Submission to the Parliament of South Australia Select Committee Inquiry on Land Access

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South Australian Chamber of Mines & Energy
The leading industry body representing the resources sector in South Australia

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1. Introduction

SACOME welcomes the opportunity to make this submission to the South Australian Parliament's Select Committee Inquiry on Land Access ('the Inquiry').

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

The South Australian resources sector is the powerhouse of the State's economy.

In 2020, SACOME commissioned an Economic Contribution Study to analyse the expenditure patterns of 12 major operating member companies throughout 2019/20 and determine their contribution to the South Australian economy.

The Study found that these companies contributed $5.9 billion in direct and indirect spending to South Australia, equivalent to 5.3% of Gross State Product, or one dollar in every twenty.

Further, these member companies achieved the following economic outcomes for the State:

- Directly employed 5,489 people; and supported the employment of 24,895 people in total. One in every thirty-three jobs are supported by the resources sector.
- Contributed $5.9 billion of direct and indirect spending to the South Australian economy. This equates to one dollar in every twenty being generated by the resources sector.
- Paid $747.3 million in wages and salaries to 5,489 direct full-time residing employees, representing an average salary of $136,152 per annum.
- Made $1.7 billion in purchases of goods and services from 1,951 South Australian businesses.
- Paid $435.8 million in State Government payments, incorporating royalties, stamp duty, payroll tax, and land tax.

(*All data sourced from SACOME 2019/20 Economic Contribution Study*)[1]

The resources sector makes significant contribution to metropolitan and regional South Australia, demonstrating a 'whole of State' economic impact.

As such, debate and decisions concerning regulation of the sector's activities must be considered in a State-wide context and with a view to ensuring that changes to regulatory

[1] Economic Contribution (sacome.org.au)

arrangements appropriately balance protection of stakeholder interests with the efficient and effective operation of the South Australian resources sector.

The Select Committee Inquiry on Land Access has been established further to recent amendments to the *Mining Act 1971*(the Mining Act) which came into effect on January 1, 2021. Consultation on the draft *Mining Regulations* occurred in the latter half of 2020 amidst an unprecedented global pandemic.

Together, consultation on the Act and Regulations comprised an engagement process running from 2016 to 2020, with a significant expenditure of time and effort by industry and government alike.

Land access was a prominent component of the Act review process, reflecting the South Australian Government's intent to provide landowners with increased rights and surety under the Mining Act. These changes to land access arrangements were given detailed consideration as part of the review process, and resulted in increased reporting, compliance, and engagement measures for operators.

On balance, SACOME took the view that these were reasonable amendments that reflected existing practice on the part of its member companies. SACOME believes the amended Act represents a balanced compromise between the operational requirements of industry and the rights of landowners.

Review of the Petroleum & Geothermal Energy Act 2020 is presently underway. Alongside this, a range of other regulatory and policy reforms relevant to the Mining Act continue to be progressed, with SACOME engaged in these processes.

SACOMEs commitment to best practice land access is further demonstrated in the development of Land Access Guidance in early 2020 which has been shared with government and the recently established independent Landholder Advisory Service.

SACOME member companies overwhelmingly engage with landowners and communities in a respectful and constructive manner.

1.1 Inquiry Terms of Reference

The Inquiry Terms of Reference are reproduced below:

On Tuesday 2 March 2021 the House of Assembly established a Select Committee to inquire into and report upon:

a) *Land access regimes as they relate to mining and mining exploration under the Mining Act 1971, the Opal Mining Act 1995 and the Petroleum and Geothermal Energy Act 2000.*

b) *Such operations of the Department for Energy and Mining as may relate to, or be affected by, land access regimes;*

c) *The practices of interstate and overseas jurisdictions as they relate to balancing the rights of landowners and those seeking to access land in order to explore for or exploit minerals, precious stones or regulated substances;*

d) *Administrative and legislative options that may help achieve a best practice model in South Australia that balances the rights of landowners and those seeking to access land to explore for or exploit minerals, precious stones or regulated substances;*

e) *Measures that should be implemented to achieve a best practice model in South Australia that balances the rights of landowners and those seeking to access land to explore for or exploit minerals, precious stones or regulated substances (to the extent that such measures are not being addressed through existing programs or initiatives); and*

f) *Any other related matter.*

SACOME also notes the statements made by the Hon Geoff Brock, Member for Frome regarding his rationale for seeking to establish this Select Committee:

