South Australian Chamber of Mines and Energy

LEADING PRACTICE MINING ACTS REVIEW

Mining Act 1971 and *Mining Regulations 2011*

Submission to

The Department of State Development

March 2017

South Australian Chamber of Mines and Energy
Mines and Energy House | Level 1, 290 Glen Osmond Road, Fullarton, South Australia, 5063
T: +61 8 8202 9999 | F: +61 8 8202 9900 | sacome@sacome.org.au | www.sacome.org.au

Representing, promoting and protecting the resources industry of South Australia

Contents

Executive Summary

South Australia is fortunate to be rich in resources in a range of commodities that are of high demand on a national and global scale. Mining continues to be South Australia's largest export group, making up over 40 per cent of the State's total exports. The resources industry contributes to 6.7% of Gross State Product - $6.4 billion - and contributes $208 million in royalties to the State Government.

Activity in the state has increased with vigour due to the recognition of South Australia's mineral wealth, thanks largely to proactive policies by current and previous State Governments. The exploration and mining industry in South Australia has great benefits on both an economic and social scale. The resources industry directly employs over 8,400 people with a further 20,000 employed in the wider METS sector. The industry provides training and upskilling for those employed, and supports local and new businesses in regional areas where mine sites are established. The growth in population in towns close to mine sites also provides for investment into social infrastructure, such as schools and hospitals, within the community. Due to the diverse nature of the sector, it connects with and employs services from a diverse range of sectors.

The resources industry continues to be supportive of the State Government's 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. Due to the complex nature of resources industry projects, which often have to take into consideration multiple land uses, South Australian Chamber of Mines and Energy ("**SACOME**") and its members are committed to the initiatives that imbed and encourage multiple and sequential land use within the South Australian Multiple Land Use Framework. Our members maintain that mining and other land uses can sustainably co-exist and are dedicated to working together with respective sectors to achieve this.

SACOME provides ongoing support to all members who are committed to community and stakeholder engagement - the Chamber has established proactive policies, including the SACOME Code of Practice for Community and Stakeholder engagement, which ensure that all members who become signatories uphold best practice methods when undertaking community engagement.

SACOME has made a number of recommendations in this submission and looks forward to continuing dialogue with the Department of State Development on these matters. SACOME will take this opportunity to emphasise that the objective of the Act and the Regulations is to allow for Mining to sustainably occur within South Australia – this should be stated within the Act. The Act and Regulations are enablers for the sector to explore and mine resources, and allow for the necessary conditions to ensure that mining activities are undertaken in appropriate responsible manner.

The recommendations follow three key themes:

1. 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.
2. Mining Lease Approvals process – SACOME seeks changes to the current Mining Lease approvals process, to make it more streamlined and workable for industry. The ML approvals process is currently inflexible and should be further developed to provide certainty through an outcomes based process.

3. 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 continues to support the State Government's strategic priority to realise the benefit of the mining industry for all South Australians, and hopes that this is reflected in the review to these key pieces of legislation. The Chamber expects further consultation with Industry on the draft amendments to the *Mining Act* and *Mining Regulations* prior to them being submitted to the Parliament for consideration and adoption.

The South Australian Chamber of Mines and Energy (SACOME)

The South Australian Chamber of Mines and Energy (SACOME) is the peak industry association for all companies with business interests in the resources industry in South Australia, including those with business, vocational or professional interests in minerals exploration, mining and processing, oil and gas exploration, extraction and processing, power generation, transmission and distribution, logistics, transport, infrastructure, and those with clients in these sectors.

Contact

Rebecca Knol
Chief Executive Officer
P: (08) 8202 9999
M: 0409 012 007
E: rknol@sacome.org.au

Introduction

The South Australian Chamber of Mines and Energy (SACOME) welcomes the Leading Practice Mining Acts Review and is pleased to have the opportunity to provide comment on the review of the *Mining Act 1971* and the *Mining Regulations 2011* on behalf of industry members. SACOME acknowledges the release of the Discussion Paper on 23 December 2016 and the associated discussion questions for stakeholders to consider.

SACOME has used the questions in the discussion paper to guide our discussions with members on the Act as it currently stands. There are some questions in the discussion paper that have been addressed directly in our submission. SACOME provides a response in two parts.

1. Part A: Consolidated feedback on the Mining Act
2. Part B: Responses to select questions in the discussion paper

SACOME's submission focuses on the issues that the industry considers important for the for the effective, efficient and transparent regulation of the industry.

A summary (Appendix A) of all recommendations are included at the end of Part A in this document.

PART A: CONSOLIDATED FEEDBACK ON MINING ACT

1. Framework

Currently, the Department of State Development (DSD) does not align the current approvals process for a Mining Lease with standard project management approach (see Figure 1).

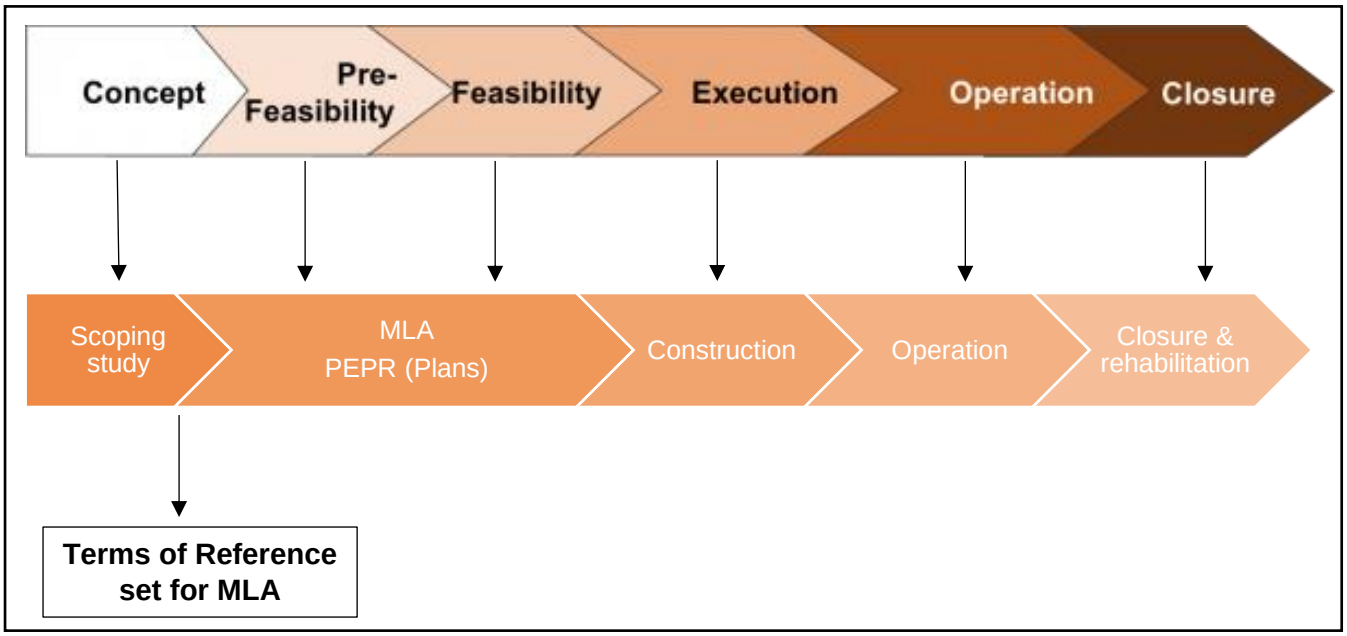

Figure 1: Typical Project Management Timeline & Proposed New Timeline

It would be preferable that no approval processes should formally commence until a scoping study has been completed and it indicates whether a project is viable.

