South Australian Chamber Of Mines & Energy

24 June 2022

Mr Fraser Ellis MP
Member for Narungga
37 Graves Street
KADINA SA 5554

Via email: narungga@parliament.sa.gov.au

Dear Mr Ellis,

Re: Draft Mining (Land Access Inquiry Recommendations) Amendment Bill 2022

The South Australian Chamber of Mines and Energy (SACOME) welcomes the opportunity to provide comment on the draft Mining (Land Access Inquiry Recommendations) Amendment Bill 2022.

SACOME is the leading industry association representing resource and energy companies, including those who provide services to them.

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:[1]

- One in every thirty-three jobs are supported by the resources sector;

[1] All data sourced from the SACOME 2019/20 Economic Contribution Study

South Australian Chamber Of Mines & Energy

- 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; and

- Paid $435.8 million in State Government payments, incorporating royalties, stamp duty, payroll tax, and land tax.

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

Accordingly, debate and decisions concerning the regulation of the sector's activities must be considered in a state-wide context and with a view to ensuring that changes to the regulatory arrangements appropriately balance protection of stakeholder interests with the efficient and effective operation of the resources sector.

SACOME notes that the draft Bill is designed to enact the recommendations of the Select Committee on Land Access.

SACOME previously made a submission to this Committee which is included as Appendix A.

SACOME further notes the draft Bill is a Private Member's Bill and is unlikely to progress through the Parliament without Government support to do so.

Background

Following consultation, the Select Committee's Report was tabled on 18 November 2021 by the Hon Geoff Brock MP, the Chair of the Committee. The Committee comprised of the Chair, Mr Eddie Hughes MP, the Hon Tom Koutsantonis MP, Mr Steve Murray MP, Mr Peter Treloar MP, and yourself.

When Mr Brock moved the establishment of the Committee on 2 March 2021, the Committee's Terms of Reference were as follows:

South Australian Chamber Of Mines & Energy

That this House establish a Select Committee to inquire into and report on –

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 other regulated substances;

e. Measures that should be implemented to achieve a best practice model in South Australia that balances the right 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.

The Select Committee reported on 18 November 2021 and made six (6) recommendations, summarised as follows:

1. The establishment of the office of a Mining Ombudsman to serve as the industry's regulator and develop a mandatory Code of Conduct for resource companies;

2. The Department for Environment and Water map existing land uses to inform the development of standalone planning legislation that governs land access, with a view to cherry-picking features from the legislative regimes in New South Wales and Queensland;

3. A 400% increase in the legal assistance provided to landholders, following a 500% increase last year; and Government to consider mandating a new source of income to paid to landholders if a mine is developed, beyond that of the tenement rental and site compensation;

South Australian Chamber Of Mines & Energy

4. The notice of entry period for resource companies to access land to be more than doubled to 90 days;
5. The Mining Ombudsman develop standard forms in plain English for use in land access arrangements; and

6. Resource companies be required to consult with the neighbouring properties of an exploration site.

SACOME notes that Recommendation 1 goes beyond the Select Committee's Terms of Reference.

As part of its inquiry, the Select Committee called for evidence from interested parties and conducted hearings.

As noted above, SACOME provided a written submission to the Select Committee in April 2021 (Appendix A) and presented oral evidence on 3 May 2021 (Appendix B).

It is noted that SACOME's feedback is not reflected in the Report's recommendations.

While some of the recommendations as codified in the draft Bill are innocuous – at least on their face – others, particularly Recommendations 1 and 2, have the potential to jeopardise investment in one of South Australia's most important sectors by weakening the Crown's sovereignty of mineral rights that is held on behalf of all South Australians.

Select Committees

While SACOME acknowledges that Select Committees of the Parliament can serve as a versatile vehicle for *ad hoc* inquiries, such inquiries ought to be conducted in an impartial manner that affords all parties procedural fairness.

The capacity for Select Committees to fulfil their inquiry function in an impartial manner has been called into question in the Parliament of South Australia, with submissions for recusal for bias and the reasonable apprehension of bias not

entertained by the relevant Members in at least two Select Committees of the 54th Parliament.[2]

The majority of the High Court has affirmed the formulation of the basic test for reasonable apprehension of bias thus: *"a judge is disqualified if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide."*[3]

Relevantly, the test for apprehended bias is the same for both curial and non-curial decision-making.[4]

Further context has been provided: *"The question is not whether a decision-maker's mind is blank; it is whether it is open to persuasion."*[5]

The application of the test requires, firstly, the identification of what might lead a decision-maker to decide a question other than on its merits; and, secondly, a logical connexion between that matter and the feared departure by the decision-maker in deciding the question on its merits.[6]

The apprehension of bias principle is so important to perceptions of independence and impartiality that *"there should be no appearance of departure from it, lest the integrity of the [inquiry] be undermined."*[7]

In his oral evidence of 27 September 2021 to the Select Committee on Damage, Harm or Adverse Outcomes resulting from Independent Commissioner Against Corruption Investigations (ICAC), the Hon Bruce Lander QC, former ICAC and Supreme Court judge, summarised the principles thus:

> "The first is that the decision-maker must enter into the investigation or inquiry with an open mind. That is to say the decision-maker cannot be biased or cannot have engaged in prejudgement. The rule against bias is a fundamental rule of procedural

[2] Select Committee on Damage, Harm, or Adverse Outcomes Resulting from ICAC Investigations; Select Committee on the Conduct of the Hon. Vickie Chapman MP regarding Kangaroo Island Port Application.

[3] *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, at [6].
[4] *Hot Holdings v Creasy* (2002) 210 CLR 438, at [69].
[5] *Minister for Immigration and Multicultural Affairs v Jia Legeng* (2001) 2005 CLR 507, at [71].
[6] *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, at
[7] *Charisteas v Charisteas & Ors* [2021] HCA 29 at [18].

South Australian Chamber Of Mines & Energy

> fairness. It is critical in ensuring public confidence in any decisions made by a public body. The rule requires a decision-maker to be free from any actual or apprehended bias. A decision-maker who is infected by apprehended bias—that is, not actual bias—cannot continue in the role of a decision-maker."

Mr Lander QC further stated:

> "If the committee is designed to be an inquisitorial fact finder… and to make decisions which adversely affect the rights, interests and legitimate expectations of persons, the persons on the committee must not be infected by apprehended bias."

