

SACOME

***Mining Act 1971 Issues Paper***

Submission to the Department of Energy & Mining

June 2025

**South Australian Chamber of Mines & Energy**

The leading industry Association representing the resource and energy sector in South Australia.

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# 1 Introduction

The South Australian Chamber of Mines & Energy (SACOME) is the leading industry association representing resource and energy companies with interests in the South Australian resources sector, including minerals, energy, extractives and petroleum.

SACOME welcomes the opportunity to provide this submission to the *Mining Act 1971* Issues Paper consultation process and thanks the Department for Energy & Mining (DEM) for its engagement with SACOME members as part of the consultation process.

We note that DEM has identified a number of possible amendments to enhance the Mining Act's regulatory framework with the intention of:

- Strengthening exploration regulation to enhance sector capability, accountability and competitiveness;
- Driving productive exploration and mining activity to increase the potential for mineral discoveries and investment in the State;
- Delivering consistency with the regulatory and licencing frameworks recently introduced in the Hydrogen and Renewable Energy Act 2023 (HRE Act) and the Energy Resources Act 2000 (ER Act);
- Maintaining effective and efficient 'one window to government' mining sector regulation; and
- Aligning mining regulation with contemporary methods and risk management.

Per the Issues Paper and advice from DEM staff to SACOME's Mining Act Working Group, we acknowledge that DEM is seeking feedback on a range of potential opportunities for improving the Mining Act, some of which may be considered as part of a legislative reform process.

SACOME notes that the Issues Paper identifies opportunities for improving the Mining Act across six focus areas:

- Exploration tenure;
- Repeal of Part 9B in favour of the Commonwealth Right to Negotiate process;
- Forfeiture;
- Legislative consistency with other Acts;
- Legacy Matters; and

- Technical & Operational amendments.

While SACOME acknowledges that the purpose of the Issues Paper is to source industry views on proposed changes, a consistent theme across all feedback is that member companies seek greater detail and clarity from DEM on the proposed structure and operation of possible amendments.

We submit that provision of this detail should be the focus of subsequent engagement.

SACOME recognises that the Issues Paper is the preliminary step in a consultation process and remains committed to working constructively with DEM as this process continues.<sup>1</sup>

## 2 Comment on Issues Paper ‘Focus Areas’

### 2.1 Exploration Tenure

#### **Consultation Questions**

- *Do you think ministerial discretion to extend the maximum exploration licence period is appropriate?*
- *If yes, how long do you think licence extensions should apply for and what eligibility criteria and conditions could be imposed?*
- *Do you think expanding the eligibility criteria for retention leases to include the conduct of additional advanced exploration is appropriate?*
- *If yes, what terms and conditions could be imposed on these activities as part of the retention lease?*
- *What alternate schemes could be considered appropriate to encourage exploration investment, ground turnover and security to deliver new discoveries and mining projects?*

#### **Comment**

SACOME members have expressed a variance of views regarding possible amendments to the Act that allow extension of the maximum exploration licence period beyond its current 18-year limit.

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<sup>1</sup> SACOME advises that BHP will be making a separate submission to this consultation process and that this independent submission will formally set out the feedback provided to DEM via dedicated consultation sessions.

SACOME members overwhelmingly seek greater clarity on how new Ministerial discretionary powers will be structured; the process via which extensions to the 18-year limit will be granted; and the timeframes for decision making. Further, members see the need for absolute clarity on the timeframes relating to grants of extension, advising that they would require at least several years advance notice.

Members advise that clarity of process with regard to discretionary powers of licence extension is a paramount consideration, recognising that operators and investors seek assurances that capital invested in a project will not be wasted in circumstances where a discretionary extension is not granted.

We note that the Issues Paper suggests possible eligibility criteria for licence extension as follows:

- demonstrated progress or performance in advancing exploration towards discovery, including details of the exploration type, extent and results;
- strong compliance history, including compliance with work and expenditure programs, and environmental and consultative requirements;
- financial capability to undertake the proposed additional work; and
- evidence of extenuating circumstances that led to difficulties or delays in exploration work, for example administrative, climatic, environmental or heritage reasons.

SACOME members advise that expenditure made by companies in progressing activity should also be included as an eligibility criterion.