The application process as it currently stands 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 DSD that restrict the proponent's ability to adjust conditions as it progresses to the Program for Environment Protection & Rehabilitation (PEPR) stage.

The scoping study should identify the baseline environmental and social aspects of the project and include a preliminary environmental, economic and social impact assessment. Environmental baseline studies can commence during this scoping study period, but may need to be augmented during the Pre-Feasibility Study (PFS) if the anticipated project footprint changes as alternatives are evaluated and decisions are made.

Pre-feasibility studies are arguably the most important of all project development stages for a mining project. It is during this stage of the project that all alternatives are evaluated and decisions made that define the project. It is during this project stage that the Mining Lease Application (MLA) process should commence, which includes an environmental, economic and social impact assessment.

The MLA should not be completed and submitted to Government until after the PFS is complete and a decision by the proponent is made to progress to the next stage of the project. If the MLA is submitted too early and has not taken into consideration the results of the PFS, it risks changes to the project definition. These changes can cause confusion, rework and tension between the proponent, Government and interested public stakeholders who have commented on the original proposal.

A way to assist this issue of proponents advancing the MLA too early is to introduce a Terms of Reference (TOR) process, whereby proponents submit to DSD a project description and preliminary environmental, economic and social assessment prior to the application process. This document would be based on the outcomes of the project scoping study and trigger the lead approval agency (DSD) to prepare the Terms of Reference for the Environmental, Economic and Social Impact Assessment that would form the basis of the MLA. The process should include consultation and submissions from referral agencies (ie. EPA, DEWNR, DPTI), local council and public submissions from relevant stakeholders in the community.

The lead approval agency then prepares the Terms of Reference which guides the MLA. The Terms of Reference should include reference to all legislation, regulations, Government (including Federal and Local Council) policies, plans and standards that will relate to the specific project. This would ensure that the proponent has full knowledge of what is required to gain approval for the project at commencement. It should be possible to inform the proponent via the Terms of Reference how the Mining Lease conditions are likely to be framed, in terms of the level of assessment required for the various impact assessments and what regulatory standards will be applicable. This will be of significant value to proponents, as the project design can take account of this more advanced knowledge of regulatory requirements at an earlier stage. Under the current system, proponents do not discover the regulatory standards they must meet until after the project has been designed, the MLA is complete, has been assessed and lease conditions granted.

SACOME Recommendation: *DSD should consider redesigning the mining approvals process in South Australia to include a scoping document at the beginning of the process to assist DSD in developing Terms of Reference to guide the Mining Lease Application process (see Figure 1).*

1.2 Other State processes for issuing of Terms of Reference

SACOME supports the initiatives of other jurisdictions in Australia which require proponents to establish a project scope and preliminary impact assessment to guide the preparation of a Terms of Reference for the environmental, economic and social impact assessment for a new, modified or extended mining project.

Most States and Territories have incorporated into the beginning of the mine approval process a rigorous planning and Terms of Reference process. The Department should look to the New South Wales, Queensland, Victoria and Northern Territory project scoping and Terms of Reference processes as precedence to assist in the design of a similar process in SA and to gain insights into the value of such processes.

A similar benchmarking exercise needs to be undertaken to learn about how other jurisdictions manage significant change to project scope and design, as may occur prior to Environmental Impact Assessment (EIA) (part of the MLA in SA) submission and ML granting, post ML granting and post operational commencement. In South Australia, the EIA (as part of the MLA) assessment and granting of the ML and conditions is part of the same process, and once the ML is granted, there is no well-defined mechanism for change if the project scope changes.

2. Definitions

Certain terms in the Act and the Regulations require improved definition to provide clarity to both the administrators of the Act, and stakeholders working with the Act.

2.1 Mining Operator

SACOME members seek 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

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. SACOME is seeking for '*prospecting'* and '*exploring'* to be included in a separate definition similar to s15 which delegates power to conduct geological investigations which are not considered '*mining'* activity. 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.

SACOME Recommendation: *The term 'Mining Operator' requires redefinition in the Act, and definitions need to be introduced for 'Explorer' and 'Miner'. Consider the introduction of a neutral term in addition to cover both explorer and miner such as 'Operator'.*

Prospecting and exploring operations need to be removed from s 6 definition of 'mining or mining operations' and be redefined into their own separate definition.

2.3 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 current Mining 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. 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.

The Discussion Paper ('**the Paper**') raises the issue that landowners should have the right to commence legal action over the issue of waivers of exemption. Should the Department consider such a proposal, there will need to be a statutory limitation to mining or retention leases and any proposal must go through further consultation with industry.

There is not any justifiable reason for landowners to have the power to commence proceedings themselves as they effectively hold the power to refuse to waive the benefit of exemption until the Court decides otherwise, should the operator seek a resolution in the Court.

SACOME Recommendation: *Amend the word 'exempt' from the Act (and therefore wording in associated regulations and forms) with another more suitable word that aligns with multiple-land use framework principles and the need to take additional conditions such as 'special purpose land'.*

2.4 Term 'building or structure with a value of $200 of more'

The term 'building or structure with a value of $200 or more' needs to be redefined and modified within the Act to increase the value to a more realistic figure and, more strictly define the nature – in terms of its purpose – of the structure. This value has not changed since 1986 and adjusting for inflation this figure in 2016 dollars is $2,100. As the Act notes that it is the value of the building or structure and not the specific dollar amount the Act has in essence devalued the intentions of the original definition.

It may be worth considering inserting a clause which also defines a building or structure as 'existing', as the timing of serving a notice of entry and having to waive the benefit of exemption could inadvertently capture a structure that was non-existent at the serving of notice, but in the meantime, create an exempt land provision where a waiver must then be sought.

While legal definitions of structures note that they are fixed or permanent, the Act should explicitly state that structure as defined in all aspects of the Act is a permanent fixed structure. This is to not induce a legal dispute over the definition of this term as it pertains to exempt land status.

The revised definitions of exempt land should take into account the level of activity that would trigger an exempt land status. For example, soil sampling is a different activity to open cut mining, yet under the exempt land definition they are treated as if they are the same. Low impact activities should be catered for under a Comparative Activity Test (see section 13 of submission) and should be subject to a notice of entry but not require a waiver.