Select Committee on Land Access

SACOME submits that Mr Brock and yourself made statements that might lead a fair-minded lay observer to reasonably apprehend you might not bring an impartial mind to the questions you were required to decide.

On 3 March 2021, following the successful establishment of the Committee, Mr Brock issued a press release entitled: "*Finally, a select committee on land access*". It commenced thus:[8]

> "It's been a long road, but Member for Frome Geoff Brock MP has finally won his bid to begin the process of protecting South Australian landowner's *[sic]* rights. Although he was unsuccessful in passing a Bill into legislation, Mr Brock has had a victory through the establishment of a Select Committee.
>
> Mr Brock first introduced a Bill into Parliament in July 2019 which would protect land access rights of landowners against the mining industry…"

This press release remains available on Mr Brock's website as of 16 June 2022.

On 26 November 2021, Mr Brock issued a press release entitled: "Recommendations give landowners a voice":[9]

> "It took a while, but finally, Member for Frome Geoff Brock MP won his bid to begin the process of protecting South Australian landowners' rights through the establishment of a Parliamentary Select Committee.

[8] https://geoffbrock.com.au/regional-development/finally-a-select-committee-on-land-access/
[9] https://geoffbrock.com.au/general/media-release-mining-select-committee/

South Australian Chamber Of Mines & Energy

> "Despite previous attempts by the Minister for Energy and Mining, the Hon Dan van Holst Pellekaan to squash my Bill and the select committee or have its findings buried deep in the Parliament Sitting Program, the report has now been presented to Parliament," Mr Brock said.
>
> Mr Brock first introduced a Bill into Parliament in July 2019 which would protect land access rights of landowners against the mining industry, but the matter was deferred and then subsequently defeated a year later.
>
> "I introduced the Bill to bring clarity, because no previous Bill had been able to satisfy all parties and I was asking for a Commission of Enquiry *[sic]*," Mr Brock said.
>
> "The Bill would have provided an opportunity to investigate best practice at a national and international level, while at the same time balancing the rights of landowners and exploration, and I was disappointed when it was defeated by a Government majority."
>
> Unwilling to give up, Mr Brock then asked for a Select Committee be established to look at the issue.
>
> The Select committee on the land access rights of landowners *against* the mining industry was finally established in March this year with Mr Brock as its chair and has now delivered its final report…"

The press release remains available on Mr Brock's website as of 16 June 2022.

SACOME submits that the inevitable conclusion to be drawn from these statements is that Mr Brock viewed himself variously as the champion, protector, and/or advocate for landowners' rights *against* the mining industry.

Relevantly, his mind was not open to persuasion that there ought to be anything but increased rights for landholders, rather than inquiring impartially into a "best practice model" of land access pursuant to the Select Committee's Terms of Reference.

Plainly, the statements would lead a fair-minded lay observer to conclude that increasing landholder rights was a long-standing political priority for Mr Brock and the establishment of the Select Committee was but another way for him to prosecute this agenda. The Committee's decision to recommend increased rights for landholders at the expense of the rights, interests and legitimate expectations of the mining industry was the culmination of that effort.

South Australian Chamber Of Mines & Energy

It would be disingenuous to disregard the plain meaning and intention of Mr Brock's words and retrospectively regard the Select Committee as an impartial inquiry vehicle. Indeed, the statement of 3 March 2021 was made before any evidence was adduced before the Committee of which he was Chair.

In respect of statements you have made, SACOME draws your attention to the third reading debate on the Statutes Amendment (Minerals Resources) Bill 2019 of 3 July 2019.

Relevantly, you stated:

a. "Once again, I rise to state my opposition to the Statutes Amendment (Mineral Resources) Bill. I previously stated my opposition to this bill during the election campaign when I drove farm door to farm door with the former shadow minister for agriculture, David Ridgway from the other place. We visited tens and tens of farmers from across and over the peninsula and stated the party opposition to this bill. We jointly trumpeted our success in stopping the passage of this bill in the upper house of the previous parliament, and we jointly decried the unfair provisions of the bill, which we suggested would affect farmers' livelihoods and mental health."

b. "We promised more: more consultation and more favourable legislation for our core constituency [farmers and landowners]. That promise, I would argue, exists in written from on the GPSA website signed by the former shadow minister for agriculture."

c. "Finally, I have opposed this bill in the chamber previously and publicly in my community and I do so again today. I have had a consistent position throughout this debate and my position today should come as no surprise to anyone. No meaningful strides have been made on compromise and, as such, my position remains unchanged."

d. "The custodians of the less than 5 per cent of arable land in this state, which is all that remains with the ever-increasing urban sprawl, know what they would like to see. The precedent already exists interstate…The hoops through which a prospective mining company must jump became progressively more difficult the more lucrative the land became…We currently have an absurd situation in South Australia in which someone who owns even a small general farming-zoned block – an eight-hectare block, to use an example I am familiar with – will apply for planning approval that will not be granted in order to protect diminishing agricultural land, yet vast open-cut mines will be approved…we allow mining companies open slather."

e. "The increase in legal advice from $500 to $2,500 will get farmers exceedingly limited legal advice – perhaps an initial consultation at best…All they get in this fight to continue their life is a measly $2,500."

f. "…It is the evidence of constituents of mine that the department have proven to be failures in policing mining regulation. The conflict between promoter and regulator of mining – both roles the department currently performs – has proven to be, in the evidence of my constituents, an insurmountable challenge."

g. "Plainly and clearly, the most recent precedent, instituted by a government, is protection of prime agricultural land through planning law measures. I look forward to his support in instituting similar systems to the ones found in Queensland and New South Wales."

The only conclusion that can be drawn from your statements is the same as for Mr Brock – increasing landowner rights was a political priority and that your mind was not open to persuasion before the Committee commenced its hearings. Indeed, your third reading contribution foreshadowed the very recommendations that emanated from the Committee.

In no way does SACOME suggest that Members of Parliament do not have the right to champion or advocate for causes inside, or outside, the Parliament. It is an integral function of their role. However, as Mr Lander QC submitted, Members of Parliament should not participate in Select Committees as finders of fact when they have prejudged the matter they are required to decide.