Members have stated in general terms that the current 18-year limit is considered inadequate given the operational realities of undertaking exploration programs.

As such, in principle support has been expressed for discretionary powers to extend the EL period (caveated by the requirement for additional detail as stated above).

Members have suggested that the length of licence extension could range from 2 to 5 years, and have suggested eligibility criteria for a grant of licence extension as follow:

- The operator has demonstrated a commitment to exploration (on-ground and financially) exceeding expenditure and activity requirements and has proven history to discovery
- There have been delays preventing on-ground access such as:
  - Native Title agreements, heritage survey delays and other restrictions (i.e a Registered Native Title Body Corporate being under administration).
  - Regulatory restriction out of the Company's control.

- Land access relating to farming activities, significant weather events, or other similar circumstances.
- The operator is appropriately funded and resourced to continue advanced exploration.
- The operator has proposals for new technological test work and new exploration methodologies.
- The operator has proposals for an untested mineral system, with the caveat that this must be sufficiently different from previous exploration.
- A new discovery happens late in the EL life span (noting that this would trigger a discretionary grant for EL extension under the existing regulatory framework).
- The conditions imposed on extensions could also include an increase in expenditure commitments and/or adherence to an agreed advanced exploration program.

Members have commented that further time extensions should be considered for companies that have taken over licence conditions from another company/operator to provide greater opportunity in progressing exploration programs. One operator has advised that they are approaching the 18-year limit for two of its tenements but has only held the current licences for 4 years.

Members have also commented that negotiating land access continues to take a significant amount of time, with some operators reporting four-to-six-year timeframes to reach agreement with landowners and/or Native Title groups.

This represents a significant portion of the 18-year licence period and SACOME submits that developing mechanisms to expedite agreement making and land access outcomes so that operators can commence exploration activity within a faster timeframe is a higher order priority.

#### Revocation of the 18-year limit

Some member companies (largely representing junior exploration interests) have suggested that the 18-year limit should be revoked in its entirety.

In advancing this position, member companies have commented that DEM and the Minister already possess powers to enforce non-compliance through evaluating expenditure and exploration activities via Annual Activity Summaries, 2-Yearly Expenditure Returns and Annual Technical Reports.

Additionally, members advise that new ground that is acquired via the Exploration Release Area (ERA) process has '2-Year Mark' conditions attached, and if a company has not satisfied

its proposed exploration work program and expenditure obligations in accordance with its ERA Application, it is forced to relinquish 50% of the area.

Member companies have suggested that more time is required to evaluate ERA process outcomes to determine its efficacy in a medium-to-long term context.

Member companies have also commented that South Australia differs from other States which have a demonstrated ability to regularly discover and develop mineral resources, stating that South Australia does not possess a comparative breadth of mineral inventory, despite having some of the world's largest but discrete occurrences (i.e. Iron Oxide Copper Gold deposit types).

An additional important factor is the impact of South Australia's geology, with the State's prospective mineral provinces being concealed under deep geological cover sequence successions.

South Australia's geology makes the generation of exploration targets incredibly complex, requiring several incremental steps in the exploration process to de-risk projects so that it can ultimately move to a drilling decision.

Each step in this process takes considerable time to execute and members have highlighted the length of time it has historically taken to discover a major deposit.

Members in favour of revoking the 18-year limit also note that this period of time only equates to approximately two commodity cycles, representing a relatively short window for exploration advancement and project development in the context of the broader resources project life-cycle.

## Retention Leases

- *Do you think expanding the eligibility criteria for retention leases to include the conduct of additional advanced exploration is appropriate?*

SACOME members have indicated support for expanding the eligibility for Retention Leases (RLs) to support additional exploration activities.

They advise that some mineral systems are complex and warrant large mining lease applications supported by appropriate investigations and test-work programs.

As such, including advanced exploration activities like delineation drilling and mineral extraction test work programs as eligible criteria under a retention lease would provide increased flexibility and confidence.

These members have expressed the view that expanding the eligibility for RLs in conjunction with ministerial discretion to extend the 18-year term could provide a useful pathway for advancing projects to the Mining Lease stage.