SACOME Recommendation: *The categories of exempt land need to be reviewed as does the value of a building or structure used for an industrial or commercial purpose (currently set at $200) – this value should be manifestly higher.*

3. Section 9AA

3.1 9AA (8) – Waiver of exemption (including cooling off)

> *(8) – The ERD Court may refuse to determine an application unless the mining operator satisfies the Court that –*
>
> > *(c) the operator made a reasonable attempt to reach agreement with the respondent.*

Clarification is needed as to when a negotiation commences in the attempt to reach an agreement. It needs to be established whether negotiation commences from the first conversation between a landowner and an explorer regarding their intention to undertake work, or if negotiation is seen by the Court as commencing when notices under s9AA have been officially served.

It is questioned whether an Operator can only be seen by the courts to have made a reasonable attempt to negotiate during the period after a notice requesting a waiver has been given. Subsequently, it is questioned whether any 'informal' steps prior to a notice being served be relevant.

In addition, if the Act is amended to allow an owner to initiate proceedings in relation to waiver the benefit of its exemption, the Court should also have the discretion to refuse to determine the

application if the owner has not made a reasonable attempt to reach agreement with the mining operator.

SACOME Recommendation: *Clarify in the Act whether a 'reasonable attempt' means prior to or after the waiver of exemption is served to the landowner. The Act needs definition of what activity is considered a 'reasonable attempt' prior to waivers or notice of entry and to apply to both mining operators and, if owners are given the right to approach the court, to owners.*

3.2 9AA (9) – Waiver of exemption (including cooling off)

(9) – On an application, the ERD Court may -

(a) if the mining operator satisfies the Court that any adverse effects of the proposed mining operations on the respondent can be appropriately addressed by the imposition of conditions on the mining operator (including the payment of compensation to the respondent), make an order waiving the benefit of exemption for the respondent and imposing conditions on the mining operator;

This section requires further clarification of the powers of the Court to preclude any unnecessary confusion between parties.

SACOME Recommendation: *This provision needs to further clarify the full extent of the powers of the Court in relation to the waiver of exemption.*

3.3 9AA (10) – Waiver of exemption (including cooling off)

(10) – The ERD Court may not make an order for costs against the respondent unless the Court considers that it is appropriate to do so on the ground that the respondent -

(a) has obstructed or unnecessarily delayed the proceedings;

The Court does not have the power to make an adverse costs order if the landowner has been obstructive during, or unnecessarily delayed, the agreement negotiation phase. The Court should have the power to award costs against the landowner for deliberatively obstructive behaviour.

SACOME Recommendation: *The Act should include wording to allow for the appropriate Court to make an adverse costs order if the landowner has been deliberately obstructive during the agreement negotiation phase.*

3.4 9AA – Waiver of exemption (including cooling off) – Notice of Entry

The various notification forms set out under the Mining 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 be helpful for 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, perhaps there could be a combined Form 21, Form 23A and Form 23B which would still set out all of 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.

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

SACOME Recommendation: *DSD to streamline the notice to land-owners process for industry by combining Form 21, 23A and 23B (where appropriate), with the requirements of the current Form 22 being included in Form 21.*

3.5 9AA (12) – Binding nature of an agreement or order to waive the benefit of exemption

> *(12) An agreement or order to waive the benefit of an exemption under this section is binding on –*
>
> > *(a) successors in title to those owners of land who had benefit of the former exemption;*

SACOME consider that the term 'successors in title' is too narrow a definition and that it needs to be broadened.

SACOME Recommendation: *That 9AA(12)(a) be broadened to say 'all persons who become subsequent owners of land...'.*

3.6 9AA – Waiver of exemption (including cooling off) – Leases and Licences

Section 9AA requires a company seeking a waiver of exemption to be a "mining operator", defined in the Act as "the holder of the relevant mining tenement" (section 6 - Interpretation).

It is questioned whether this means the holder of the tenement in respect of which the waiver is sought or whether it is acceptable for a holder of an exploration licence (EL) to seek a waiver in respect of a mining lease (ML) yet to be granted.

In principle if referring only to section 9AA there is the inclination to follow the former interpretation. However, regulation 6(2)(a) specifically recognises the ability for a waiver agreement to be entered into before the relevant tenement is granted:

> *"The holder of a mining tenement (or an applicant for a mining tenement), other than an exploration licence, who is party to an agreement, or a person who has the benefit of an order under section 9AA of the Act, to waive the benefit of an exemption, must ensure that a copy of the agreement or order (as the case may be) is lodged with the Mining Registrar –*

(a) if the waiver is obtained prior to an application to register the tenement – at the time of making the application;

(b) if the waiver is negotiated at any time thereafter – within 21 days after the negotiations are completed.

***SACOME Recommendation:** The Act should be amended to clarify that it is acceptable for the holder of an EL to seek a waiver in respect of a ML yet to be granted.*

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

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 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.

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.

***SACOME Recommendation:** The provisions under s 34 regarding the Minister's requirements to make a change to a ML should be replicated in s 30 regarding changes by the Minister to the terms or conditions of an EL, as the current provision is too broad.*

5. Part 9 - Entry upon land, compensation and restoration

A mining operator may enter land to carry out mining operations on the land by a number of different means according to the Act including:

- where the mining operator has an agreement with the owner of the land authorising the mining operator to enter the land to carry out mining operations on the land; or,
- where the mining operator has given the prescribed notice of entry and certain other conditions are met.

The definition of owner of land under the Act is:

(a) a person who holds a registered estate or interest in the land conferring a right to immediate possession of the land; or

(b) a person who holds native title in the land; or

(c) a person who has, by statute, the care, control or management of the land; or

(d) a person who is lawfully in occupation of the land.

The identity of 'owners of land' referred to in paragraph (c) and, particularly, paragraph (d) of the definition are not easily identifiable by a mining operator, even after carrying out appropriate due diligence inquiries, as they are not ascertainable by searching any register, such as the South Australian Integrated Land Information System (SAILS). This makes it extremely difficult in many cases to ensure that notices of entry and/or agreements are in place with the rightful 'owners of land' as defined under the Act.

SACOME Recommendation: *It is recommended that the mining operator should only be required to serve notice of entry on 'owners' referred to in paragraphs (a) and (b) of the definition and the registered owner of the land should be responsible to notify any other parties that may have legal rights as an 'owner of land' under the Act and the mining operator.*

The mining operator should be entitled to proceed once the registered owner of the land has been served notices as required.

5.1 Section 58A(3) and 59(3)

SACOME queries whether, under the provisions set out in s58A(3), 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 Recommendation: *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 Recommendation: *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).*

6. Compensation

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

SACOME Recommendation: *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 homogenised to the criteria in s61.*

6.1 Compensation & Access Agreements

The compensation and access agreements established under s58A and s61 respectively appear in the Act to only be binding on the tenement holder and owner at the time the agreement was entered in to.

SACOME Recommendation: *The Act should include a provision in which the compensation and access agreements under s 58A and s 61 are binding on subsequent tenement holders and owners.*

6.2 Compensation provisions under sections 30(3) and 34(7)

The compensation provisions under s30(3) regarding Exploration Licences, and s34(7) regarding Mining Leases should be deleted. 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.