Accordingly, SACOME submits that no weight can be attributed to the Report of the Select Committee, infected as it is by apprehension of bias.

SACOME further submits that the draft Bill should be abandoned, premised as it is on implementing the recommendations of a Report of no probative value.

Draft Bill

SACOME maintains the positions outlined in its original submission (Appendix A) to the Select Committee and remains concerned the changes recommended fundamentally weaken the Crown's sovereignty over mineral rights, held in trust for all South Australians.

Consequently, we make the following comments in respect of the draft Bill that has been produced.

South Australian Chamber Of Mines & Energy

Consultation process

SACOME received your correspondence on 27 May, with a deadline given of 24 June for submissions. Less than one month for the resources sector to respond to such a far-reaching Bill is wholly inadequate and, in SACOME's view, shows enormous disregard for the contribution of the resources sector to the South Australian economy.

The sufficiency of this consultation is also at odds with your criticism of the consultation process undertaken for the Mining Act amendments that commenced on 1 January 2021. In that case, the Bill had been subject to multiple rounds of consultation over several years, including the reopening of consultation by the Marshall Liberal Government of which you were then part.

SACOME also submits that the timeframe afforded to both the Department of Energy and Mining and the Department for Environment and Water as the primary agencies in Government to be affected (on the assumption they were even invited to comment) is inadequate.

SACOME notes that the Office of the Small Business Commissioner was not invited to comment on the draft Bill. We consider this an oversight considering they mediate land access disputes on a low or no cost basis between landowners and mining companies; functions you are proposing would be assumed by the Office of the Mining Land Commissioner.

Office of Mining Land Commissioner (Recommendations 1 and 2)

SACOME understands from your covering letter that further work is intended to be undertaken in respect of Recommendation 2 by the proposed Office of the Mining Land Commissioner, with a view to making recommendations to Government regarding land access arrangements following the completion of land mapping (the preparation and maintenance of a *mining land use plan* per proposed s 56ZL).

Proposed s 56ZF enumerates the Commissioner's functions. While SACOME understands the rationale of not codifying specific tasks for Government departments, it is odd in the present case as the Commissioner is to be an independent statutory officer who is not subject to any direction or control by the Crown. This extends to the provision of advice.

South Australian Chamber Of Mines & Energy

While the Commissioner *may* provide advice to the Minister regarding changes to land access arrangements as appears to be your intention, they are under no obligation to do so. The absence of any certainty as to what would happen with this work – whether the Commissioner would present recommendations to Government, the Government seek advice through the Department, or not pursue it – is of concern to the sector. It seems likely that this work would be duplicated.

It may be the case that the Commissioner would regard the mining land use plan as an assessment framework in the review of Minister's decisions to grant or renew an exploration licence, pursuant to proposed s 56ZI. This could only occur upon application by an aggrieved landowner.

It is of significant concern to SACOME the only appeal rights that flow from the Commissioner's decision appear to be that of judicial review, and the Bill completely silent on the factors the Commissioner ought to take into consideration when exercising his powers to confirm, vary, or revoke the Minister's decision.

Such uncertainty would not only inhibit investment but afford the Commissioner an effective right of veto and power greater than that of the Crown.

Moreover, while SACOME understands the Committee recommended that the DEM's role as regulator be removed and reassigned to an independent Mining Ombudsman, or Commissioner, this was not only beyond the remit of the Committee's Terms of Reference, it was decided without sufficient regard to:

1. What impact the amendments to the Mining Act has had, considering they were commenced only recently;

2. The revised functions of DEM;

3. Services that already provided elsewhere in Government, such as the Landowner Information Service and the mediation service provided by the Office of the Small Business Commissioner (initiatives welcomed by SACOME when the Mining Act was amended); or

4. The administrative requirements and capabilities of the Mining Land Commissioner or their office.

South Australian Chamber Of Mines & Energy

Reforming the Mining Act

Such significant changes that have the potential to adversely impact investment in one of South Australia's most important economic drivers should not be enacted by a Private Member's Bill. Individual Members of Parliament do not have the same resources or expertise as Government in researching, drafting and consulting on reforms, or modelling their impacts.

Instead, it would be preferred for Government to holistically review the Mining Act (that is, beyond just land access), which would need to be undertaken by an independent Reviewer; this is noted in spite of the very short time that has elapsed since the commencement of the Mining Act Amendments on 1 January 2021.

Such a process would be procedurally fair and give the sector confidence that its rights, interests, and legitimate expectations would be taken into consideration.

Any recommendations arising from such a Review would then be for the responsible Minister and Department, with specialist DEM policy officers to provide drafting instructions to Parliamentary Counsel and prepare a Cabinet submission, alongside any recommendations for machinery of government changes with the approval of the Premier.

Anything other than an independent Review of the Mining Act commissioned by the Government could not have the confidence of the sector and would only represent the continuation of a political agenda that seeks to undermine the Crown's ownership of minerals, held in trust for all South Australians.

Should you wish to pursue changes to land access arrangements, in a way that genuinely seeks to be best practice, SACOME submits that you should approach Government directly with a request to independently review the Mining Act.

Conclusion

In summary, SACOME is of the view that:

1. No weight can be placed on the recommendations of the Select Committee, tainted as they are by apprehensions of bias;

2. The consultation process you have undertaken is inadequate;

South Australian Chamber Of Mines & Energy

3. The draft Bill should be abandoned;

4. The recommendations if implemented pose a substantial risk to investment in one of South Australia's most important economic sectors; and

5. Should you wish to further pursue changes to the Mining Act, Government should be approached with a request for an independent Review.

SACOME would welcome the opportunity to meet with you to further discuss this matter.

Your sincerely,

Rebecca Knol
Chief Executive Officer
South Australian Chamber of Mines & Energy

Appendix A: SACOME Submission to the Parliament of South Australia Select Committee Inquiry on Land Access, April 2021.

Appendix B: Hansard of 3 May 2021, SACOME's evidence to the Select Committee.

cc: The Hon Tom Koutsantonis MP, Minister for Energy and Mining
The Hon Geoff Brock MP, Minister for Regional Roads
Mr Stephen Patterson MP, Shadow Minister for Mining

South Australian Chamber of Mines & Energy
Level 3, 115 King William Street Adelaide SA 5000 | +61 8 8202 9999 | sacome@sacome.org.au | www.sacome.org.au

APPENDIX A

SACOME

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

April, 2021

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

Table of Contents

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.

