey which we hope to send soon.

Please consider and answer the following few questions on your organisation and your organisation's experience with respect to SA Government regulation. We ask that you email the completed template to Hayley Gossert (email [Hayley.Gossert2@sa.gov.au](mailto:Hayley.Gossert2@sa.gov.au)) by 14 May 2021 at the latest. This will provide us with sufficient time to consider your information before developing a draft report.

***Please note: if you can provide answers to any of the questions via existing publications / documents / links, then please do so (via attachments / links).***

### Confidentiality and Information Privacy

If you would prefer your response is to be treated as confidential, you must indicate this by responding to the first question in the table below.

With respect to information privacy, the Commission stores and treats all private information in accordance SA public sector records management, information security, and freedom of information regulations, guidelines, policies and practices.<sup>1</sup>

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<sup>1</sup> Government of South Australia

Industry Association Response Template

No.	Question	Answer
	Name of Organisation	South Australian Chamber of Mines and Energy
Do you want your response to be treated as confidential? Delete whichever is appropriate: YES		
<b>Section 1: Information about your Industry Association</b>		
1.1	<b>Organisation representative contact details</b>	
	Name	Rebecca Knol
	Position	Chief Executive Officer
	Contact phone number	(08) 8202 9999
	Contact email	rknol@sacome.org.au
1.2	<b>Industry Profile</b>	
	<p>Indicate which of the industry does your organisation represent (tick all that apply)<sup>2</sup></p> <p><i>Note: industry are those priority sectors as identified in the <a href="#">SA Growth State plan</a>.</i></p>	<input type="checkbox"/> Tourism <input checked="" type="checkbox"/> Energy and mining <input type="checkbox"/> Creative industries <input type="checkbox"/> Defence industry <input type="checkbox"/> Hi-Tech <input type="checkbox"/> Other (please specify below)  <input type="checkbox"/> Health and medical industries <input type="checkbox"/> Space industry <input type="checkbox"/> International education <input type="checkbox"/> Food, wine and agribusiness

<sup>2</sup> Industry groups reflect the SA Growth Sectors <[Sectors](#) | [Growth State](#)>

No.	Question	Answer
<b>Name of Organisation</b>		<b>South Australian Chamber of Mines and Energy</b>
<b>1.3</b>	<b>Membership Profile</b>	
	Size of current membership	Approximately 130 companies
	Average size of member business by FTE and turnover	Varies from major resources sector operators to individual consultants.
	Any other relevant details regarding membership?	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.
<b>1.4</b>	<b>SA Government Regulation</b>	
For the purposes of this inquiry, 'regulation' refers to any primary legislation (Act of Parliament), subordinate regulation (regulations, rules, by-laws), and other formal government rules and requirements designed to influence or change business behaviour.		
	List the most significant pieces of South Australian Government regulation that apply to the industry(s) / businesses that your organisation represents.	<ul style="list-style-type: none"> <li>• Mining Act 1971 (SA), Mines and Work Inspection Act 1920 (SA), Opal Mining Act 1995 (SA) and associated regulations.</li> <li>• Petroleum and Geothermal Energy Act 2000 (SA) and associated regulations.</li> <li>• Petroleum and Geothermal Energy (Ban on Hydraulic Fracturing) Amendment Act 2018 (SA)</li> <li>• Aboriginal Heritage Act 1988 (SA)</li> <li>• Broken Hill Proprietary Company's Indenture Act 1937</li> <li>• Defence Act 1903 (Cth) (Woomera Prohibited Area)</li> <li>• Environment Protection and Biodiversity Conservation Act 1999 (Cth)</li> <li>• Environment Protection Act 1993 (SA)</li> <li>• Explosives Act 1936 (SA)</li> <li>• Infrastructure South Australia Act 2018 (SA)</li> <li>• Landscapes South Australia Act 2019 (SA)</li> <li>• Modern Slavery Act 2018 (Cth)</li> <li>• Native Title Act 1993 (Cth)</li> <li>• Native Vegetation Act 1993 (SA)</li> </ul>