> *I have had this notice of motion on the Notice Paper for some months now. Previously, I had a bill to appoint an independent commission of inquiry into the same access that this notice of motion relates to.*
>
> *As we all know, that bill for an independent commissioner who was to be away from politics was complete. It was not to be a retired politician but a retired judge or someone who has never been in politics before.*
>
> *As we all know, that bill was not successful getting through this house, which is why I put the notice of motion on the Notice Paper to have this independent select committee that could go out there and get all the related information and give us the best opportunities for true communication and information to come from landowners and also from industries themselves.*
>
> *By having this select committee, I am not indicating that there are 100 per cent issues out there, but we need to make certain that we do look at the best opportunities and practices.*
>
> *This motion is not to relate to the bill that the minister put through some time ago but to make certain going forward that this state has untold potential for agricultural growth in South Australia and untold potential for resource and mineral opportunities to create royalties and for the exploration of our northern areas in particular.*
>
> *All I am asking is for the select committee to be able to go out there, get all the facts and figures and then report back to the parliament at a later date. Certainly, I will*

> *allow for other people to have any discussions about the issue, but I feel very, very passionate about going out to the community itself.*
>
> *I had the opportunity to look at the select committee into the grain industry many years ago and one of the things that was highlighted was that, no matter what we said as a parliament, there were other suggestions that came forth from people outside of the parliament itself, and this is what I am looking for at the moment to get the best opportunities out there and to explore and to make certain that everybody, including landowners, pastoral people and mining companies, has the opportunity to get the best result and to make certain that no-one is hard done by.*[2]

Taken together, the Terms of Reference and the Hon. Geoff Brock MP's rationale for establishing the Select Committee indicate that he and those Members of Parliament who supported the motion were not satisfied with the land access regime effected by the amended Mining Act; and that an appropriate balance of the rights and interests of landowners, pastoralists and resources sector operators is yet to be appropriately struck.

The Select Committee Inquiry appears to proceed upon the assumption that the Leading Practice Mining Act Review and the associated land access framework resulting from it was undertaken without regard to practices in other jurisdictions; and has not resulted in a best-practice framework.

The Leading Practice Review of South Australia's mining laws was commenced under the Weatherill Labor Government and completed under the Marshall Liberal Government. This was a comprehensive three-year review process covering the Mining Act, Regulations, Ministerial Determinations, and policy guidelines.

The legislative package was passed into law with bipartisan support.

While SACOME previously indicated support for an independent review of the South Australian Mining Act, the sector engaged in good faith and supported an extensive consultation process which resulted in material changes to land access and approvals arrangements under the Mining Act designed to benefit landowners.

Given the extensive consultation process and balanced outcome of the process, SACOME formed the view that an independent review of the Mining Act was not required and instead offered a commitment to ongoing iterative reform.

SACOME supports the pursuit of best practice and hopes that a key outcome of the Select Committee Inquiry will be confirmation that South Australia has land access frameworks that are consistent with leading practice in other jurisdictions.

Further, SACOME trusts that the Inquiry will acknowledge that SACOME member companies undertake land access and landowner engagement in a best-practice manner.

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[2] Hon Geoff Brock MP, Member for Frome, Hansard, House of Assembly, 2 March 2021, p. 4308.

By way of preface it is important to state that amendments to the Mining Act only came into effect on 1 January 2021 – one month prior to establishment of this Select Committee Inquiry – and there has been no time to meaningfully assess whether the new framework is operating effectively.

Key message:

- As an exercise in procedural fairness, the recently amended Mining Act must be afforded sufficient time to operate so that an informed assessment of its efficacy can be made.
- SACOME submits that this should be a key recommendation of the Select Committee.

2. Crown Ownership of Mineral and Petroleum Rights

SACOME expresses its support for the principle of Crown ownership of mineral and petroleum rights in the strongest terms.