---

[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.

---

[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)

APPENDIX B

HOUSE OF ASSEMBLY

SELECT COMMITTEE ON LAND ACCESS

Constitution Room, Old Parliament House, Adelaide

Monday, 3 May 2021 at 10:10am

BY AUTHORITY OF THE HOUSE OF ASSEMBLY

WITNESSES

MEMBERS:

Hon. G.G. Brock MP (Chairperson)
Mr F.J. Ellis MP
Mr S.P. Murray MP

WITNESSES:

KNOL, REBECCA, Chief Executive Officer, South Australian Chamber of Mines and Energy

SCOTLAND, DAVID, Director, Policy, South Australian Chamber of Mines and Energy

1 The CHAIRPERSON: Thank you for your attendance before the committee today. A transcript of your evidence will be taken by Hansard and made available to you for correction. Regarding disclosure of evidence, I advise you that the committee has passed a motion to enable the disclosure of evidence prior to it reporting to the houses. This means that your evidence will be publicly available once you have had the opportunity to check the accuracy of the record.

If at any stage you wish to provide evidence in confidence, please advise the committee and we will consider that request. With regard to media, the committee will allow media representatives to be present during the taking of evidence, to record the meeting and take photos. If at any time you feel uncomfortable or object to the media's presence, please advise the committee. The proceedings of this committee are protected by parliamentary privilege. Anything said by witnesses at this meeting is protected against prosecution.

If after this meeting you consider that you have been victimised or intimidated because of what you have said here, please advise the committee. Intimidation of witnesses is considered a contempt of the parliament and both houses of parliament have power to punish for contempt and breaches of privilege. However, please be aware that if you repeat your evidence outside of this meeting you may not be protected. Again, Rebecca and David, I invite you to make a presentation to this committee before I call upon members to ask any questions. Thank you very much.

Ms KNOL: I understand I need to state my position. I am Rebecca Knol, CEO at the South Australian Chamber of Mines and Energy. Firstly, on behalf of the Chamber I would like to thank you for the opportunity to present to the committee today. As many of you know, SACOME is the peak industry association representing companies with interests in the South Australian minerals, energy, extractives, oil and gas sectors, and associated service providers.

The South Australian resources sector is indeed the powerhouse of the state's economy, and a recently commissioned economic contribution study identified that the sector contributes $5.9 billion of direct and indirect spending to the SA economy. In simple terms, one dollar in every 20 is generated by the resources sector. The sector also supports one in 33 jobs, just under 25,000 workers in the sector supporting over 1,950 businesses.

The sector contributes to both regional and metropolitan South Australia and indeed has a whole of state impact. As such, decisions concerning regulation of the sector's activities must be considered in a statewide context. Any change to regulatory arrangements should appropriately balance protection of stakeholder interests with the efficient and effective operation of the South Australian resources sector, recognising the significance of the sector to the economy.

Without restating the inquiry's full terms of reference, SACOME does note that the select committee will be undertaking a comparative review of land access frameworks, with a view to making recommendations on what a best practice South Australian model might look like. The leading practice review of South Australia's mining laws was commenced under the Weatherill Labor government in 2016 and completed under the Marshall Liberal government at the end of 2020. This was a comprehensive review process covering the Mining Act, regulations, ministerial determinations and policy guidelines, with significant expenditure of time, effort and resources by both industry and government.

Importantly, amendments to the Mining Act were passed into law with bipartisan support on 1 January 2021. Land access was a prominent component of the Mining Act review process and resulted in changes that increased rights and sureties for landowners, and increased reporting, compliance and engagement measures for operators. SACOME supported these amendments on the basis that they resulted in a balanced compromise between the operational requirements of industry and the rights of landowners.

SACOME supports the pursuit of best practice and hopes that a key outcome of the inquiry, in light of the extensive changes to land access arrangements under the amended Mining Act, is recognition that South Australia's land access frameworks are consistent with leading practice in other jurisdictions. Further, SACOME trusts the inquiry will acknowledge that our member companies undertake land access and landowner engagement in a best practice manner.

SACOME notes that this select committee inquiry was established one month after the amended Mining Act came into effect on 1 January 2021. There has been no time to meaningfully assess whether the new land access framework is operating effectively. As an exercise in procedural fairness, it must be given sufficient time to operate so that an informed assessment of its efficacy can be made.

Legislative stability is necessary to ensure investment certainty and amendments to the Mining Act that came into effect on 1 January 2021, and we need time to demonstrate that. SACOME submits that this should be a key recommendation arising from the inquiry. SACOME's presentation covers key concepts relevant to land access to assist the committee in understanding the rationale for our existing regulatory frameworks. I will also discuss SACOME's approach to best practice land access and the expectations around industry culture and practice set by SACOME for our member companies.

Firstly, I will talk about Crown ownership of mineral and petroleum rights. The principle of Crown ownership of mineral and petroleum rights is fundamental to any decision about land access. SACOME expresses its support for the principle of Crown ownership of mineral and petroleum rights. SACOME's written submission to the inquiry references a report prepared by Professor Tina Hunter for the Western Australian Department of Mines in 2017. This report undertakes a comparative review of land access arrangements in WA and other Australian states and territories and select international jurisdictions and is recommended to the select committee.

Professor Hunter provides a useful explanation of the Australian system of land, with reference to Crown ownership of mineral and petroleum rights, which I will paraphrase. 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 or private ownership interest.

A Crown leasehold interest is a lease where the Crown, as the owner of the land, lease 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 agricultural use of government land.

A freehold interest is an interest in land granted by the Crown that confers ownership of land. It is the closest form of interest in land 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 the land. Professor Hunter expands on the concept of freehold interest in land stating:

> …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 interest in the 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 a 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 that the land can be owned privately by one person (freehold) and also have a mineral/petroleum title granted over it, allowing the titleholder to explore for and produce minerals and petroleum.

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 purchases of goods and services.