SACOME Recommendation: *Sections 30(3) and 34(7) in the Act regarding the Minister's right to require an EL or ML holder to pay compensation should be deleted given these requirements are provided for under s61.*

7. Environment, Resources & Development (ERD) & Warden's Court

The Warden's Court is seen to be more approachable to all parties, less costly for all parties, and has a long history of dealing with mining related matters and establishing legal precedents. Prior to the 2011 amendments of the Act, all matters under the Act were referred to the Warden's Court.

In the time since the ERD Court has played a role in resolving and mediating disputes in the Act there has been a noticeable reduction in the efficiency of disputes that have come before the court. In some cases, the ERD Court has acted as a gatekeeper to exploration activities even though the determinations of the ERD Court have been challenged and overruled in the Supreme Court.[1] Additionally, the ERD Court is seen as an expensive, resource intensive and time consuming process to mediate disputes, in contrast to the Warden's Court which is less expensive for all parties and more efficient.

In relation to waiver of the benefit of exemptions in respect of exempt land, regardless of the appropriate court used to hear such matters, the Act should be amended to make it clear that the court acts as an arbitration tribunal and include a provision that, where the Minister is of the opinion that there is a clear State or national interest or benefit in developing a proposed mining operation, the Minister may – much as set out in section 63W of Part 9B - overrule the determination of the Court

[1] *Straits Exploration (Australia) Pty Ltd & Anor v Kokatha Uwankara Native Title Claimants & Ors* [2012] SASCFC 121.

SACOME Recommendation: *In the first Instance, the ERD Court should be replaced with 'Warden's Court' in the Act. Furthermore, as per section 63W in Part 9B, the Minister should be provided with the power, in matters relating to the waiver of the benefit of exemptions in respect of exempt land, to overrule a determination of the Court and substitute another determination, if the Minister is of the opinion that there is a clear State or national interest or benefit in developing a proposed mining operation.*

8. Minerals Claims (Part 4 – Prospecting for Minerals)

Mining proponents should be able to apply for a Mining Lease (ML) or Retention Lease (RL) without the need for pegging and applying for a Mineral Claim. Section 34 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.

SACOME Recommendation: *That the term Minerals Claims be removed from the Act.*

9. Section 30A – Term & renewal of licence

The resources industry would prefer to have 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.

SACOME Recommendation: *The requirement to apply for a 'subsequent exploration licence' after an EL's initial 5-year term is abolished and replaced with the requirement to apply for a renewal of the EL which, if approved, results in the retention of the existing EL number and a further renewal term of 5 years.*

10. Part 11A – Lodging of Caveats

The caveat scheme utilised under the Mining Act should be updated to better protect non-proprietary interests, such as equitable interests and contractual rights.

A more practical alternative to the current caveat scheme utilised under the Mining Act would be to adopt the approach which has been utilised by the Lands Title Office under the *Real Property Act 1886 (SA)* (***RPA***) for an extended period, whereby the party claiming the caveatable interest is responsible for determining whether a caveatable interest exists and for registration of that interest on the applicable register.

This approach, whereby the party claiming the caveatable interest, rather than DSD, would retain responsibility for determining whether a registerable interest exists and for registration of that interest, is also more closely aligned with the Personal Property Securities Register established under the *Personal Property Securities Act 2009 (Cth) (**PPSA**).* Under that system, the holder of the security interest retains responsibility for determining whether a registerable interest exists and, if so, for registering that interest on the PPSR.

Consistent with the position adopted under the above-mentioned regimes, DSD should not be responsible for determining the validity of caveatable interests, but rather should register all caveats lodged with DSD provided they are in an approved form.

Where the validity of a caveatable interest which has been registered is challenged, this would be most quickly and efficiently determined by the Warden's Court. While any dispute regarding the validity of a caveatable interest is ongoing, the relevant caveat should remain on the register and no dealings in relation to the relevant tenement should occur until the dispute has been resolved.

A revised caveat regime under the Mining Act could adopt similar procedures for the removal (or warning) and withdrawal of caveats which are currently utilised under the LPA in relation to real property.

This approach, and the increased protection afforded to non-proprietary interests, such as equitable interests and contractual rights, would provide greater certainty to businesses operating in the South Australian resources sector.

***SACOME Recommendation:** The caveat scheme utilised under the Mining Act should be updated to better protect non-proprietary interests, such as equitable interests and contractual rights, and the party claiming the caveatable interest, rather than DSD, should retain responsibility for determining whether a registerable interest exists and for registration of that interest.*

11. PART 10(A) – Programs for Environment Protection and Rehabilitation (PEPR)

11.1 Joint Venture Agreements

Part 10A requires the tenement 'holder/holders' of mining tenement operate in accordance with an approved PEPR. In the PEPR Determination, and possibly in other places, each holder is required to sign the PEPR and each holder has to submit the PEPR (consultants/couriers will not do, unless provided with thorough authorisation signed by each holder).

If there are two tenement holders, then both holders need to sign and authorise the PEPR. This means that a majority holder and, for example, a partner at 15% share (who is also on the lease documents) are both required to sign the PEPR. This leaves the majority holder at risk of hold ups for signatures, and empowers the minor party to veto progression of the project if they deem it is not the right time for them to progress.

In addition, any amendment to the PEPR (which can occur several times annually) is required to go through the signature process again - further increasing ongoing commercial risk for the major party.

It is questioned why would one enter into a JV in South Australia when as the major partner, at the end of the permitting process your authority and/or control of your majority investment is subject to veto by a junior party (irrespective of the size of their interest).

Once a ML is granted to the holders, it becomes 'operational'. Industry suggests that PEPRs be the jurisdiction of the operator under the relevant joint venture agreement who is required to sign the PEPR since a PEPR is an operational document (ie. the rules by which the operator actually operates). The holders delegate authority to the operator to carry out operations. The holders are still obliged to ensure the operator is suitably qualified to carry out the operations and thus cannot carry out mining operations unless a program that complies with the requirements in Part 10 is in force. The holders are still responsible for compliance with the ML conditions.

SACOME Recommendation: *Where there are two or more tenement holders over a mining lease, only the operator be required to sign off on the PEPR (and any future amendments). Further, if a PEPR has been suitably signed, it can be submitted to DSD by any person.*

Note, no amendment to the Act is required to establish this point, the Department however needs to clarify its policy in this area. The policy should outline that the designated operator of the tenement, in other words the party that lodges the PEPR, should also provide some form of proof that the tenement holder and any other party to the tenement has consented to the operator submitting the PEPR. Therefore, the joint parties acting diligently should have provided for this when the JV was formed.

11.2 Definition of PEPR

Queries have been raised over the definition of a PEPR in the context of approvals for a mining development. The current approvals process begins with approval for the Mining Lease Application, and following this, companies seek assessment and approval for their Program for Environmental Protection & Rehabilitation (PEPR).