The Australian system of land is well-summarised in a report prepared by Professor Tina Hunter in 2017 for the Western Australian Land Access Working Group. This Working Group was established by the Western Australian Department of Mines for the purpose of undertaking comparative review of land access arrangements for mining and petroleum legislation in Western Australia, other Australian states and territories, and select international jurisdictions.[3]

Professor Hunter's succinct explanation of the Australian system of land with reference to Crown ownership of mineral and petroleum rights is reproduced below:

Generally speaking, there are two common forms of interests in land granted by the Crown under the common law system of Australian States and Territories, namely: Crown leasehold interest; and Freehold (private ownership) interest.

A Crown leasehold interest is a lease where the Crown, as owner of the land, leases the land for agricultural purposes. These leases, generally known as pastoral leases, have been in existence since the 19th Century and were introduced as a method of securing payment for the agricultural use of government lands.

A freehold interest is an interest in land granted by the Crown that confers ownership of land. It is the closest form of ownership to absolute ownership. Most landowners in Australia presume that they have absolute ownership over their land, and therefore the right to refuse others from coming onto their land.

Professor Hunter expands on the concept of freehold interest in land, stating that:

> … as a result of the *Doctrine of Tenure*, the fee simple landowner does not enjoy absolute ownership. Rather, he has the right to exclude all others except those whose interests in land has been granted by the Crown. Under the *Doctrine of Tenure*, the Crown reserves rights over the land, entitling it to claim ownership in the minerals and petroleum that lie on and under freehold land. This right is known as Crown reservation in respect of minerals and petroleum.
>
> The land law system in Australia, particularly the concept of Crown reservation, allows separate interests to be held over a single property. This concept, known as *fragmentation of property rights*, means the land can be owned privately by one

[3] Professor Tina Hunter, *Land Access on Private Land for Mineral and Petroleum Activities: A review of existing provisions in Australian States/Territories and Selected Overseas Jurisdictions*, February 2017 https://www.dmp.wa.gov.au/Documents/About-Us-Careers/Professor_Tina_Hunter_Land_Access_Report_February_2017.pdf

> person (freehold) and also have a mineral/petroleum title granted over it, allowing the titleholder to explore for and produce minerals and petroleum.[4]

The principle of Crown ownership of mineral and petroleum rights is reflected in South Australia's mining and petroleum legislation, which provides the Minister with power to allocate rights for exploration and development of these resources to tenement holders.

In exchange, tenement holders return royalties generated from these resources to the State, in addition to providing other economic benefits through their operations including employment, taxes, and the purchase of goods and services.

2.1 Right to Veto

Discussions about land access frameworks and the concept of a landowner right to veto are often linked.

SACOME refers to the Commonwealth Productivity Commission's 2016 *Regulation of Australian Agriculture Report* which did not support the concept of a right to veto per the excerpt below:

> At present, the right to compel land access for the purpose of resource exploration and extraction is held by the Crown (on behalf of the community), who may grant licences to resource companies to exercise this right. This right is complementary to the Crown's ownership of subsurface minerals.
>
> A right of veto would shift the power to make land access (and hence land use) decisions from the Crown to the landholder. This represents a transfer of decision-making powers from the community as a whole to individual landholders. Individual landholders are unlikely to be better placed than government to make land use decisions in the interests of society as a whole.
>
> Additionally, a right to refuse access to land is a de facto right to refuse access to minerals, encumbering the Crown's ability to exercise its ownership of subsurface minerals. (By contrast, a landholder's permission to access land would not by itself grant access to minerals, given that ownership of minerals vests in the Crown.)
>
> On this basis, the Commission considers that land access rights for resource exploration and extraction should vest in the Crown, given that it also owns subsurface minerals. This is because the right to access those minerals cannot be exercised without a right to access land, meaning that, if those rights are held by separate parties, additional transaction costs will be incurred when allocating and exercising exploration and production rights.
>
> A right of veto is also inconsistent with the tenet that land title does not grant absolute ownership and the Crown's general power to compulsorily acquire property.