I would now like to move on to right to veto. Discussions about land access frameworks and the concept of a landowner right to veto are regularly 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 and stated:

> A right of veto would shift the power to make land access (and hence land use) decisions from the Crown to the [landowner]. This represents a transfer of decision-making powers from the community as a whole to [an individual landowner]. Individual landholders are unlikely to be better placed than government to make land use decisions in the interests of society as a whole…
>
> 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. 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.

SACOME notes that both major political parties have publicly ruled out support for introduction of a right to veto in South Australia. SACOME's reasonable expectation is a continuation of bipartisan support for this position.

I will now move on to multiple land use frameworks. SACOME supports the principle of multiple land use as set out in the Council of Australian Governments or the COAG Energy Council's Multiple Land Use Framework implemented in 2013 and the South Australian government's South Australian Multiple Land Use Framework implemented in 2016. These frameworks were developed to address challenges arising from competing land uses, land access and land use change. They were intended to support the ability of 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. It supports a shared commitment to multiple and sequential land use that considers existing legitimate land uses and environmental, social, regional and economic impacts.

Multiple land use frameworks represent policy evolution that reaffirms 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 land use decisions. Importantly, it places a premium on respectful and transparent stakeholder engagement as a means of resolving potential conflict. SACOME strongly supports the principles of open, transparent and respectful engagement with landowners espoused in these frameworks and has observed them in preparing our land access guidance documents.

I will now move to land access guidance and industry culture. In addition to regulatory requirements and government policy guidelines for land access, SACOME 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 and transparent negotiation between resources companies and landowners. However, it is worth noting 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 activities.

SACOME most recently prepared land access guides for mineral exploration and petroleum exploration in 2020. SACOME's expectation is that member companies will observe the

principles set out in these land access guides to assist discussions and build mutually agreeable working relationships with landowners. These principles emphasise early and respectful engagement well in advance of undertaking an activity; understanding landowner concerns; respect for landowner rights, privacy and property; ongoing communication and consultation undertaken in good faith; prompt payment of compensation; and rectifying any impact caused by 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 and Stakeholder Engagement, which was published in 2014, and the SACOME Code of Conduct for Mineral and Energy Explorers: A framework for access to rural land, which was published in 2013 and endorsed by Primary Producers South Australia.

Taken together, these documents demonstrate a long-held public commitment by SACOME and its member companies to undertake land access in a best practice manner. SACOME welcomes the opportunity to develop and implement an updated code of conduct for mineral and energy explorers in collaboration with PPSA, GPSA, Livestock SA and other agricultural sector industry bodies, reflecting recent amendments to the Mining Act and any changes to the Petroleum and Geothermal Energy Act, which is presently under review.

By way of closing remarks, land access can be an emotive and politically charged issue. However, I hope this presentation has demonstrated SACOME's long-held commitment to balancing regulatory frameworks and best practice engagement. Given the accepted position of Crown sovereignty over mineral and petroleum resources, regulation of land access in South Australia, as it relates to resources development, seeks to balance legitimate competing interests in land.

Compensation to landowners is at the core of this approach, reinforced by well-defined processes for stakeholder engagement mandated by law, encouraged by policy and reinforced by industry codes of conduct and practice. SACOME acknowledges that some landowners believe that access by resources companies should not be permitted under any circumstances. This was a prominent feature of the debate around the Mining Act review process, with some landowners and their representatives calling for a landowner right to veto.

These calls are grounded in landowners' negative experiences with resource sector companies, and SACOME accords the landowner experience due respect. Such occurrences are unacceptable. As an outcome from the inquiry, SACOME hopes to see:

- a recommendation that the land access framework under the amended Mining Act is afforded sufficient time to operate in order to test its efficacy;
- recognition that pursuit of best practice is not necessarily an outcome of cherrypicking from other jurisdictions. Many competing factors must be balanced in determining an effective land access framework. This is an extensive and exhaustive process, as evidenced by the leading practice Mining Act review;
- recognition that the principle of Crown ownership of mineral and petroleum rights is fundamental to the Australian system of land and must be preserved;
- recognition that a landowner right to veto is inconsistent with the principle of Crown ownership of mineral and petroleum rights and should not be supported;
- recognition that multiple land use frameworks are an effective means of balancing legitimate competing interests in land and have worked well in South Australia;
- recognition that 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 landowners;
- acknowledgement that land access is heavily regulated under both the Mining Act and the Petroleum and Geothermal Energy Act and other South Australian statutes, and that these acts set out detailed requirements for resources sector operators seeking to access land;

- acknowledgement that 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;
- that as a 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.

The select committee has the opportunity to demonstrate decisive leadership in supporting the legislative framework that governs resources sector activity in the state. On behalf of our members, I again thank the committee for the opportunity to present and welcome questions from the members.

2 The CHAIRPERSON: Thank you, Rebecca, that was very full.

3 Mr ELLIS: Thank you, Rebecca, for the thorough presentation. You talked a lot about multiple land use frameworks and how South Australia is leading the way, and you did say at the end there—you pre-empted my question somewhat—that they are working. Would you care to expand on that? We are leading the way in the nation. They are having a positive effect on the relations between miners and farmers?

Ms KNOL: Absolutely. I think we have many great examples throughout the State where the relationship between resource companies and farmers is proactive and is positive. We, of course, hear about the negatives in the media, but we do believe that the positives far outweigh the negatives in the state of South Australia and that these land use frameworks provide a sensible roadmap for operators and landowners alike.

4 Mr ELLIS: Accepting that fact, does that mean we are best placed in South Australia going forward, considering we have had a recent law change? We have heard about multiple land use frameworks. Are we leading the nation still, or is there another jurisdiction in Australia that we should imitate?

Ms KNOL: Yes, it's an interesting question. I think one of the great advantages that South Australia has had is that the legislation was very old—1971—and hadn't been reviewed in the mid 1980s when a lot of other jurisdictions had the opportunity to review their legislation. We have reviewed it now, and I would say we are now at the forefront of other jurisdictions. We have had the opportunity to look at what is happening in other jurisdictions and not cherrypick in the sense of bolting pieces together, but being able to look holistically at the framework and make meaningful change to the legislative framework.

5 Mr ELLIS: That being the case, how long do you think that this current status needs to last for before you consider it's a large enough sample size to make an assessment—five years, three years?