Suggested conditions include agreement on the forward advanced exploration programs (activities and minimum expenditure commitments) and times frames for progressing the mining lease application.

The advanced exploration programs should include drilling and metallurgical test work programs, with consideration given to the style of mineralisation being targeted and the challenges this presents.

## 2.1.1 Exploration Ground Area

### **Consultation Questions**

- *Do you think a reduction of the maximum exploration area in South Australia is appropriate?*
- *If yes, what size should the maximum exploration licence area be?*

### **Comment**

Feedback received by SACOME shows that members do not support a reduction in maximum exploration area from 1000km<sup>2</sup> to a smaller exploration area (noting that 500km<sup>2</sup> was suggested in the Issues Paper).

Members have commented that implementing changes that create a higher number of smaller area size Exploration Licences has the potential to result in a greater administrative, reporting and cost burden for both government and industry. Members have advised that the proposed tenement area size reduction would result in increased administrative burden (through more tenement applications, monitoring obligations and reporting requirements); and greater cost (through increased licence fees and increased requirement for agreement making).

Operators have also expressed their preference for starting with a larger tenement area, particularly in the case of greenfield exploration. They advise that the larger areas size helps to justify the initial investment and increases the likelihood of discovering a resource. As geological confidence improves, the area can be progressively reduced to focus on the more prospective areas.

Operators have suggested that DEM should consider allowing companies to pick-up larger sized areas (1000km<sup>2</sup> or greater) with increased expenditure requirements as a grant condition.

Some members have commented that the Exploration Release Area (ERA) process already lends itself to a 50% reduction in tenure at the two-year mark if an operator's proposed exploration and expenditure is not met. These members view the ERA process as an effective mechanism for resolving land banking.

While SACOME members acknowledge that DEM is attempting to address land banking through this proposed change, members have suggested that the Mining Act already provides the Department with powers to address inactivity and/or non-compliance.

## 2.1.2 Exploration Ground Release

### **Consultation Questions**

- *Do you think the mechanisms for improving exploration ground release in South Australia are appropriate?*
- *Are there any other ways we could encourage more competitive and fit-for purpose release of ground for exploration?*

### **Comment**

Consistent with above comment in relation to proposed grants of discretionary power to the Minister, SACOME members seek further clarification on how this power would be exercised and details on the process DEM is contemplating.

Members have specifically queried the timeframes that would attach to ground release, asking whether DEM proposes to hold ground until such times as a large package is available for release versus ground being released relatively quickly on a tenement-by-tenement basis.

SACOME acknowledges DEM's advice to SACOME's Mining Act Working Group that the department's preferred approach is to make tenement packages as attractive to the market as possible, and that this can mean holding back ground so as to generate interest from high quality applicants that have the commercial capacity to progress exploration programs.

Member companies have spoken in support of ground release processes used in Queensland, whereby when ground is relinquished or a tenement surrendered, it is subject to a moratorium period of two calendar months.

Following this moratorium period, the land becomes available the first business day after that second month and licence applications can be made by any party. In the case of multiple applicants, a competitive process is used to determine a grant of licence.

Members have also commented on the possible unintended consequence of DEM holding on to ground for an extended period, noting that this may operate against the desired outcome of promoting greater levels of exploration activity.

## 2.2 Repeal of Part 9B

### Consultation Questions

- *Do you think we should repeal Part 9B of the Mining Act?*
- *If yes, what are the benefits associated with repealing Part 9B?*
- *If no, what are the benefits of retaining Part 9B? What feedback can you provide on the operation of right to negotiate schemes used in other jurisdictions?*

SACOME notes the following context providing by DEM regarding potential repeal of Part 9B:

*There are differing views about the nature of the scheme's challenges and how to address them. The department is therefore seeking feedback on the merits of repealing Part 9B. If this happened, the Commonwealth Native Title Act's Right To Negotiate (RTN) scheme would apply to exploration and mining activities carried out on South Australian native title land.*

*This would bring South Australia in line with other states and jurisdictions. This would also create consistency with RTN processes often used for licensing of activities under the Energy Resources Act.*

### Comment

SACOME members have commented that repeal of Part 9B in favour of the RTN scheme, or retention of Part 9B is less of a material issue than is the length of time it is taking operators to negotiate agreements with Native Title groups.

