3 April 2017

Julie Holmes
Director, Simpler Regulation Unit
Department of Treasury & Finance
State Administration Centre
200 Victoria Square
Adelaide, South Australia, 5000

Via e-mail: SimplifyDay@sa.gov.au

Dear Ms Holmes,

RE: Simplify Day 2017

Thank you for providing the South Australian Chamber of Mines and Energy ('**SACOME**') with the opportunity to provide input into Simplify Day 2017. SACOME welcomes the initiatives of the Department of Treasury and Finance to help shape regulatory improvement and reduce red tape in government practices.

SACOME has recently submitted a comprehensive response to the 'Leading Practice Mining Acts Review', suggesting various areas in which the *Mining Act 1971* (SA) ('**the Act**') can be modernised and streamlined to make it more workable for all stakeholders and to remove any unnecessary duplication in the legislation.

The following items reflect a selection of SACOME's recommendations to help shape regulatory improvement and reduce red tape in the regulation of the mining industry in South Australia.

1. Framework

*SACOME recommends for the approvals process for a Mining Lease ('**ML**') to be redesigned to align with a standard project management approach.*

The application process for approvals does not include a scoping study phase – the entire assessment needs to be completed before the project is fully defined, and in this time a set of ad hoc and prescriptive guidelines are implemented by the lead regulatory agency that restrict the proponent's ability to adjust conditions as it progresses to the Program for Environment Protection & Rehabilitation ('**PEPR**') stage. It is the industry's preference, and leading practice, that the approvals process should only formally commence following completion of a scoping study which indicates whether a project is viable.

The proponent can then submit the scoping study – which would include a project description and an environmental, economic and social impact assessment – to the regulator. This document in turn would assist in the development of Terms of Reference by the regulator, to help guide the Mining Lease Application by the proponent. These Terms of Reference should include reference to all associated legislation, regulations, Government policies, plans and standards relating to the project, ensuring that the proponent has full knowledge of what is required to gain approval. This framework for mining approvals is reflective of other jurisdictions Nationally and Internationally.

2. Definitions

There are certain terms in the Mining Act and Regulations which require improved definition to provide clarity to both the administrators of the Act, and stakeholders working with the Act.

2.1 Separation of 'exploration' and 'mining'

SACOME recommends a division between 'exploration' and 'mining' in the Act. The term 'mining operator' on a Notice of Entry form creates a perception for stakeholders that the company is seeking entry to mine, rather than to explore.

Forms 21 (Notice of Entry), 22 (Notice of Use of Declared Equipment) and 23A (Waiver of Exemption) have reference to 'mining operator' and 'mining operation' without specific reference to the definition in the Act. This has led to confusion and in some cases undue stress on landowners who, not aware of the definition, have assumed their property is being accessed for the purpose of developing a mine. The Statutory Forms required to be completed by a 'mining operator' and/or the 'owner of land' for access for the purpose of exploration should be made clearer in their purpose; that they are only related to an exploration authority, and not mining which is outside the scope and the tenement class.

2.2 Mining or mining operations

SACOME recommends the terms 'prospecting' and 'exploring' to be included in a separate definition similar to s15 of the Act which delegates power to conduct geological investigations which are not considered 'mining' activity.

Currently under s6(a) of the Act, 'mining' or 'mining operations' is defined as 'Operations carried out in the course of prospecting, exploring or mining for minerals'. 'Prospecting' and 'exploring' in this provision should be removed from the definition of 'mining' or 'mining operations' for the reasons discussed above and should be defined separately in the Act as 'exploration activities'. The provision under s6(f) means that work undertaken by the Geological Survey of South Australia (GSSA), including 'geological, geophysical or geochemical investigation or survey' is not considered 'mining' under the Act.

Exploration companies already undertake the same specific exploration work as GSSA that is provided for in s15. If a comparative activity test was undertaken between these two respective operations, it would demonstrate that they are the same and should be treated in a similar manner.

3. Exempt land

The South Australian Multiple Land Use Framework ('**SAMLUF**') of the South Australian government provides for all land in South Australia to be open to multiple uses for the benefit of all South Australians.

The Act defines Exempt Land under section 9. There are examples of the definition being misinterpreted to mean that the land is off limits to mining operations.

SACOME proposes that a solution to ease the misinterpretation of what 'exempt land' means, with respect to SAMLUF, is to change the word 'exempt' with a word or term that more clearly reflects the purpose of a waiver of exemption – that is land that has a special purpose and should require special conditions to be agreed or determined before access is allowed. SACOME suggests the use of 'special purpose land'.

4. Streamlining of notice of entry forms

SACOME recommends that Form 22 could be eliminated with relevant information in respect of equipment to be used in the course of exploration incorporated into Form 21.

The various notification forms set out under the Act are quite comprehensive and each comprises many pages, although they generally repeat the same information (such as company name and contact details, location, work to be undertaken, landowner rights, and excerpts from the Mining Act).

It would assist both industry and landowners if there was an option for the forms to be merged. For example, where the land required to be accessed is also exempt land, it would be feasible for a combined Form 21, Form 23A and Form 23B which still sets out all the required information but would reduce the amount of paperwork that landowners have to work their way through.