Ms KNOL: Given that the process has taken from 2016 to 2020, it's been a long consultative process. We also need to understand the size of the resources sector here in South Australia, which is smaller than other jurisdictions. We don't get as many opportunities to test the legisation as quickly as other jurisdictions, so I think that a three to five year time frame would be meaningful. I think in three years' time there may be sufficient information and evidence from our member companies to suggest that we can make some further suggestions for improvement. After all, the whole tenet behind the review was that we wanted to work to have improved legislation, not wait until it was 40 years old.

6 Mr ELLIS: Are there any early returns that need feedback thus far?

Ms KNOL: There is some early feedback that, because the system is now largely online, many farmers don't have the access to fast internet that we are afforded here in the city and that companies are now finding themselves as mini printing houses, having to print off substantial documents—over 150 pages—and then sit down with landowners and work through those documents. It is not required by law that they need to do that but they understand that for respectful relationships it is all about one-on-one contact.

7 Mr ELLIS: Farmers that have had that 150-page document lumped on their desk might not consider it—I'm being a bit facetious.

Ms KNOL: That's okay. What we are hearing back from our member companies is that they are working through it with them in sections so that they can fully understand what's going on rather than having to read verbatim 150 pages. So early feedback is that the online piece has been valued but it is going to cause some headache in terms of how companies engage in respectful relationships.

8 Mr MURRAY: Thank you for your presentation, Rebecca. I might just start by addressing the first four points that you have made, just to go on the record. You talk about support of Crown ownership of minerals. I support that. You are opposed to the right of veto and I am also opposed to any form of blanket or diminution of the rights of the Crown in so far as minerals are concerned. Similarly, I am supportive of multiple land use frameworks.

I might just move to the best practice part of your discussion, if I could. The deep suspicion is that the issues we do have in the sector here in South Australia are more likely a result, in large part, of non-SACOME member companies. I just wonder whether you know how many non-SACOME members are participants in the industry at the moment. What is the proportion? How many are there and what is that as a proportion of the 1,950 businesses that you referred to in your opening?

Ms KNOL: SACOME supports over 130 members. We represent all of the major operating entities in the state. There would be some exploration companies and developers that we don't have as members. That said, there are other industry associations such as AMEC and CCAA. Those companies may be, and we are aware that there are some companies who are members of AMEC but not of SACOME and vice versa, and that is quite normal. Others may be members of the Minerals Council of Australia but not members of a state-based body. I think there would be very few companies who are not members of one or other but, yes, there are some.

9 Mr MURRAY: Do you have any sense of how big that population would be?

Ms KNOL: We can take that on notice.

10 Mr MURRAY: Given that you've got non-SACOME members who are more likely, based on your answer, to be members of other bodies, do those other bodies, in your subjective opinion, have much the same ethics framework that you have talked about?

Ms KNOL: I think it would be best for that question to be asked of those companies. SACOME has had a very forward looking position in terms of best practice in years gone by, and certainly since I came to the position in 2016 it's been very much about best practice, and positive, transparent and meaningful engagement.

11 Mr MURRAY: What's your view on participants in the industry being compelled to have membership of SACOME and as a result being compelled to comply with the ethical framework you have put in place?

Ms KNOL: It's an interesting and difficult question because we are not here to tout for membership. The regulator is ultimately the body allocating tenement to a company, so ultimately it is the regulator who would determine whether a company is implementing best practice, and they would be best placed to do that because they would have access to a history of how that operator has performed in either other jurisdictions or here in South Australia.

12 Mr MURRAY: Perhaps I can phrase the question differently. What would be your view of the regulator ensuring that membership of SACOME was a precondition for exploration in South Australia?

Ms KNOL: I suspect there would be pushback because some companies don't wish to be part of our association. The way that we are operating and our member companies operate would not be the way in which all companies were operating and I think that they would see their hand being forced in that regard.

13 Mr MURRAY: If I could perhaps lead you in that regard: why would those companies not wish to be bound by or utilise the best practice framework that you have implemented?

Mr SCOTLAND: I think it's difficult to speculate as to what the rationale would be from those operators. I think the best that we can do is continue to act as an example of best practice and encourage that best practice as part of industry culture.

14 Mr MURRAY: I take it, given the view expressed, there would be some reticence. You must have some anecdotal feedback as to whether or not companies would be compelled or is it a judgement call based on the level of attainment that may be beyond some of those potential participants?

Ms KNOL: Resource Sector associations around the country are generally there for members who want to be part of a progressive body and involved in information and knowledge sharing. SACOME has been in existence now for over 40 years, an association where companies can come together and share experiences and ideas and formulate best practice. I think in all societies some people want to be a part of that and some people don't want to be a part of that.

As David has indicated, I don't want to speculate on why they would not want to be a part of it, but membership would suggest that if they had wanted to be a part of it they have had 40 years to be part of it and some of them have chosen not to be. It is difficult because it is voluntary, hence coming back to our position that ultimately it is the regulator who can determine whether a company is adhering to best practice principles or not. It is much easier for us with our member companies because of course we can have those robust conversations behind closed doors and work towards best practice outcomes.

Our land access guidance document was very much our industry saying, 'It's terrific; we have got the Mining Act in place; however, we are not resting on our laurels.' We believe from the discussions that we have had that landowners need further support in terms of how to start conversations with resource companies and vice versa. We are wanting to give landowners the best opportunity to engage with resource companies in a frank, open and transparent way, hence moving forward with that land access guidance, and again putting that guidance in place back in 2013 and again in 2016. So there have been several attempts by SACOME to make sure that our member companies are participating in best practice engagement.

15 Mr MURRAY: Is your best practice enshrined in the legislation or does it, in your view, surpass the prerequisites that are embodied in the legislation?

Mr SCOTLAND: We have been in close conversation with the Landowner Information Service as they have set up their operations. We have provided them with all of the land access guidance that we have had available, and we continue to be in conversation with them on a regular basis absolutely with the intent of making sure that there's a resource that is available to landowners, that they understand what best practice looks like from a SACOME point of view. As recently as I think 2020 in our budget submission we have regularly called for statewide land access frameworks to be implemented, recognising the best practice that SACOME puts forward.

For SACOME and for all our industry members, land access is a constant conversation and it's a constant push for absolute best practice, recognising how serious the consequences are of not getting it right. To go back to the leading practice review, the Landowner Information Service was one thing that came out of that. The Ombudsman set up an alternative dispute resolution mechanism, which we absolutely support. There have been significant changes to approvals processes and notices of entry. I think the notice of entry is now 42 days, which is the largest notice of entry in the country.

