

28 September 2018

Mr John Chapman
Small Business Commissioner
GPO Box 1264
Adelaide SA 5001

Dear Commissioner

Draft Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018 Feedback

The South Australian Chamber of Mines and Energy (SACOME) welcomes the opportunity to make this submission in relation to the draft *Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018* (the Code) in accordance with section 28F(3) of the *Fair Trading Act 1987 (SA)* (the Act).

SACOME is the peak industry body representing companies with interests in the South Australian minerals, energy, extractive, oil and gas sectors and associated service providers.

SACOME provides the following responses to the Code:

1. The Small Business Commissioner has carriage of the following five codes established under Part 3A of the Act.
 - *Fair Trading (Farming Industry Dispute Resolution Code) Regulations 2013*
 - *Fair Trading (Motor Vehicle Industry Dispute Resolution Code) Regulations 2014*
 - *Fair Trading (Newsagency Industry Dispute Resolution Code) Regulations 2014*
 - *Fair Trading (Franchising Industry Dispute Resolution Code) Regulations 2015*
 - *Fair Trading (Building and Construction Industry Dispute Resolution Code) Regulations 2017*
2. The content of the Code is almost identical in nature to the above regulations.
3. SACOME submits, insofar as the Code attempts to establish an alternative dispute resolution procedure, the content of the Code is non-contentious.

4. SACOME does not support section 4 of the Code which identifies farmers as a member of the mining and resources industry. Section 4 of the Code states:

4—Prescription of mining and resources industry and industry participants

For the purposes of Part 3A of the Act—

(a) the activity of undertaking—

(i) mining operations; or

(ii) regulated activities pursuant to a licence under the Petroleum and Geothermal Energy Act 2000,

on or in relation to land used for the business of primary production is taken to be an industry (the mining and resources industry); and

(b) the following persons are taken to be participants in the mining and resources industry:

(i) mining operators;

(ii) licensees under the Petroleum and Geothermal Energy Act 2000;

(iii) farmers.

SACOME contends that farmers are not members of the mining and resources industry.

The mining and resources industry comprises companies that operate in the minerals, energy, extractive, oil and gas sectors and associated service providers.

Therefore, as section 28D of the *Fair Trading Act 1987 (SA)* states:

industry code means a code regulating the conduct of participants in an industry towards other participants in the industry or towards persons to whom goods or services are or may be supplied by participants in the industry

SACOME proposes that the Small Business Commissioner does not have the authority to implement dispute resolution procedures to resolve land access issues between resource sector companies and farmers.

SACOME submits that the Code is an unnecessary piece of regulation.

The Code adds another layer to the highly regulated environment resource sector companies operate in.

5. There are, already, several South Australian and Commonwealth Acts that incorporate principles of sustainable land management and land access for a wide range of land uses.

Each of these Acts have consultation and engagement requirements that resource sector companies need to consider when conducting their operations.

6. The Code makes specific reference to the *Mining Act 1971 (SA)* and the *Petroleum and Geothermal Energy Act 2000 (SA)*.

These Acts also outline how explorers are to conduct resources exploration and production on most land in South Australia, including freehold and pastoral land, subject to approval by the Department of Energy and Mining (DEM).

Both the *Mining Act 1971 (SA)* and the *Petroleum and Geothermal Energy Act 2000 (SA)* lay down clear obligations for the explorer to notify and consult with landowners, to repair damage to improvements, to rehabilitate disturbed areas and to pay compensation for financial loss, hardship or inconvenience.

7. DEM, as a regulator, can provide agricultural landholders with consistent and fair information regarding their rights and obligations when resource sector companies seek access to their land, this can also include information on compensation issues.

DEM has also developed detailed material for farmers and other primary producers, so they understand their rights and obligations when resource sector companies seek access to their land.

8. To improve stakeholder engagement and to assist landholders affected by mining, the South Australian Government and SACOME have produced a range of codes and guidelines that have been published over the past 5 years:
 - Code of Conduct for Mineral and Energy Explorers, SACOME & PPSA, June 2013 ([link](#)).
 - Landowner frequently asked questions about mineral exploration in South Australia, Mineral Resources Division, Department of State Development, July 2014 ([link](#)).

- Guidelines: landowner rights and access arrangements in relation to mineral exploration and mining in South Australia, MG4, Version 2.2, July 2014 ([link](#)).
 - Understanding mineral exploration, Information for farm businesses and the community in South Australia, Version 2.0 July 2014 ([link](#)).
 - Resources Pack: Community Engagement Protocol: Local Government and Resources Industry Development in SA, Community Engagement Group Australia, 25 May 2015 ([link](#)).
 - Code of Practice for Community & Stakeholder Engagement, SACOME ([link](#)).
9. While SACOME welcomed the reintroduction of the *Statutes Amendment (Minerals Resources) Bill 2018* to amend the *Mining Act 1971*, the *Mines and Work Inspection Act 1920* and the *Opal Mining Act 1995*.

This was on the basis that the resources sector has been supportive of the long-standing policy of supporting and encouraging multiple land use to maximise the benefits from current and future social, economic and environmental land use interests.

At the time of the Mining Act review, SACOME made several recommendations following three key themes:

- **Modernisation of processes** - The Act requires changes to modernise processes within it and to update or redefine sections to make the operation of the Act more efficient and clear to all stakeholders.
- **Mining Lease Approvals process** – SACOME seeks changes to the current Mining Lease approvals process, to make it more streamlined and workable for industry. The Mining Lease approvals process is currently inflexible and should be further developed to provide certainty through an outcomes based process.
- **Access to Land** – Access to Land sections within the Act require critical changes to make the provisions clearer and more defined for proponents and to ensure that land access is efficient, effective and affordable for all parties involved.

SACOME submits that rather than introducing another piece of regulation which duplicates the processes already in place through various Acts. It would be of greater benefit to conduct a comprehensive review of the Mining Acts incorporating best-practice principles from other jurisdictions to establish a

legislative framework that better meets the operational needs of the resources sector and addresses the concerns of the agricultural sector.

Kind regards

A handwritten signature in black ink, appearing to read 'Rebecca Knol', with a long horizontal flourish extending to the right.

Rebecca Knol
Chief Executive Officer