In the many cases where land is not exempt, a Form 21 is appropriate for explorers/mining proponents to use for giving notice of their intent to enter land to undertake various activities.

5. Minister's power to amend a term or condition of Exploration Licence

SACOME recommends that the specific provisions under s34 which the Minister has to follow to make changes to a ML should be the same in s30 in order for changes to be made to an EL. There is no reason

as to why the conditions under which the Minister can make amendments to a term or condition of an EL or ML should not be the same.

Under s30(5) of the Act, the Minister may *'…add, vary or revoke a term or condition of an exploration licence at any time during the term of the licence considered appropriate by the Minister.'*

These powers under the Act for the Minister to make changes to the conditions of an exploration licence (**'EL'**) are too broad, especially considering the stringent conditions placed on the Minister under s34(9) to s34(13) regarding his/her ability to change the conditions of a Mining Lease.

6. Section 58(a)(3) and 59(3)

SACOME queries whether, under the provisions set out in s58A(3) of the Act, a mining operator is able to enter on to land after the 21-day period from when a prescribed Notice of Entry is served, if an owner has not lodged a notice of objection with the appropriate court. The Act clearly states that an owner has three months after the service of a notice to lodge an objection. However, a mining operator can enter onto the land after this 21-day period if an objection has not yet been lodged, yet there is uncertainty over a two-month period where an objection could be lodged after activities have commenced.

SACOME recommends that the three-month period prescribed in the Act to lodge a notice of objection after a prescribed notice of entry has been served should be reduced to a 21-day period to align with the requirements under a notice of entry in s58A(1).

Similarly, s59(3) provides for a three-month period for an objection to be lodged against the use or unconditional use of declared equipment as listed on Form 22 which is served alongside the prescribed notice of entry form (Form 21). For the reasons discussed above regarding s58A(3), this period should be reduced to a 21-day period to align with notice of entry requirements.

SACOME recommends that the three-month period prescribed in the Act to lodge a notice of objection after Form 22 regarding the use or unconditional use of declared equipment has been served should be reduced to a 21-day period to align with the requirements under a notice of entry in s58A(1).

7. Standardisation of compensation criteria

SACOME recommends that the provisions of s61 should apply to the determination of compensation under s9AA by the appropriate court and, if retained, to the compensation provisions in s54. Compensation criteria under the Act should be consistent with the criteria in s61.

Section 9AA of the Act refers to compensation and s54 of the Act provides for compensation in respect of miscellaneous purposes licences, yet there is no consistency with the compensation criteria in section 61.

7.1 Section 30(3) and 34(7)

SACOME recommend that the compensation provisions under s30(3) of the Act regarding ELs, and s34(7) regarding MLs should be deleted given these requirements are provided for under s61.

These sections which provide for the Minister the right to require an EL or ML holder to pay compensation to any person are adequately provided for under s61 – Compensation in the Act. The purposes of these provisions as they currently stand are unclear given the comprehensive provisions under s61.

8. Minerals Claims

SACOME recommends that the term 'Minerals Claims' should be removed from the Act.

Mining proponents should be able to apply for a ML or Retention Lease ('RL') without the need for pegging and applying for a Mineral Claim. Section 34 of the Act would need to be modified to include parts of Part 4, but worded as 'Mining Lease' instead of Mineral Claim.

Part 6 would need to be modified in sections where it refers to mineral claims. The 'pegging' of a ML would be in a similar manner as currently described for pegging Mineral Claims.

The only purpose mineral claims serve is to identify an area in respect of which a ML or a RL is to be applied for (and it is a requirement to hold a registered mineral claim to make such application). With modern technology for identifying these areas, the need for mineral claims has gone.

9. Renewal of Exploration Licences

SACOME recommend a renewal process for ELs so that, instead of applying for a 'subsequent' licence which is issued with a new EL number, the Tenement Holder applies for a renewal of the existing EL for a further term. The existing EL number is retained upon renewal. In addition to avoiding unnecessary complications with respect to financing and securities, this would also assist in some native title and exempt land situations.

10. Mining Lease rental fees

SACOME recommends that the payment of annual rental for a Mining or Retention Lease or Miscellaneous Purpose Licence should not be payable until mining operations are entitled to be commenced on the mining or retention lease or miscellaneous purposes licence.

Currently, as soon as a ML, RL or Miscellaneous Purpose Licence (MPL) is granted the Tenement Holder is required to pay annual rental in advance (see sections 36 and 40 re MLs and 41E re RLs and 52(6) &

(7) re MPLs), although mining operations cannot commence until a PEPR or Management Plan is approved and the benefit of any exemption in respect of exempt land is waived, with some members indicating that a PEPR can take 12 months to 2 years to be prepared, assessed and approved. The annual rental requirement should be fixed within the Act when the 2011 amendments came in and the PEPR and Management Plan concepts were introduced. Due to this oversight, another unjustified financial impost is being imposed on a tenement holder when it has no current cash flow and is dependent on all approvals being received so that it can secure finance.

Should you require any further clarification on any of the matters addressed in this submission, please feel free to contact me on (08) 8202 9999 or via e-mail at ykoernerheinjus@sacome.org.au.

Yours sincerely,

Yelena Koerner-Heinjus
Policy Advisor