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		<ul style="list-style-type: none"> <li>• Offshore Minerals Act 1994 (Cth)</li> <li>• Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)</li> <li>• Pastoral Land Management and Conservation Act 1989 (SA)</li> <li>• Petroleum (Submerged Lands) Act 1982 (SA)</li> <li>• Planning, Development and Infrastructure Act 2016 (SA)</li> <li>• Radiation Protection and Control Act 2021 (SA)</li> <li>• Roxby Downs (Indenture Ratification) Act 1982 (SA)</li> <li>• Water Resources (Far North Prescribed Wells Area) Regulations 2003 (SA)</li> <li>• Whyalla Steelworks Act 1958 (SA)</li> <li>• Work Health and Safety Act 2012 (SA)</li> </ul>
<b>1.5</b>	<b>SA Regulators</b>	
	For the purposes of this inquiry, a regulator is a South Australian state or local government body responsible for implementing, monitoring compliance, and enforcing SA Government regulation.	
	List the most significant regulators who, using SA government regulation, administer and enforce regulation on the industry(s) or businesses that your organisation represents.	<ul style="list-style-type: none"> <li>• Department for Energy and Mining (DEM)</li> <li>• Department for Environment and Water (DEW)</li> <li>• Department for Infrastructure and Transport (DIT)</li> <li>• Department for Premier and Cabinet (Aboriginal Affairs and Reconciliation)</li> <li>• Department for Trade and Investment (DTI)</li> <li>• Essential Services Commission of South Australia</li> <li>• Infrastructure South Australia</li> <li>• South Australian Environment Protection Authority</li> </ul>
<b>Section 2: SA Government Regulatory Framework (based on answer to question 1.4)</b>		
<b>2.1</b>	What are the main challenges or concerns facing businesses in your industry that are due to SA Government regulation?	The South Australian resources sector is highly regulated and good regulatory design is of paramount importance for ensuring economic, social and environmental outcomes continue to be met. The main challenges South Australian resources sector operators face are:

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	<p><i>Note: May be the way the regulation has been designed and/or how it's been implemented and administered?</i></p> <ul style="list-style-type: none"> <li>• Regulatory frameworks that balance the efficiency requirements of industry (the removal of duplicate/unnecessary regulation) with the appropriate environmental and social protections expected by the community;</li> <li>• significant regulatory obligations that increases time and cost pressures for operators; and</li> <li>• regulatory frameworks that have the potential to act as either an investment attraction tool or a deterrent to investment.</li> </ul> <p>On balance South Australia has a stable and sound regulatory framework that has created an environment for low-risk sustainable investment. However, there are opportunities to improve regulatory outcomes, in particular if <i>Growth State</i> agenda outcomes are to be achieved.</p>	
<b>2.2</b>	<b>Design and development of SA Government regulation</b>	
	<p>Has your organisation been consulted as a stakeholder for the design / development of new or revised regulation relevant to your industry(s) in the past 5 years? If so, what was the regulation, how did you participate and who consulted you?</p>	<p>Yes, SACOME has been consulted as a stakeholder for the design/development of new or revised regulations.</p> <p>In the past 5 years SACOME has participated in the:</p> <ul style="list-style-type: none"> <li>• Mining Acts review;</li> <li>• Mining Act regulations consultation;</li> <li>• Draft Far North Water Allocation Prescribed Wells Area consultation;</li> <li>• Landscapes South Australia Act (Natural Resources Management reforms);</li> <li>• Mining and Resources Industry Land Access Dispute Resolution Code consultation;</li> <li>• Native Title Legislation Amendment Bill 2019 consultation;</li> <li>• Planning and Design Code (Phase three (Urban Areas) Code consultation;</li> <li>• Radiation Protection and Control Bill 2018 consultation;</li> <li>• Review of Rail Guidelines for Tarcoola-Darwin Railway</li> </ul>

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		<ul style="list-style-type: none"> <li>• Stronger Partners, Stronger Futures consultation.</li> </ul> <p>SACOME is also currently engaged in the following processes:</p> <ul style="list-style-type: none"> <li>• Petroleum and Geothermal Energy Act review.</li> <li>• Pastoral Act review.</li> <li>• Explosives Act review.</li> <li>• Radiation Protection and Control Act Regulations consultation.</li> </ul> <p>Consultation in the above circumstances usually occurs with direct contact from the relevant Department, accompanied by an Issues Paper and consultation sessions.</p> <p>SACOME also regularly convenes industry working groups and host workshops with Department representatives to facilitate consultation.</p>
	How does your organisation raise regulation concerns with the SA Government / the regulator? Are there opportunities to improve feedback mechanisms?	<p>SACOME raises concerns directly with the relevant Minister or Department.</p> <p>SACOME is recognised as a key stakeholder and is afforded good opportunities to provide feedback to government.</p> <p>Regulators are generally responsive to member companies concerns. SACOME emphasise the importance of constructive engagement on the part of both industry and regulators to achieve desired regulatory outcomes.</p>
<b>2.2</b>	<b>Regulator performance (for regulators identified at question 1.5)</b>	
	Based on your organisation's experience, what do regulators do well and not so well?	<p>Overall, the South Australian resources sector benefits from good regulation and good regulators.</p> <p>Improvements could be made by:</p>