The PEPR process as it stands is a subsequent and more detailed impact assessment document rather than the intention of a series of management plans the company prepares to minimise or mitigate environmental impact. In effect, companies are now undertaking a second environmental impact assessment which is less flexible than the impact statement conducted at the MLA stage as the ML guidelines restrict changes to management plans throughout the life of the project.

The PEPR process needs to be more outcome focussed rather than the current prescriptive process. To ensure consistency and certainty for mining assessments. measurable and objective outcomes should apply. Legislation and regulations need to be explicit in the outcomes required. The Department that implements them must be accountable. There is concern that requirements of PEPRs are being changed throughout the drafting process, akin to shifting goal posts. This could be avoided through the implementation of a clearly defined approvals framework, as discussed in section 2.

SACOME Recommendation: *Mining Approvals process must be based on an outcome focussed model, rather than the trend towards a prescriptive model which is currently occurring within the PEPR and more broadly the Mining Approvals process. The current prescriptive process could be avoided through the implementation of a clearly defined approvals framework.*

11.3 Mining Lease rental fees

Currently, as soon as a ML, RL or 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 have been fixed within the Act when the 2011 amendments came in and the PEPR and Management Plan concepts were introduced. Due to this oversight by Government, 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.

SACOME Recommendation: *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.*

12. Comparative Activity Test

SACOME members seek a division between Exploration and Mining, to include improved regulation of both exploration and operation activities such as a 'Comparative Activity Test' (CAT) in the Act and/or Regulations. Other States have varying methods designed around "low impact" definitions. The CAT would provide that certain prescribed classes of activities be prohibited without higher approvals. The present system has become obtuse and anachronistic with multiple laws and costly processes simply because an activity is proposed to be undertaken in the context of exploration or production.

A mining company should be able to undertake the same activities that a neighbour or recreator may lawfully undertake on land. There is no principled reason that explorers and operators are not afforded the same legal rights as their neighbours or recreators for similar activities.

SACOME Recommendation: *For the Act to include terms which authorise an explorer or operator to undertake activities that the holder of 'ordinary title' is allowed to do, which are commensurate with the terms of an Exploration or Mining Licence.*

13. Timelines

Assessment timeframes are critical for certainty in project development. This is more acute for junior exploration companies who are highly represented in Australian discoveries made (60-70%) and value created (40-50%) where capital is limited and time is of the essence.[2]

Long, uncertain and unrestrained assessment timeframes can lead to a loss of investment in a jurisdiction and damage to investment attractiveness. Table 1 outlines the timeframes of various assessment processes for major projects in both mineral, financial and petroleum agencies. Clearly defined assessment timeframes and open and transparent reporting of assessments will provide

[2] MinEx Consulting, 2015

certainty and clarity for long term projects to manage their risk profiles. It is reasonable for companies to expect the regulator to respond to applications in a defined timeframe.

SACOME Recommendation: *The assessment timeframes for all mineral licences and leases be defined in Mining Act 1971 (SA) legislation and associated regulations to provide certainty to project proponents and the community, and reported against annually in an open and transparent manner.*

Agency	Policy	Agency Timeframe	Legislation
New South Wales Resources and Energy Department	Mineral Applications – EL, ML, Assessment Lease (AL) Coal Applications – EL Coal Applications – ML, AL Renewals – EL, ML, AL ML needs development consent (EIS) to be granted. "Stop the clock" to allow for non-R&E department assessment or proponent feedback	45 days 85 days 45 days 45 days As long as it takes	*Mining Act 1992 (NSW)*
Foreign Investment Review Board (FIRB)	Treasurer must respond within the legislated period or extend the timeframe by a further 90 days by registering an interim order	30 days	s77 *Foreign Acquisitions and Takeovers Act 1975 (Cth)* Order [GN39]
Environmental Protection & Biodiversity Conservation (EPBC) Act	Response to referral by minister - Consultation - If the proposed project is a controlled action	20 days 10 days Additional time (can proceed to bilateral assessment)	*Environment Protection and Biodiversity Act 1999 (Cth)*
National Offshore Petroleum Safety & Environmental Management Authority (NOPSEMA)	To assess whether a proposal meets certain criteria Median assessment timeframes	30 days 64 days (43 NOPSEMA, 21 proponent)	*Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)*
Development Assessment Commission (DAC)	Major Development - Project assessment - Consultation (DR to EIS) - Response by Government	5 – 8 months 12 weeks 3 – 6 weeks 6 – 8 weeks	Part 8 *Development Regulations 2008 (SA)*

Table 1: Timeframes of various assessment processes

14. Amendments to Mining Lease Conditions

Due to the complex and changing nature of mining projects, in addition to external factors such as global commodity prices, and advances in technology and process efficiency, there will often be a significant shift in the scope of a project during a mine life. Such changes may include a reduction or alteration of a mine footprint, revised operating practices, the use of different plant and equipment, revised operating methods, revised hours of operations, etc.

The Act, as it currently stands, does not allow for amendments to Mining Lease (ML) conditions to accommodate such changes in scope, causing regulatory issues and time delays for companies who need to apply for a new lease or the inability to implement operational changes at all under the current lease conditions.

SACOME recommends the introduction of a mechanism into the Act which enables appropriate amendments to ML conditions throughout the mine life by way of a set procedure. An example of an existing mechanism in operation in South Australia can be found in the *Development Act 1993 (SA)*.

Any regime regarding the amendment of ML conditions during the mine life would need to contain consultation requirements that are appropriate for the nature and extent of the amendment in question. Accordingly, to ensure that an efficient and cost effective methodology is adopted, the regime should differentiate between major amendments, which require public consultation, and minor amendments, which could be dealt with by DSD within a specified time frame through an administrative process which does not require public consultation. The differentiation between major amendments and minor amendments could be determined according to the significance of changes to the disturbance area, the number of receptors, or other relevant factors.

SACOME Recommendation: *SACOME recommends the introduction of a mechanism into the Act which enables appropriate amendments to ML conditions throughout the mine life by way of a set procedure. This will provide some much-needed flexibility for mining projects. SACOME encourages DSD to consult with industry on the mechanism which would trigger a modification under the Act and what the subsequent modification approvals process would look like.*

The Department should incorporate into Part 6 – Mining leases of the Act a comprehensive provision that allows for amendments to ML conditions, and should review the minimum conditions in the ML which are standard to a project, and then have the specific conditions for the project in the PEPR, which is more easily amended to take into account any changed circumstances.

15. Mining Assessment Fees

15.1 Repeal of current mining lease application fee structure

The gazetted revision to the mining lease application fee structure introduced in December 2014 should be abolished. While it is acknowledged that the fees in place prior to the revision were too low, the introduction of a ‘capital cost’ structure is a significant and unjustifiable financial impost on mining proponents who have already invested heavily in undertaking detailed impact assessments works, stakeholder and community engagement activities, and the preparation of ML applications which themselves are comprehensive, expensive and time-consuming.