There are many examples of how expectations around best practice have bled into regulatory frameworks, into policy frameworks, and continue to be a point of ongoing discussion with new bodies that have been set up under the amended Mining Act to promote cooperation, discussion and agreement making between landowners and operators.

16 Mr MURRAY: Just to be clear, you are of the view that the framework that SACOME endorses and effectively enforces with its membership base is superior, more onerous and more advanced than is enshrined in the act.

Mr SCOTLAND: I don't know that I could say that's the case, but what I can say is there is a high bar set by the industry association, and we have made that publicly clear and continue to make that publicly clear.

17 Mr ELLIS: I have one more question, and it might be for David, with all due respect, Rebecca. Rebecca mentioned the Tina Hunter report and articulated the differences between freehold and leasehold land. Is there any practical difference for a miner or explorer trying to access those minerals on freehold or a leasehold, or is it basically the same process?

Mr SCOTLAND: I would have to take that question on notice.

18 Mr ELLIS: Please. I probably should have announced myself.

19 The CHAIRPERSON: That was a good question. I was going to ask that one too.

20 Mr MURRAY: I might move to the question of multiple land use. It's a leading question, but I think it's reasonable to make the point that some mining activities will effectively preclude multiple use of the same land. If you dig a rather large hole it's fairly difficult to perform agriculture on some of those sites. By way of a broad statement, I take it you're comfortable with the fact that there will be circumstances where it's not possible to have multiple use of land; it's going to in fact be possible to either have access to the minerals to the exclusion of other potential uses for the land or not.

Ms KNOL: That gets down to an issue of mine closure planning, and mine closure planning elsewhere in Australia and the world indicates that there are multiple uses of land, post mining operation, whether that be aquaculture in an open pit, whether that be agriculture on tailings dams, but there are examples all over Australia and indeed all over the world.

Mine closure planning is a very important regulatory piece. It's a piece of work that needs to be considered at the front end of a project, and indeed there is a requirement to do so. Mine closure is more than just regulating environmental monitoring on a mine site for site stability. Of course, site stability is important, but creative mine closure planning actually looks at uses beyond the operation. That's particularly important.

It is very different if you have an Olympic Dam type of operation, which is generational in nature, but where you have a mine site that may operate for 10 to 15 years, it is important that there is good and robust planning around what happens post closure.

21 Mr MURRAY: For example, not to pick on Kanmantoo but just to use them as an example I am personally familiar with, it would be difficult to see any agricultural use of the Kanmantoo site, given the very nature of that. Where I am coming from is, while being supportive of multiple land use, it is a view I have—and I am wondering whether you are prepared to concede—that in particular where compensation is necessary for other mining or exploration activities that in itself is a concession that the mining is taking place effectively at the cost, and hence the compensation, of those other activities. Is that a view that sits within your view of the multiple land use?

Ms KNOL: Multiple land use is looking at the highest value use of that land. If mining has been the highest use of that land, which in the past has been agricultural land—and Kanmantoo is a good example—and if post mining facilitating a pumped hydro project is the next most valuable use of that land, then all of those things sit under a multiple land use framework. It is a different question if you are suggesting that we go from cropping country to mining and then back to cropping. There have been examples where that has occurred, but of course if you have a great big pit that makes cropping quite difficult.

22 Mr MURRAY: Yes, that's the proposition.

Ms KNOL: So then multiple land use needs to look at—and again back to mine closure planning—what is the next most valuable use of that land for the community. There are amazing examples in Canada where open pits have been turned into very productive aquaculture—which I consider to be agriculture as well—communities have been able to develop a whole new industry based on what they have been left with, but more importantly the dialogue between what they are going to be left with and how they transition to that new land use.

23 Mr MURRAY: If I can take you to the analysis of best possible use for the land, you referred in your answer to the fact that the most appropriate use for the community generally for that land at Kanmantoo is mining, given that it was a lower value cropping land type than would otherwise

be experienced elsewhere in the Adelaide Hills, particularly with higher rainfall areas and better quality soil.

Is that not default recognition that there will be an assessment made whereby, as you said, the best possible land use is mining for that particular area? If that is the case, is it not possible, therefore, that there is an assessment made by the community more generally of the obverse, that is to say that the land in question has better use for cropping, by way of example, than for mining, based on some subjective or partially objective analysis of the relative use to the community?

Ms KNOL: Those assessments of whether it is the best use of the land are actually made by the regulator. They are made by the South Australian government. The Crown holds the mineral rights. The South Australian government is doing the assessment of any proposed project. It is the South Australian government's or the regulator's role to look at the community concerns.

24 Mr MURRAY: It weighs the scales.

Ms KNOL: It weighs the scales. That's not a scale weighing that's done by the resource sector company; that's a scale weighing that's done by government.

25 Mr MURRAY: My question is: if on the one hand the scale is weighed by the state with a particular piece of land in favour of mineral exploitation—leading question—I presume that it's okay for the state, in respect to another piece of land, to weigh the scales and find that the use of the land is best directed to agricultural pursuits as opposed to mineral exploitation. If one is true and is okay, then I presume the obverse is the case. Is that something that the sector is comfortable with as an assessment?

Ms KNOL: I think it's a question that needs to be asked of the regulator.

26 Mr MURRAY: But when the regulator does do that—I mean, that's the swings and roundabouts, is it not? Is the sector comfortable with a situation where the regulator will make an assessment in one case that mining is the best possible use of that land? I think the answer there is yes. We've got several situations here at the moment where, for example, you cannot mine in the Barossa or the McLaren Vale areas because of the protections put in place there. That's an assessment that the regulator or the state made some time back.

My question is: insofar as your view of multiple land use and/or, to some extent, best practice land access but multiple land use in particular, is that an outcome that the sector is comfortable with, can live with and is aligned to?

Ms KNOL: Ultimately, the company abides by the decision of the regulator. If the regulator makes a decision, for whatever reason, that mining can't occur on a piece of land, then that is the decision that is made. There are avenues to challenge that decision, as there would be if you were sitting in the agricultural space. It ultimately comes down to the regulator making a decision about whether mining can or cannot occur on that land.