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		<ul style="list-style-type: none"> <li>recognising that major reform priorities take time to develop/implement. For example, the Mining Act regulations consultation process was shortened from a three-month consultation to a six-week consultation.</li> </ul> <p>SACOME acknowledges that the impact of COVID-19 was the principal reason for the change in consultation timeframes, however the shortened consultation timeframe created legitimate time pressure on industry to provide a response.</p> <ul style="list-style-type: none"> <li>providing greater consideration on how to use regulation to support policy objectives such as the <i>Growth State</i> agenda.</li> </ul> <p>For example, SACOME has repeatedly called on the State Government to establish 'Resource Infrastructure Corridors' to create a regulatory structure to facilitate faster project development times through demarcating infrastructure project pathways to major South Australian resources provinces.</p> <p>This would be achieved by holistically resolving land access, approvals and logistics issues; and would provide the State with a competitive advantage by reducing the time and costs associated with developing resources projects in South Australia.</p> <ul style="list-style-type: none"> <li>Considering how different Acts impact on industry activity in a holistic manner and looking to streamline where possible. Single touch approvals or reducing regulatory duplication is supported.</li> </ul>
	<p>Where multiple regulators regulate a specific industry or business activity – how well do you consider those multiple interactions are managed?</p>	<p>SACOME considers that communication between co-regulators in South Australia is well managed, in particular where regulation of a resource activity is shared.</p> <p>In South Australia, the lead agency approach (undertaken by DEM) provides SACOME members companies with a single-entry point to Government, coordination of approvals and case management for major resources sector projects.</p>

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		However, SACOME member companies continue to raise delays in approval timeframes and duplication in the approvals process as areas of improvement.
<b>2.3</b>	<b>Opportunities for reform – based on answers provided above</b>	
	Can you identify specific regulated areas or activities that would benefit from deregulation (where deregulation can mean removal of regulation, or reduced regulation requirements) without compromising public health, safety and the environment?	<p>Mining Act:</p> <ul style="list-style-type: none"> <li>• Iterative reform that looks to streamline the operation of the Mining Act based on operational experience.</li> </ul> <p><i>Financial Surety Arrangements</i></p> <ul style="list-style-type: none"> <li>• 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 towards productive use.</li> <li>• SACOME advocates on behalf of our members for a progressive mechanism that better balances risk with facilitating project development. SACOME calls for the adoption of a Western Australia two-part financial assurance model comprising:             <ol style="list-style-type: none"> <li>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</li> <li>2. Mandatory payment into a mining rehabilitation fund based on a percentage of calculated rehabilitation cost.</li> </ol> </li> </ul> <p>Petroleum and Geothermal Energy (Ban on Hydraulic Fracturing) Amendment Act:</p>

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		<ul style="list-style-type: none"> <li>• SACOME supports the removal of this legislated moratoria on hydraulic fracture stimulation on the Limestone Coast.</li> <li>• The imposition of this legislated moratoria in 2018 is an example of an abrupt policy change that overrides established approval processes. This was a political, rather than evidence-based decision.</li> <li>• In South Australia, hydraulic fracture stimulation has been used safely for over sixty years, multiple inquiries have found the risks of unconventional gas development to be minimal and can be manage effectively.</li> </ul> <p>Aboriginal Heritage Act (AHA):</p> <ul style="list-style-type: none"> <li>• Protection of Aboriginal heritage in South Australia is complicated by a lack of clarity in the AHA and its misalignment with other legislation, including the Mining Act and the Petroleum and Geothermal Energy Act.</li> <li>• The disconnect between accepted practice and legal requirement is a notable flaw in the AHA.</li> <li>• There is the need to define the legal status of Work Area Clearances and Cultural Heritage Surveys to provide greater certainty regarding the interaction with the Mining Act and the Petroleum and Geothermal Energy Act; and for greater alignment between the AHA and other laws.</li> </ul> <p>EPBC Act:</p> <ul style="list-style-type: none"> <li>• SACOME supports the progress of bilateral agreements between the Commonwealth and the South Australian Government for streamlining approvals under the EPBC Act and creating a single, State-based approval mechanism. This process remains split between State and Commonwealth regulators.</li> </ul>

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		<p>Nuclear</p> <ul style="list-style-type: none"> <li>• SACOME supports the legislative/regulatory changes required to allow for the domestic use of nuclear.</li> <li>• South Australia possesses large quantities of uranium and stable geology conducive to making nuclear energy a viable low-cost, low-emissions option.</li> <li>• The accelerated commercialisation of Small Modular Reactor technology as a reliable, low-emissions power source is supported by SACOME.</li> </ul>
	<p>What reforms to regulation or regulators could be implemented to address issues raised above? Are there examples of reforms from interstate / overseas?</p>	<p>Consideration of how primary Acts governing mining and petroleum production interact with other Acts and identify opportunities for streamlining, red tape reduction and unintended outcomes etc.</p>