[4] ibid. p.9

> In particular, there is no reason why an exception should exist for agricultural land vis-à-vis resource exploration and extraction.
>
> Insofar as a right of veto is aimed at preserving agricultural land per se, such a policy risks generating a net cost to the community if land is not put to its most efficient use. Also, any distributive justice considerations relating to land access negotiations should be addressed through compensation arrangements, rather than through a transfer of land rights from the community to individual landholders.[5]

SACOME supports the findings of the Productivity Commission, recognising that the principles espoused above regarding compensation rather than a transfer of land rights are reflective of State and Territory mineral and petroleum regulatory frameworks.

The effective transfer of mineral or petroleum ownership rights to a landholder afforded by a right of veto would compromise a government's ability to implement balanced, efficient, and optimal land use policies.

SACOME notes that both major political parties have publicly ruled out support for introduction of a right to veto in South Australia. This is consistent with the principle of Crown ownership of mineral and petroleum rights and SACOME's reasonable expectation is a continuation of bipartisan support for this position.

2.2 Multiple Land Use Frameworks

SACOME supports the principle of multiple land use, as set out in the Council of Australian Government (COAG) Energy Council's *Multiple Land Use Framework*[6], implemented in 2013; and the South Australian Government's *South Australian Multiple Land Use Framework*[7], implemented in 2016.

These frameworks were developed to address challenges arising from competing land use, land access and land use change; and are intended to support the ability of local and regional communities and governments to maximise land use in a flexible, environmentally sustainable manner over time.

South Australia was a national leader in the development of a multiple land use mechanism to resolve conflict arising from competitive demands for land use.

The *South Australian Multiple Land Use Framework* sets out guiding principles to assist government, community, landowners, business and industry to efficiently and effectively address land access and land use challenges; and supports a shared commitment to multiple and sequential land use that considers existing legitimate land uses and environmental, social, regional and economic impacts.

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[5] Productivity Commission 2016*, Regulation of Australian Agriculture*, Report no. 79, Canberra, p.103 https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf

[6] https://energyministers.gov.au/publications/multiple-land-use-framework-december-2013

[7] https://energymining.sa.gov.au/minerals/land_access/multiple_land_use_policy_framework#:~:text=The%20Framework%20seeks%20to%20increase,communities%20on%20land%20use%20change.

The Multiple Land Use Framework seeks to balance legitimate land uses in a way that promotes:

- Best use of resources – maximising the social, environmental and heritage values of land use for current and future generations;
- Coexistence – the rights of all land users are recognised, and their intentions acknowledged and respected, ensuring land use decision making does not exclude other potential uses without considering the benefits and consequences for other land users and the wider community;
- Decision making and accountability – risk-based approach in the assessment of land use capability, including the benefits and consequences; and
- Strategic planning – inter-governmental planning to recognise community expectations and capacity to adapt to land change.

Importantly, the principles set out in these framework documents have been incorporated in the Mining Act and the Petroleum, Geothermal & Energy Act.

These frameworks represent policy evolution that reinforces the primacy of the Crown as grantor of interests in land but does so in a considered manner that balances the benefits and consequences of decisions about land use; and places a premium on respectful and transparent stakeholder engagement.

SACOME strongly supports the principles of open and transparent and respectful engagement with landowners espoused in these frameworks and has incorporated them into SACOME land access guidance documents.

2.3 Comment on Regulation of Resource Development & Land Access

Given the accepted position of Crown sovereignty over mineral and petroleum resources, regulation of land access as it relates to resources development seeks to balance legitimate, competing interests in land.

Compensation to landowners is at the core of this approach backed by approvals processes grounded in community consultation and environmental responsibility; and processes for stakeholder engagement mandated by law, encouraged by policy and reinforced by industry codes of conduct/practice.

SACOME acknowledges that some landowners hold the view that access by resources companies should not be permitted under any circumstances. This has been a key feature of debate around the Mining Act review process, with some landowners and their representatives calling for a landowner right to veto.

These calls are often grounded in landowners' negative experiences with resources sector companies and SACOME accords that landowner experience due respect.

Such occurrences are unacceptable.

It does not logically follow, however, that governments should regulate based on the actions of the very worst performers or that resources sector activities are illegitimate on this basis.