There is industry frustration that the revised fee structure, which increased some proponent's financial obligations by almost 7,000%, was introduced on 18 December 2014 with no consultation. When comparing South Australia's revised mining assessment fees to those imposed in other jurisdictions in Australia, no other State or Territory charges an assessment fee based on the capital cost of a project – rather, the fees are charged at a fixed rate, with the highest fee for a ML application being $10,000 in New South Wales.

In South Australia, proponents are now required to pay anything from $3,445 to $202,404 (based on the Schedule of Fees dated 1 July 2016). Such uncertainty in application fees, which are at significantly inflated and unnecessary rates, is unworkable for industry as applications are lodged at a time when there is no cash flow from the project. Our members have also reported that the inflated fee has not resulted in more efficient assessment of applications by DSD.

This unworkable fee strongly discourages investment in South Australia, a clear inconsistency with the role and aims of Investment Attraction South Australia and DSD.

SACOME Recommendation: *The assessment component of the Mining Lease application fee which was introduced in December 2014 should be abolished as it is a disincentive to investment and economic growth and inconsistent with every other mining jurisdiction in Australia. A standard fee for all applications, consistent with other Australian jurisdictions, is recommended as it will provide certainty to proponents in a time where there is no cash flow.*

15.2 Split fee arrangement

SACOME has had previous correspondence with DSD on the introduction of a split fee arrangement for Mining Lease application fees. This option is considered necessary to balance DSD's desire for cost-recovery while enabling proponents to direct limited funds into project proposals and securing finance.

SACOME proposes a fee arrangement reflective of that in the *Development Act 1993* (SA).

This recommendation does not require an amendment to s 35(1) of the Act as there is a relatively simple mechanism to effectively stage the payment of fees relative to the progression of a mining lease assessment. Alternatively, if DSD does not agree with this view s 35(1) should be amended.

Section 92(1)(o) of the Mining Act authorises the Governor to make regulations which:

> *"prescribe fees that are to be paid in respect of anything done under this Act or in connection with the administration or operation of this Act, or in respect of any matter occurring under this Act, and provide for recovery of fees".*

Legal advice is that there would be nothing in section 35(1) and the regulations which would preclude the following:

1. *Schedule 1 to the regulations being amended to reduce the mining lease application fee in item 3(a) of that schedule to (say) 30% of the current amount. This would not offend against*

section 35(1) as this reduced application fee would still be required to be paid with the lease application;

2. *Schedule 1 being further amended to, say, reflect two new fees:*
    a. *An "assessment progress" fee equal to, say, 30% of the current amount payable on, say, submission by the proponent of its Response Document (or upon notification by DSD that a Response Document is not required); and,*
    b. *An "assessment completion" fee equal to, say, 40% of the current amount payable, say, on finalisation of the assessment.*

A staged approach for the payment of fees is consistent with the approach under the *Development Act 1993* and facilitative of promoting mining development in South Australia.

It is understood that the application of staged fee payments under the *Development Act 1993* has worked well for project proponents and not presented a burden in its administration from the Department of Planning, Transport & Infrastructure (DPTI) perspective.

SACOME notes that the last payment in this staged approach should only be submitted to the Department after a decision on the application has been made by the Minister.

SACOME Recommendation: *For consideration to be given to a split fee arrangement for Mining Assessment fees.*

16. Royalties

The Act should allow for the repatriation of a proportion of the existing royalty rate from the extraction of minerals to the local government area where the respective operation exists. This a similar arrangement to that in Western Australia under their 'Royalties for Regions' program. The flow of royalties directly back to the community for appropriate use, as determined by the relevant local council, would assist local Government in, for example, the upgrading of social infrastructure and maintenance of local roads required to be utilised as part of the mining operations.

The retention of incentives such as the new mine royalty rate should be considered a high priority as these provide incentives for further investment into mining in South Australia. This is especially the case for those who are smaller mining companies.

If this concept is endorsed, we would advocate that further consideration be given to the implementation of such a program.

SACOME Recommendation: *Consideration should be given to a proposal to repatriate a proportion of the royalties gained from a project back into the local community in which it resides.*

SACOME supports the retention of the 'reduced royalty' regime for new mines, which is extremely beneficial to mining operators during the first 5 years of operation.

17. Rehabilitation & mine closure

17.1 Rehabilitation bonds

Where bonds are based on appropriate calculations and activities, and cover the cost of implementing those actions, the mechanism should be appropriate. There needs to be specific guidance as to the activities to be covered and costed in the bond, otherwise discretion will result in vast differences in costs being reported by different companies. Discussion on the framework for approvals (see Part A, Section 1: Framework) refers to the implementation of a terms of reference that will assist in this process. Bonds should be regularly reviewed as increased knowledge becomes available, as progressive closure actions allow methods to be refined, and actual costs to be captured.

17.2. Mine closure planning, financial assurance & rehabilitation of former mine sites

SACOME wishes to highlight sections 2.3 and 2.4 in the Discussion Paper on a leading practice mine closure, financial assurance and the rehabilitation of former mine sites. These sections address two very important areas of responsibility and accountability for the resources industry. SACOME would welcome a broader discussion with the department on managing legacy mines, closure planning in general, as well as the opportunity to discuss leading practice financial assessment models.

SACOME Recommendation: *SACOME recommends the establishment of a mine closure committee, including both SACOME members and DSD, to continue discussion around best practice closure planning.*

PART B: RESPONSES TO SELECT QUESTIONS IN THE DISCUSSION PAPER

SACOME has chosen to answer specific questions in the discussion paper that warranted a response. This does not imply there is a tacit approval for the other questions in the discussion paper.

1.3.3 Notices to landowners under the Mining Act

> *Do you think that landowners should have equivalent rights to commence negotiations with an operator in relation to 'exempt land' by issuing a notice under section 9AA of the Mining Act? If so, at what time should this right arise*

Government would effectively be empowering and encouraging landowners to move matters into an adversarial environment which would likely damage relations between landowners and proponents. The regulator quite rightly places a great deal of pressure on explorers and mining proponents to engage at an early stage with landowners, communities and other stakeholders. Explorers and mining operators are reluctant to commence an action in a Court against a landowner for the reasons above, and will only do so after all other options have been unsuccessful.

> *Do you agree that it seems reasonable that a landowner's right to commence negotiations should arise at the time the operator has enough information about the scope, location and likely impacts of mining operations? Do you agree that an appropriate time for a landowner to issue proceedings is at a time when the operator has enough information on the proposed operations?*

Should Parliament amend the Act to provide landowners with the right to commence negotiations (as contemplated above), it should only be after the proponent has obtained all approvals and funding. There are many external factors that make it difficult for a proponent to negotiate waivers of exempt land, and commit to compensation and (possibly) other financial matters at such an early stage of a project. The timing of negotiations is crucial as external factors, such as approval delays or drop in commodity prices, may inhibit the ability for a proponent to be able to fully engage in a negotiation, which can lead to frustration for both parties.