27 Mr ELLIS: Is in situ recovery technology progressing to a point at which that might be a genuine mixed use land option, rather than an open pit?

Ms KNOL: Yes.

28 Mr ELLIS: Is in situ recovery ever going to get to the point where it could be a primary method of extracting minerals?

Ms KNOL: Again, we can take this on notice and come back to you with some of the newer technologies that are being employed in this sector. I tend to refer to underground mining as 'keyhole surgery',. I think you have heard me use that expression before. Ultimately, across the globe, resources are becoming more and more difficult to get at. We have got at the easy ones and we are now getting at the harder ones. The value of the minerals can be less as well, so the extraction method needs to always be the most cost efficient.

I think, with growing community concerns around the whole sector, companies are getting a lot smarter, and we are extracting minerals in far more technologically advanced ways than we did perhaps 50 years ago. We are seeing incredible advances in direction drilling getting into ore

bodies where we need to get at them. OZ Minerals' Carrapateena is a fantastic example of that. It's a massive ore body but it's well beneath the surface, and they extracting using keyhole surgery.

I think that makes it a lot easier in terms of conversations with landowners, because what's happening at the surface, which is what agriculture is concerned with, is effectively unimpacted, with all the work actually happening below.

29 Mr ELLIS: It might well be worth waiting for some of those technologies to progress; that would solve a lot of land access issues, I suspect.

Ms KNOL: Yes. There's always a cost-benefit analysis that needs to be undertaken, and in some situations that will never be the most effective method. But we are seeing here in South Australia that what is being proposed in the Adelaide Hills is exactly that. It's a very good ore body, which they are planning to extract via keyhole surgery, not a great big open-cut mine.

30 The CHAIRPERSON: I thought the questions were very, very informative.

31 Mr ELLIS: Thank you, Chair.

32 The CHAIRPERSON: They were, and you have asked a couple of questions I was going to ask regarding the in situ, because that's the way a lot of areas are going.

Rebecca, you did indicate there was a time frame for people to be able to object and so forth. In your view, has that been working with the new act that has come into place at this particular point?

Ms KNOL: The new act, it's so new; we are months in literally, three months in, and I think we all need more time.

33 Mr MURRAY: Just for clarity, there are 1,950 businesses involved in the sector. The 130 members that you've got, do I subtract one from the other to get the potential membership for you?

Ms KNOL: No. Twelve member companies were surveyed for the economic contribution study—only 12 member companies. Out of our 130-odd members, 12 of them were evaluated for this economic contribution study. Those 12 member companies utilised the services of 1,950 businesses in South Australia. They, of course, utilised the services of other businesses around the country and the globe, but here in South Australia those 12 member companies utilised the services of 1,950 businesses.

34 Mr MURRAY: What's the population of participants in the industry who are non-SACOME members; do we know, roughly?

Ms KNOL: No, and you asked that question before. We have all the major operating entities. They are all members of SACOME. It's where you get down to explorers and developers, they may have their head office in New South Wales and be members of New South Wales Mining and not members of SACOME because that's where they are headquartered but actually looking at tenement here or they might be based in Western Australia. They may be members of AMEC, a national body, or they may be members of MCA, who are a national body.

35 The CHAIRPERSON: Or they may be members of no organisation.

Ms KNOL: Correct.

36 The CHAIRPERSON: And it would be interesting to understand how many participants are out there in the sector other than the 130 members of your organisation.

Ms KNOL: I suggest that the only way that you could work that out would be for the industry associations to work with the regulator who holds the ultimate book of who's got tenement and determine which of those that have tenement are members of SACOME and which are members of AMEC or CCAA or anybody else. It would need to be an investigation into tenement holders.

37 The CHAIRPERSON: You are indicating that the regulator would have the numbers. For argument sake, you have 130 but there may be 400 people out there exploring, etc., so the regulator should know that?

Ms KNOL: The regulator knows who holds the tenement and then there needs to be a conversation. Obviously we don't publish our membership list because it is like publishing your client database, but we would be open to having a conversation with the regulator to tick off and say, 'Yes, we take care of all of those.' They would then need a separate conversation with AMEC or other industry associations to work out if the rest are members of an association. Then you would be able to answer your question, which is what percentage of mineral explorers or developers essentially - because we know that all the operators are covered - are not members of an industry association.

38 Mr MURRAY: What is the membership? Fraser and I could get ourselves an old truck and decide we are going to explore for minerals. What is the annual membership for our fly-by-night little outfit? We are just a start-up.

39 Mr ELLIS: We are going to go big, though.

40 Mr MURRAY: Yes, it will go big and you are in charge of the holes. What's the cost for us as a start-up venture?

Ms KNOL: Again, we don't publish our membership fee schedule. However, we are just ballpark here. If there are two of you, you're based here in South Australia and you are a small exploration company, it would be in the order of about $5,000.

41 Mr MURRAY: Is that an annual charge?

Ms KNOL: Yes. It's an annual charge and you can pay that in monthly instalments. It is actually not a particularly high bar to be a member of an organisation where you can then participate in our committees and we do have a specific committee for explorers and a separate committee for miners and extractive companies, so it's an opportunity for them very quickly to be part of that family.

42 Mr MURRAY: Do you have a disciplinary process? In our purely hypothetical example, if one or both members don't behave themselves are we subject to some sort of disciplinary process?

Ms KNOL: Under our constitution we can ask members to leave or revoke their membership, yes.

43 The CHAIRPERSON: Is your constitution a public constitution?

Ms KNOL: Yes, it's public and it's on our website and I can forward a copy.

44 The CHAIRPERSON: For the committee's information, if you can forward that to us that would be ideal.

Ms KNOL: Absolutely. It is also important to say that we are also governed by a member elected Council and those types of decisions would go to that member elected council.

45 The CHAIRPERSON: There being no further questions, thank you Rebecca and David. You are the first presentations to this committee. The transcript will be sent to you for your corrections and when you get that back to us, as I indicated earlier, your submissions will be made public. We may ask you to come back later to answer more questions that the committee may have.

Ms KNOL: Again, on behalf of SACOME and its member companies, thank you for the opportunity and it's nice to be first cab off the rank.

THE WITNESSES WITHDREW