Members note that delays to the granting of an Exploration Licence (EL) will occur at the early stages of the process due to the length of time it takes to negotiate agreement; or later in the process when an EL has been granted but agreement still must be negotiated.

Members note that the expedited procedure process is available to operators under Part 9B and the RTN, however, Native Title parties regularly object to use of the expedited procedure and use of it can negatively impact the ability of operators to successfully negotiate agreements.

By way of an initial 'threshold question', SACOME members have queried whether, under a return to the RTN scheme, DEM would take the position that the grant of an exploration licence would be an act to which the expedited procedure under the *Native Title Act 1993* (Cth) could apply. These members advise that the answer to this question is key in assessing whether a repeal of the Part 9B process could lead to a more efficient process for access to native title land.

Members have also commented on the utility of Part 9B for the purpose of conducting early, low impact exploration to determine prospectivity, noting that conducting early exploration activities under Part 9B assists in assessing whether negotiating an agreement for higher impact exploration is necessary.

SACOME notes

Further, members have noted that moving to the RTN scheme mandates government involvement in the agreement making process and that some Native Title groups are not supportive of government involvement.

Some members have noted that a shift to the RTN process provides access to statutorily mandated timeframes for agreement making and access to a specialist jurisprudence via the National Native Title Tribunal. Those members have also observed that the RTN process works effectively in other State jurisdictions and also provides a greater degree of surety with regard to future acts.

SACOME members seek clarification from DEM on the department's proposed role in the agreement making process; what mechanisms will support agreement making under an RTN scheme; what levels of resourcing DEM might require to support this involvement; and how this is likely to alter timeframes for agreement making.

Noting that DEM employs the RTN process under the Energy Resources Act, members seek further advice from the department about whether they see the RTN process as superior to the Part 9B process and what administrative efficiencies might be gained for government and industry in harmonising the RTN process.

SACOME members have generally advised that, from an operational perspective, the repeal of Part 9B in favour of a shift to the RTN scheme is a lower order priority than resolving delays and developing measures to expedite agreement making in South Australia.

## 2.3 Forfeiture

### ***Consultation Questions***

- *Do you think that the existing Mining Act forfeiture provisions should be expanded to enable the Crown to transfer a forfeited lease to any person approved by the Minister?*
- *What do you consider would be the benefits or disadvantages of this potential approach?*
- *Are there other options to improve the forfeiture provisions under the Mining Act that we could consider?*

## Comment

Members seek further clarification on how proposed discretionary powers would be used by the Minister, along with a better understanding of processes that would support exercise of the discretionary power.

Members have commented that greater clarity on how a 'person approved by the Minister' will be determined is sought as qualifying considerations may operate to limit or disincentivise applicants for forfeited leases.

Members expressed in principle support for transferring the benefits of the outgoing lessee's approvals and rights to enter land as part of the transfer of a forfeited lease.

In discussing forfeiture provisions, members have also raised the issue of plainting and the tactical use of applications to the Warden's Court under section 70 of the Mining Act.

While the intent of this provision is to ensure that tenement holders are genuinely exploring ground and not land banking, members have expressed concerns that parties who have no genuine interest in exploration can leverage the system to secure out-of-court settlements or 'go-away payments' from tenement holders.

SACOME submits that the Issues Paper process provides an opportunity to consider amendments to the Mining Act that ensures plainting meets its legislative intent and is not open to abuse. Reforms could include requiring applicants to demonstrate genuine intent to undertake exploration.

## 2.4 Legislative Consistency with other Acts

### Consultation Questions

- *Do you think the addition of a ministerially directed disputes resolution process in the Mining Act is appropriate?*
- *If yes, should mediation be triggered as a pre-condition to any court action, or as a regulatory response to specific issues?*
- *Do you think the addition of a controlling interest provision in the Mining Act is appropriate?*
- *Is a minimum change in interest of a least 20% of the tenement holder entity (in alignment with the HRE and ER Acts) an appropriate threshold for ministerial approval?*
- *Are there particular conditions or requirements that you think should be imposed on tenement holder entity changes?*

- *Are private royalties preventing development of state mineral deposits?*
- *Are there scenarios where private dealings, including but not limited to future royalties, are good for exploration and project development?*

#### Dispute Resolution for Land Access

Members have indicated in principle support for dispute resolution processes for land access being extended to the Mining Act but seek further information on how this process would work in practice.