SACOME believes that stringent approval processes, compliance and penalty measures are the appropriate means of addressing operational recalcitrance or denying an operator with poor credentials the ability to undertake activity in South Australia.

South Australia is considered a desirable jurisdiction for resources investment due to the level of regulatory certainty provided by our mining and petroleum legislation.

A right to veto, a declaration of moratoria or a special exempt area brings with it legitimate concerns about sovereign risk and undermines the perception of a jurisdiction as a location in which investment can be made with certainty.

Key messages:

- The principle of Crown ownership of mineral and petroleum rights is fundamental to the Australian system of land and must be preserved.
- A landowner right to veto is inconsistent with the principle of Crown ownership of mineral and petroleum rights and should not be supported.
- Multiple Land Use Frameworks are an effective means of balancing legitimate, competing interests in land and have worked well in South Australia.
- Distributive justice considerations relating to land access should be addressed through compensation, rather than through a transfer of land rights from the community to individual landholders.

3. South Australian Land Access Frameworks

Both the Mining Act and the Petroleum & Geothermal Energy Act set out clear requirements for operators who seek to access to land.

These requirements continue to evolve in line with changes to community and regulator expectations while preserving the principle of Crown ownership of mineral rights; and observing Multiple Land Use Framework principles which seek to balance legitimate competing land uses.

Additional land access requirements are also mandated by other State and Commonwealth laws that regulate land use.[8]

Early engagement with landowners prior to any land access activity is strongly encouraged by DEM; and is a core tenet of SACOME's advice to member companies.

As stated above, significant changes to land access arrangements were made as part of the Leading Practice Mining Act review process. A list of landowner benefits afforded by the amended Mining Act is provided as **Appendix 1**.

3.1 Exempt Land & Waiver of Exemption

The Mining Act observes the concept of 'exempt land', which is land that has been improved by the construction of structures, as well as cultivated land, plantations, orchards, vineyards, parklands, infrastructure land, and forests.

The Mining Act requires an explorer or operator to negotiate a 'waiver of exemption' as a precondition to accessing land and carrying out operations.

If agreement cannot be reached, the matter can be resolved via the Warden's Court, the Environment, Resources & Development Court, or the Supreme Court.

In determining whether to waive exempt land, the Court will consider the adverse impacts of the proposed operations, and whether those impacts can be remedied by conditions and compensation.

If conditions and compensation cannot remedy the impacts, the Court will not waive the benefit of exempt land and the proposed operations cannot occur on that land.

3.2 Notice of Entry

[8] Including the Planning, Development and Infrastructure Act, the Environment Protection Act, National Parks and Wildlife Act, Adelaide Dolphin Sanctuary Act, Marine Parks Act, Landscape South Australia Act, the River Murray Act, the Wilderness Protection Act and the Aboriginal Heritage Act in South Australia; and the Commonwealth's Environment Protection and Biodiversity Conservation Act, Woomera Prohibited Area Access Framework under the Defence Act and the Native Title Act.

Under the Mining Act a notice of entry must be provided to a landowner prior to accessing land to undertake any form of activity.

A tenement holder must first either consult with a landowner and issue a Notice of Entry, and then wait 42 days before entering the property; or negotiate an agreement with a landowner that includes the conditions of entry.

Recent amendments to the Mining Act saw the Notice of Entry period double from 21 days to 42 days, with this change being supported by SACOME.

Landowners have the right to object to a Notice of Entry. This is exercised by them issuing a notice of objection which triggers a mediation process. Where disputes are not resolved through mediation, the matter may be referred to the Warden's Court for resolution.

The Warden's Court must be satisfied that operations on the land could result in substantial hardship or substantial damage to the land in order to hear an application for objection and may determine that the land, or a particular part of the land should not be used; determine the conditions on which operations may be carried out on the land with least detriment to the interests of the owner and least damage to the land; and determine the amount of compensation payable.

The Petroleum & Geothermal Energy Act has a similar Notice of Entry provision, requiring licensees to give written notice of entry to landowners, presently with a 21-day waiting period.