1.4 Ensuring that payments and fees are recovered

> *Do you agree that payments due to the South Australian government, for the benefit of the community, should have priority over other obligations?*

The current fees and other charges can discourage investment in South Australian mining projects. SACOME does not agree that payments due to Government should take priority over the many other financial obligations facing any company attempting to develop a mining project, particularly the lengthy time frames that proponents are being faced with. However, SACOME would consider this concept if the fees imposed on the exploration and mining industry in South Australia were fair and reasonable, and in line with other jurisdictions.

1.5 Ensuring that the community is informed of any changes

What changes to approved mining operations should give rise to a statutory right for a landowner to be notified?

Access conditions and compensation would already have been agreed by the parties prior to any mining operations commencing, therefore no changes should give rise to a statutory right for landowners to be notified. However, it would be in the mining operator's best interests to, as a matter of courtesy, discuss any material changes with the landowner prior to implementation and to seek informal feedback.

What type of information should landowners and the community receive during any change of operation process?

Unless the change is material it is unnecessary to provide landowners or community members with details. However, the mining operator could, as a courtesy, provide details of any changes to landowners and the community via its website, in any newsletters it may circulate or contribute to, to a Community Consultative Committee or other regular stakeholder group(s) it may engage with.

2.1.1 The scope of preventative regulatory measures

Requiring explorers and operators to give a security bond to the Minister which covers the present and future costs of rehabilitation of all land disturbed by operations.

There should be further discussion with industry on the implementation for bonds on exploration licences prior to any development of a new exploration bond scheme. There is some opposition to the scheme as outlined in the discussion paper for exploration licences, and further evidence and discussion is warranted.

With respect to mining leases, a bond to cover the present costs of rehabilitation should be required. However, the current practice of forcing companies to lodge financial bonds for a monetary amount that takes into consideration what a mine will potentially look like at peak production and at peak disturbance (e.g. 10, 15, 20 years down the track) is unacceptable and places yet another significant financial impost on companies attempting to develop a project.

Bonds should be for short periods of time only, with reviews undertaken every 3 – 5 years to ensure that the bond in place will cover rehabilitation for the project, one stage at a time. Another reason for regular reviews over time is that increased knowledge becomes available and progressive closure actions allow methods to be refined and actual costs to be captured, thus maintaining the required bond amount at relevant level.

There needs to be specific guidance as to the activities to be covered and costed in the bond, otherwise discretion will result in vast differences in costs being reported by different companies.

Should the Department be able to prohibit or delay the expiry of a tenement until an explorer or operator has complied with all outstanding obligations?

While this is a sensible approach, it will require clear, appropriate, unambiguous, site specific obligations that have been previously agreed by the tenement holder and DSD that can be readily achieved.

Should the Department adopt a more streamlined surrender and/ or expiry process?

There should never be an un-streamlined process. Closure is a time when the company has extreme financial expenditure and stakeholder scrutiny with no income being generated – this process should indeed be as streamlined as possible while ensuring that previously determined obligations have been met.

Should the process be open for public comment prior to acceptance of the surrender or expiry date to ensure all outstanding liabilities are brought to the attention of the Department and the community?

If the auditing, monitoring and compliance process is robust enough, there should not be a requirement for public comment. This would open the door to comments being received by parties with no direct knowledge of the operation or surrounding environment. It is the Regulator's responsibility to ensure that outstanding liabilities are dealt with, not the role of the public. In addition, there are sufficient preventative tools in place to ensure damage to the environment can be prevented, including compliance orders, penalties and suspension/cancellation of a tenement.

Do you see benefits in enhancing the Departments compulsive tools by:

- *Increasing penalties;*
- *Preventing renewals, transfers, cancellations surrenders and transfers until environmental obligations have been complied with; and,*
- *Imposing personal liability for directors for company non-compliance.*

There should be no additional imposition of personal liability on directors under the Mining Act. The regime for imposing personal liability on directors should be uniform across Australia, and is currently adequately addressed under the *Corporations Act 2001 (Cth)* and the common law. The imposition of additional personal liability on company directors under the Mining Act would put South Australia at a significant commercial disadvantage compared to other states, particularly when companies are considering investment in new projects.

Further, if a regime of personal liability for directors was introduced under the Mining Act, it would adversely impact the willingness of experienced and appropriately qualified and skilled people to take up directorships in the South Australian resources sector.

In addition, directors of a company are not always at fault when a company breaches its legislative obligations. This is particularly the case with large organisations, where non- executive directors are not involved in the day-to-day management of the company nor necessarily in a position to exercise operational responsibility for all compliance issues.

If the imposition of personal liability for directors under the Mining Act was implemented, which is strongly opposed by SACOME, any such regime would need to include the following features as an absolute minimum:

- only directors shown to have personally assisted or been involved in the relevant breach or misconduct should be affected;
- relevant defences (such as due diligence, reasonable steps, reasonable reliance, etc) must be expressly and clearly incorporated in the regime; and
- courts must have a broad power to relieve directors from personal liability in order to ensure the imposition of that liability does not operate unfairly or unjustly in any given circumstances.

2.2 Ensuring greater government & industry environmental accountability & transparency

The Department seeks your views on the public disclosure of the following documents (Do you see benefit in publishing relevant government, explorer and operator documents (where appropriate) online to increase government and industry transparency and accountability?):

This is a broad question that requires further engagement with industry to ensure companies financial obligations are not compromised, and ensure government freedom of information legislation is not eroded. SACOME and its members would value the opportunity to engage in dialogue about the detail embedded in this question further. SACOME has the committee structures in place to discuss these matters comprehensively. There are some elements listed in the suggested items that the industry is agreeable to have published, however there are others that require a more nuanced approach to ensure that the correct information is conveyed accurately and can be comprehended in an appropriate contextual manner.

3.5 Ensuring that we have a modern, flexible tenement structure

What benefits and risks are there to introducing overlapping mineral specific ELs in South Australia?

The introduction of overlapping EL's is not supported. This would create an administrative complexity in all aspects of regulation, particularly responsibility for rehabilitation, PEPR's and renewals. Many companies have Joint Venture (JV) arrangements that allow for multi commodity exploration in a single tenement. Many explorers, especially juniors, are multi-commodity explorers and this raises the question of whether they would have to apply for multiple licences over the same area.

Would the benefits of flexible shapes and sizes of exploration licences better support and facilitate efficient exploration?

Shapes and size of tenements should be modernised to allow any shape, not be fixed to the graticule system. Tenement applications are completed online, so a database should be able to handle unusual shaped areas. Geology does not conform to the graticule system. Limits to application areas should still apply to reduce the opportunity of explorers to 'land bank' by securing a licence over a large area.

3.5.5 Terms of Exploration Licences

What EL terms and regulatory mechanisms will ensure adequate time to explore and identify mineral deposits in South Australia, without leading to 'land banking'?

The current system in place works effectively with good turnover of ground and regular introduction of new exploration companies. The five-year exploration licence with 5 year extensions subject to expenditures is appropriate for SA's Greenfields challenges. SACOME is not supportive of the suggestion that licences can be granted for 20 years. This effectively 'locks up' prospective areas and reduces competition/expenditure. SACOME does not support the quarantining of resources by any mechanism for example moratoria or extended licences.