SACOME notes that this proposed amendment aims for alignment with mechanisms set out under the Hydrogen & Renewable Energy Act. Further detail on the frequency and efficacy of its use would help in understanding its utility in the context of the Mining Act.

#### Ministerial Approval Requirements for Tenement Transfer & Controlling Interest Changes

Consistent with previous comments on grants of discretionary power to the Minister, greater clarity sought on how this proposed change would operate in practice and what processes/administrative arrangements would be established to enable it.

Members have cautioned that adding a Ministerial approval requirement to the change of controlling interest process is likely to slow down project development as it adds an additional step in the approvals chain that companies seeking to enter into projects must navigate.

Members have commented that royalty arrangements are sometimes used as an alternative to traditional capital/equity raising. If Ministerial approval is required to negotiate royalty arrangements as a component of project funding, members have commented that this could have the unintended consequence of restricting novel funding measures that support exploration activity in South Australia, or operate as an additional layer of red tape.

Operators have also commented that the proposed 20% controlling interest threshold is out of step with operational reality, noting that companies will farm into a project for a 50% or 70% share and then increase their earning over time.

By way of general comment, members have queried whether this proposed change is the most effective way to drive competition, or whether it would simply operate to prevent mergers and acquisitions. Further, members have queried whether an existing independent regulatory body like the Australian Competition & Consumer Commission (ACCC) is the more appropriate oversight entity.

## 2.5 Legacy Matters

### Consultation Questions

- *What are your views on the suggested option to allow some 'low financial risk' tenement holders to pay an annual levy as a replacement or partial substitute for a bond?*
- *Are there other ways in which the state could improve its financial assurance for mining operations?*

### Comment

#### Financial Assurances

Greater flexibility with regard to financial assurance measures is given in principle support by SACOME members.

Clarification is sought on how low risk vs high risk operators would be determined for the purposes of determining eligibility to pay an annual levy into the Mining Rehabilitation Fund versus the requirement to pay a full bond.

Operators have commented that 'low risk' and 'high risk' is likely to change over time so seek greater clarity from DEM with regard to points in a company's life cycle where their risk level would be reassessed.

Operators have also commented on the dichotomy between low-risk tenement holders and high-risk activities. Clarity is sought on how DEM might structure annual levy arrangements in this regard.

## 2.6 Technical & Operational Amendments

### Consultation Questions

- *Do you have concerns with any of the examples of technical and operational amendments listed, and if so, what are the issues?*
- *Can you suggest any other miscellaneous amendments to improve administration and operation of the Mining Act?*

#### Scoping

SACOME notes that DEM seek feedback on the proposal to prescribe the Scoping process in the Mining Act as part of a suite of proposed technical and operational amendments.

SACOME members do not support making Scoping a mandatory process and seek further clarification on how DEM proposes to prescribe the process.

SACOME further submits that Scoping should be retained in the Mining Regulations but not elevated to the Mining Act.

We acknowledge advice provided by DEM at the SACOME Mining Act Working Group meeting held on 14 May 2025 that the Scoping process would remain optional for use by operators rather than mandatory.

SACOME has received a variance of views on scoping with some early users of the process stating that they did not find it sufficiently expedient to justify the associated expenditure of time and resources, particularly where existing processes are well understood by operators.

An example of this is where an operator is applying for a mining lease in very close proximity to an area they have operated for many years. In such cases, operators characterised their experience of Scoping process as duplicative and inefficient.

Other members who have undertaken Scoping more recently have commented that they found it to be of use, and that it addresses many of the required elements of the licensing process that an operator is required to undertake, thus providing efficiencies.

Members have also commented that they support the introduction of Scoping for a Retention Lease (RL) application, stating that if a company has gone through a RL application prior to a Mining Lease (ML) application, then the length of time for a Scoping application should be significantly reduced

They advise that the amount of consultation, data and baseline studies required for the RL application is equivalent to a ML application, and that this prior work should be recognised if the company moves forward from an RL to a ML.