This Act is presently under review with changes to consultation and engagement requirements proposed in the Issues Paper. Further, the Issues Paper proposes a mandatory 30-day public consultation period for all Environmental Impact Reports and draft Statements of Environmental Objectives, which represents a strengthening of requirements.

3.3 Landowner Information & Compensation

The Leading Practice Mining Act Review process resulted in increased information being made available to landowners to assist them in understanding their rights and obligations under the land access process; and to support land access agreement making.

DEM's *Rights, access and interacting with landowners: a guide for explorers, miners and landowners* provides updated land access guidelines reflecting recent amendments to the Mining Act, including a list of questions landowners and explorers/miners should ask one another during the land access process.[9]

Under section 61 of the Mining Act, landowners are entitled to compensation for economic loss, hardship and inconvenience caused by mining operations conducted on their land. Compensation is negotiated between the landowner and explorer or miner and can be both monetary or non-monetary in nature. If agreement on the appropriate amount of

[9] https://sarigbasis.pir.sa.gov.au/WebtopEw/ws/samref/sarig1/image/DDD/MRGMG4.pdf

compensation cannot be reached, the landowner or explorer/miner can take the matter to an appropriate court (depending on the amount of compensation sought).

Landowners can now claim up to $2500 from an explorer or mining company for legal costs incurred in the process of considering a request for access to exempt land. This amount was previously set at $500. While the sufficiency of this quantum has been disputed, it nonetheless represents a 500% increase in compensation

A Mining and Resources Industry Land Access Dispute Resolution Code administered by the Small Business Commissioner was implemented in 2018 and strongly supported by SACOME.

The Code helps farmers and resource companies by providing mandatory alternative dispute resolution processes on a low (or no) cost basis overseen by the Small Business Commissioner. This independent process is designed to help resolve farming land access disputes as quickly and cheaply as possible.

The South Australian Government have also established the Landowner Information Service (operating under the auspices of Rural Business Support) which provides free, factual and impartial information about resources sector operations and regulations. This service has been established to further assist landowners in making informed decisions in their interactions with the resources sector.

SACOME strongly supported establishment of the Landowner Information Service and formally endorsed it alongside Primary Producers South Australia.

Key messages:

- Land access is heavily regulated both under the Mining and Petroleum & Geothermal Energy Acts, and other South Australian statutes. These Acts set out detailed requirements for resources sector operators seeking to access land.
- Significant changes to land access arrangements; landowner compensation; informal dispute resolution mechanisms; and landowner information services have been implemented through the Mining Act review process.
- Changes to land access arrangements under the amended Mining Act only recently came into effect and should be afforded sufficient opportunity to determine their efficacy.
- Consistent with other jurisdictions, should a landowner object to a resources company accessing their land; or should they refuse to negotiate an access agreement, Court mechanisms are available as impartial avenues of appeal for both landowners and resources companies.

4. SACOME Land Access Guidance & Industry Culture

In addition to formal regulatory requirements and government policy guidelines for land access, SACOME consistently advocates for land access to be undertaken in a 'best-practice' manner by its member companies.

As the peak representative association for the South Australian resources sector, SACOME actively promotes a culture of stakeholder engagement based on respectful, transparent negotiation between resources companies and landowners.

It is important to understand that membership of SACOME and other resource sector industry associations is voluntary. SACOME does not represent non- member companies and has a limited role in influencing their operational culture or activities.

SACOME most recently prepared Land Access Guides for Mineral Exploration[10] and Petroleum Exploration[11] in 2020.

SACOME's expectation is that member companies will observe the following principles to guide their discussions and build mutually agreeable working relationships with landholders:

- Advise the landholder of your intentions relating to authorised activities well in advance of them being undertaken. Early engagement and understanding landholder concerns provides a basis for constructive discussion.
- Engage with the landholder, providing information on the proposed exploration program and seek advice on key issues that will need to be taken into account in refining the program and drafting a compensation agreement.
- Liaise closely with the landholder in good faith.
- Respect the rights, privacy, property and activities of the landholder.
- Treat all information obtained about the landholder's operations confidentially.
- If compensation is to be paid, promptly pay to the landholder once the agreed milestones are reached.
- Advise the landholder of any significant changes to operations or timing.
- Minimise damage to improvements, vegetation and land.
- Be responsible for all authorised activities and actions undertaken by employees and contractors of the explorer.