3.5.6 Forfeiture

Should the forfeiture provisions only relate to mining leases, retention leases and mineral claims, or should this include exploration licences?

Legislated forfeiture processes for exploration licences are strongly opposed as jurisdictions with this capacity are mired in court and non-productive activity. The plaint and forfeiture system is an archaic requirement of gold miners operating under miner's rights. It is totally inappropriate for broadacre exploration tenements. To introduce this to South Australia would be a major step backwards. The departments data shows there is good turnover of exploration tenements and companies in South Australia.

APPENDIX A – SUMMARY OF RECOMMENDATIONS

1. DSD should consider redesigning the mining approvals process in South Australia to include a scoping document at the beginning of the process to assist DSD in developing Terms of Reference to guide the Mining Lease Application process (see Figure 1).

2. The term 'Mining Operator' requires redefinition in the Act, and definitions need to be introduced for 'Explorer' and 'Miner'. Consider the introduction of a neutral term in addition to cover both explorer and miner such as 'Operator'.

3. Prospecting and exploring operations need to be removed from s 6 definition of 'mining or mining operations' and be redefined into their own separate definition.

4. Amend the word 'exempt' from the Act (and therefore wording in associated regulations and forms) with another more suitable word that aligns with multiple-land use framework principles and the need to take additional conditions such as 'special purpose land'.

5. The categories of exempt land need to be reviewed as does the value of a building or structure used for an industrial or commercial purpose (currently set at $200) – this value should be manifestly higher.

6. Clarify in the Act whether a 'reasonable attempt' means prior to or after the waiver of exemption is served to the landowner. The Act needs definition of what activity is considered a 'reasonable attempt' prior to waivers or notice of entry and to apply to both mining operators and, if owners are given the right to approach the court, to owners.

7. This provision needs to further clarify the full extent of the powers of the Court in relation to the waiver of exemption.

8. The Act should include wording to allow for the appropriate Court to make an adverse costs order if the landowner has been deliberately obstructive during the agreement negotiation phase.

9. DSD to streamline the notice to land-owners process for industry by combining Form 21, 23A and 23B (where appropriate), with the requirements of the current Form 22 being included in Form 21.

10. That 9AA(12)(a) be broadened to say 'all persons who become subsequent owners of land...'.

11. The Act should be amended to clarify that it is acceptable for the holder of an EL to seek a waiver in respect of a ML yet to be granted.

12. The provisions under s 34 regarding the Minister's requirements to make a change to a ML should be replicated in s 30 regarding changes by the Minister to the terms or conditions of an EL, as the current provision is too broad.

13. It is recommended that the mining operator should only be required to serve notice of entry on 'owners' referred to in paragraphs (a) and (b) of the definition and the registered owner of the land should be responsible to notify any other parties that may have legal rights as an 'owner of land'

under the Act and the mining operator. The mining operator should be entitled to proceed once the registered owner of the land has been served notices as required.

14. 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 s 58A (1).

15. 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 s 58A(1).

16. The provisions of s 61 should apply to the determination of compensation under s 9AA by the appropriate court and, if retained, to the compensation provisions in s 54. Compensation criteria under the Act should be homogenised to the criteria in s 61.

17. The Act should include a provision in which the compensation and access agreements under s 58A and s 61 are binding on subsequent tenement holders and owners.

18. Sections 30 (3) and 34 (7) in the Act regarding the Minister's right to require an EL or ML holder to pay compensation should be deleted given these requirements are provided for under s 61.

19. The ERD Court should be replaced with 'Warden's Court' in the Act. Furthermore, as per section 63W in Part 9B, the Minister should be provided with the power, in matters relating to the waiver of the benefit of exemptions in respect of exempt land, to overrule a determination of the Court and substitute another determination, if the Minister is of the opinion that there is a clear State or national interest or benefit in developing a proposed mining operation.

20. The term Minerals Claims be removed from the Act.

21. The requirement to apply for a 'subsequent exploration licence' after an EL's initial 5-year term is abolished and replaced with the requirement to apply for a renewal of the EL which, if approved, results in the retention of the existing EL number and a further renewal term of 5 years.

22. The caveat scheme utilised under the Mining Act should be updated to better protect non-proprietary interests, such as equitable interests and contractual rights, and the party claiming the caveatable interest, rather than DSD, should retain responsibility for determining whether a registerable interest exists and for registration of that interest.

23. Where there are two or more tenement holders over a mining lease, only the operator be required to sign off on the PEPR (and any future amendments). Further, if a PEPR has been suitably signed, it can be submitted to DSD by any person.

    Note, no amendment to the Act is required to establish this point, the Department however needs to clarify its policy in this area. The policy should outline that the designated operator of the tenement, in other words the party that lodges the PEPR, should also provide some form of proof that the tenement holder and any other party to the tenement has consented to the operator

submitting the PEPR. Therefore, the joint parties acting diligently should have provided for this when the JV was formed.

24. Mining Approvals process must be based on an outcome focussed model, rather than the trend towards a prescriptive model which is currently occurring within the PEPR and more broadly the Mining Approvals process. The current prescriptive process could be avoided through the implementation of a clearly defined approvals framework.

25. 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.

26. For the Act to include terms which authorise an explorer or operator to undertake activities that the holder of 'ordinary title' is allowed to do, which are commensurate with the terms of an Exploration or Mining Licence.

27. The assessment timeframes for all mineral licences and leases be defined in Mining Act 1971 (SA) legislation and associated regulations to provide certainty to project proponents and the community, and reported against annually in an open and transparent manner.

28. SACOME recommends the introduction of a mechanism into the Act which enables appropriate amendments to ML conditions throughout the mine life by way of a set procedure. This will provide some much-needed flexibility for mining projects. SACOME encourages DSD to consult with industry on the mechanism which would trigger a modification under the Act and what the subsequent modification approvals process would look like.

29. The Department should incorporate into Part 6 – Mining leases of the Act a comprehensive provision that allows for amendments to ML conditions, and should review the minimum conditions in the ML which are standard to a project, and then have the specific conditions for the project in the PEPR, which is more easily amended to take into account any changed circumstances.

30. The assessment component of the Mining Lease application fee which was introduced in December 2014 should be abolished as it is a disincentive to investment and economic growth and inconsistent with every other mining jurisdiction in Australia. A standard fee for all applications, consistent with other Australian jurisdictions, is recommended as it will provide certainty to proponents in a time where there is no cash flow.

31. Consideration should be given to a split fee arrangement for Mining Assessment fees.

32. Consideration should be given to a proposal to repatriate a proportion of the royalties gained from a project back into the local community in which it resides. SACOME supports the retention of the 'reduced royalty' regime for new mines, which is extremely beneficial to mining operators during the first 5 years of operation.

33. SACOME recommends the establishment of a rehabilitation and mine closure committee, including both SACOME members and DSD, to continue discussion around best practice closure planning and rehabilitation.