[10] https://www.sacome.org.au/uploads/1/1/3/2/113283509/sacome_land_access_guide_2020_-_mineral_exploration_final_feb2020.pdf

[11] https://www.sacome.org.au/uploads/1/1/3/2/113283509/sacome_land_access_guide_petroleum_final_april2020.pdf

- Rectify any damage caused by the authorised activities without delay.

These principles are accompanied by detailed checklists to assist operators and landowners in constructively progressing the land access process.

The 2020 Land Access Guides build on the *SACOME Code of Practice for Community & Stakeholder Engagement*[12] published in 2014; and the *SACOME Code of Conduct for Mineral & Energy Explorers: a framework for access to rural land*[13] published in 2013, and endorsed by Primary Producers SA (PPSA).

These documents demonstrate a long-held public commitment by SACOME and its member companies to undertaking land access in a best practice manner.

SACOME welcomes the opportunity to develop and implement an updated *Code of Conduct for Mineral & Energy Explorers* in collaboration with PPSA, GPSA, Livestock SA and other agricultural sector industry bodies, reflecting amendments to the Mining Act and the Petroleum & Geothermal Energy Act.

Key messages:

- As the peak representative body for the South Australian resources sector, SACOME consistently advocates for land access to be undertaken in a 'best-practice' manner by its member companies.
- These best-practice principles are communicated through publicly available land access guides and industry codes of practice.
- SACOME is a member-based organisation. It does not represent non-member companies and has a limited role in influencing their operational culture or activities.

[12] https://energymining.sa.gov.au/__data/assets/pdf_file/0015/312612/SACOMECodeOfPractice.pdf
[13] https://energymining.sa.gov.au/__data/assets/pdf_file/0016/312613/Code_of_conduct_for_explorers.pdf

5. Conclusion

SACOME welcomes the opportunity to make this submission to the Inquiry.

SACOME restates its support for the principle of Crown sovereignty over mineral and petroleum rights in the strongest terms.

SACOME believes that South Australian legislative frameworks appropriately balance the regulation of mineral and petroleum development with the rights of landowners, particularly given recent amendments to the Mining Act which should be given appropriate time to operate before further changes to land access frameworks are made.

As the peak industry association for the South Australian resources sector, SACOME promotes a culture of best-practice in land access and stakeholder engagement and is committed to ongoing reform in this area.

SACOME welcomes the opportunity to further engage with the Select Committee throughout the course of this Inquiry.

Appendix 1

Summary of benefits for landowners under amended Mining Act (43 additional provisions)

Exempt Land (term retained)

Exempt land legal advice increased by 500% (from $500 to $2500 per landowner) (s. 9 & 9AA)

Increased exempt land radius by 50% from 400m to 600m for high impact mineral operations (s. 9)

Improved access to justice by expanding the courts that hear exempt land matters to include Environment, Resources and Development and Supreme Court as well as the Warden's Court (s. 9AA)

New right for landowners to commence exempt land proceedings (s. 9AA)

Transparency and access to information

Free access to information of what is approved over land through an expanded Mining Register, which will log or contain information about ongoing activities on a tenement (part 2A)

Improved industry and government transparency and accountability through modernised powers for compiling, keeping, providing and releasing materials publically (part 2A)

Updating and expanded public consultation on tenement applications and change of operations (s. 56H)

Obligation to prepare assessment reports so reasons for decisions are clearly documented (s. 56ZA)

Name and shame by publication of directions or orders for non-compliance by explorers or miners and annual compliance reports (s. 15AA)

Alternative Dispute Resolution / Small Business Commissioner

Small Business Commissioner to provide information, advice and mediation as part of a structured alternative dispute resolution process between primary producers and resource companies.

Notice of entry

Clear and understandable definitions of operations so that notices to landowners are clear about what activities are proposed and approved (s. 6)
Improved notices to reflect impact and proposed exploration activity to ensure the type of exploration operations being proposed are clear e.g. notice to authorise 'advanced exploration' operations (s. 58A)

New notice of intention to apply for production tenement with rights to object, or progress negotiations, prior to the grant (s. 58A)

Increased time to enter or commence activities from 21 to 42 days after notice (s. 58A)

New right for pastoral lessees to object to notices of entry and all activity based notices (s. 58A)

Increased accountability/compliance

Increased compliance and enforcement tools so all environmental rehabilitation obligations are met (part 10B)

Guaranteed payments to landowners with new powers to allow Government to recover unpaid rent (s. 56M & 85)

Increased penalties for breaching exempt land and notice of entry obligation (s. 58A, 70HC & 70FA)

Farmer's rights to extractive minerals

Right to use more extractive minerals through clarification of 'personal use' so landowners can use more extractive minerals on their property without triggering regulation under the Act (s. 75)

Compensation

Right to compensation protected by clarifying that rent paid by a mining operator to a landowner is in addition to any compensation payable (s. 61)

Native Title

Increasing notice and objection timeframes in Part 9B (Native Title) of the Mining Act to align with the Commonwealth *Native Title Act 1993* (part 9B). **Commitment to further Native Title amendments** as part of *Stronger Partners, Stronger Futures.*

Mitigation and preventative measures

Expanding the exclusion zone around sensitive environmental receptor (residential properties) by 50% for high impact mining operations (s. 9)

Publishing non compliances and annual compliance report on the Mining Register to encourage environmental accountability (part 2A)

New test for granting a mining lease, retention lease and miscellaneous purposes licence, whereby the Minister must not grant unless satisfied appropriate environmental outcomes will be achieved (parts 6, 7 & 8)

Expanding referrals to the environment Minister for applications, renewals and relevant PEPRs which are within or adjacent to a specially protected area (s. 56F & 56G)

Ensuring consistency between the Mining Act and the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*, to be ready for possible future bi-lateral negotiations (s. 56J & 70D)

New accountable surrender processes to ensure all environmental outcomes are achieved prior to approving a surrender of whole or part of a tenement (s. 56X)

Introducing a Fund to hold 'Residual Risk Payments' to pass requirements and liabilities to maintain and monitor any ongoing externalities to the Government (s. 62AA)

New power to require the audit of a PEPR to assess the tenement holder's ability to achieve the outcomes or requirements of a PEPR (s. 70DB)

Compliance & Punitive

Expanding the compliance tools to apply to some operations authorised under other Acts to ensure all operations in the State are undertaken in an environmentally accountable manner (s. 7)

New power to reinstate expired tenements or extend the term prior to expiry to allow full use of compliance and enforcement tools under the Act. This will ensure full rehabilitation of the area occurs and all environmental outcomes are met (s. 56Y & 56Z)

Expanding the scope to which a compliance direction can be issued (s. 70E)

Introducing a clear emergency direction power that can be issued verbally, to allow for more efficient emergency management (s. 70FB)

Clarifying that an environmental direction can be issued directing an act or omission be undertaken that may otherwise be in contravention of the Act to

ensure operators and the regulator can act quickly to prevent or remediate environmental harm (s. 70FC)

Evidence and prosecutions

Modernising investigatory powers for gathering evidence for prosecutions under the Act (s. 14-14H)

Introducing a civil offences and penalty regime to ensure compliance action is appropriate and commensurate with the behaviour (part 10C)

Introducing continuing offences provisions to appropriately address continual non-compliance with the Act (s. 70HG)

Introducing offences against directors for offences of body corporates to align with all other South Australian environmental legislation (s. 70HH)

Introducing a provision making all offences under the Act summary offences, to ensure appropriate compliance responses (s. 70HJ)

Significantly expanding the evidentiary provisions to ensure the regulator has modern investigatory tools available (s. 70HK)

Introducing enforceable voluntary undertakings, which allow for a person to accept an undertaking, rather than being prosecuted under the Act, to facilitate faster rehabilitation (s. 74AA)

Ensuring clear liability by clarifying where tenement holders are jointly and severally liable or vicariously liable for harm, and deeming the tenement holder liable unless there is evidence to the contrary (s. 70HK and 81)

Assurance of payment by tenement holder for payment due like the cost of rehabilitation (s. 62 & 85)