Eyre Peninsula
Local Government Association

27th January 2017

To:
Dr Ted Tyne,
Executive Director Mineral Resources
Department of State Development

lodged via **DSD.miningactreview@sa.gov.au**

Dear Dr Tyne (Ted),

On behalf of the Eyre Peninsula Mineral & Energy Community Development Taskforce (Taskforce), please accept the following submission in regard to the review of the Mining Act 1971 and associated Regulations.

The Taskforce congratulates your department in undertaking the review.

Improved effectiveness and efficiencies will support the continued growth of an important South Australian industry.

This submission has been constructed in table form for ease of reading. The first section is in reference to Sections of the Act. The following section contains comments to the Discussion Paper -*December 2016 Leading Practice Mining Acts Review.*

Hopefully you find the attached comments constructive and helpful in your review of the Mining Act and Regulations.

Regards

Geoff Dodd
Coordinator
Eyre Peninsula Mineral & Energy Community Development Taskforce.

Section 1 - Mining Act 1971 -Notes

Mining Act 1971 Section Number/Heading	Suggested amendment
9—Exempt land (1) Subject to this section— (a) land that is lawfully and genuinely used— (i) as a yard, garden, **cultivated field**, plantation, orchard or vineyard;	Should the clause read 'agricultural land' in lieu of 'cultivated field'?
17—Royalty (1) Subject to this Act, royalty is payable to the Minister on all minerals recovered from mineral land and— (a) sold or intended for sale; or (b) utilised, or to be utilised, for any commercial or industrial purpose.	Should a royalty be payable by local government for use of road making material that are not intended for commercial sale? Refer to comments in Section 2. (1.1)

Part 6 Mining Leases	
35—Application for lease (1) An application for a mining lease must be made in a manner and form determined by the Minister and must be accompanied by— (a) a mining proposal— (i) specifying the mining operations that the applicant proposes to carry out in pursuance of the lease (including details of the mining methods proposed and a description of the existing environment); and (ii) setting out— (A) an assessment of the environmental impacts of the proposed mining operations; and (B) an outline of the	For the sake of expediency could a Mining Lease application and programs for environment protection and rehabilitation be combined as the one application? (Part 10A) In regard to the assessment of a Mining Lease Application, should the assessment criteria be expanded to include a cost benefit analysis to be applied to the proposed product revenue to be generated by the mining operations verse the revenue generated by the existing land use? An example would be to allow mining on productive agricultural land for a short period of time (5 to 10 years) verse the loss of productivity from the agricultural land for many generations. The converse may apply for a significant mining operation that may continue for 50 to 100 years contributing significantly to the national GDP verse the loss of productive agricultural land. A multiple land use criteria and net present value framework may be needed in the analysis of mining lease applications, also taking into account the potential for loss of food and water security.

measures that the applicant proposes to take to manage, limit or remedy those environmental impacts; and (C) a statement of the environmental outcomes that are accordingly expected to occur; and (iii) a draft statement of the criteria to be adopted to measure the expected environmental outcomes; and (iv) the results of any consultation undertaken in connection with the proposed mining operations; and (b) such information as the Minister requires; and (c) the prescribed fee.	
35A—Representations in relation to grant of lease (1) The Minister must not grant a mining lease unless he or she has caused to be published, in accordance with subsection (4), a notice— (a) describing the land to which the application relates and, if relevant, the particular stratum to which a lease would relate; and (b) specifying a place at which the application may be inspected; and (c) inviting members of the public to make written submissions in relation to the application to the Minister within a period specified in the notice **(which must be a period of at least 14 days from the date of publication of the notice).**	14 days is a very short minimum period to submit a representation, should this period be extended to a minimum 30 days? No specific time period is stated for the **owner of the land** to make a submission/representation in writing once notified by the Minister of a Mining Lease application. Should there be a statutory period for the owner of the affected land to respond, say 90 days? Similarly for Local Government, should there be a Statutory period of time to make a submission once notified by the Minister? Similarly in relation to a Retention Lease and Miscellaneous purposes licence. Following the responses to submissions being conducted by the applicant, should a maximum 90 day decision notification period by the Minister for lease approval or otherwise, be in place to expedite the process and limit the financial impost on the mining lease applicant.

37—Nature of lease (1) A mining lease must describe or delineate the land in respect of which it is granted with as much particularity as is reasonably practicable. (2) A **mining lease is not required to be registered under the** ***Real Property Act 1886.***	Should a Mining Lease be registered under the Real Property Act? Would this assist in determining a Local Government land value on the mining venture for rating purposes? Under the Local Government Act 1999, a valuation must be applied to a property to enable a rate to be generated against the property, either as a capital or site (unimproved) valuation. Pursuant to the Valuation of Land Act 1971, Section 5 (1) (a) ***"the annual value of land held of the crown by virtue solely of a mining lease must not exceed the amount of the rental payable to the crown under the lease".*** In accordance with the Mining Regulations the Annual Mining Lease Fee is $234 or $61.50 for each hectare in the area of the lease. This in effect leaves the value of land owned by the mining company outside of the lease area, subject to broad acre valuation for council rating purposes. The lease area for mining purposes may contain many millions of dollars of capital improvements or in real terms have a site value of billions of dollars with mining activities having a significant effect on the immediate council area, yet there is no opportunity for local government to levy a realistic rate (tax) against mining operations. Could the Mining Act be amended to allow a site or capital valuation to be applied to the Mining Lease for Local Government rating purposes and override the Valuation of Land Act 1971? Could the Mining Regulations 2011 be amended to include a mining lease fee based on valuation or another mechanism such as tonnes mined and payable to the Local Government jurisdiction where the mining lease is located, as well as to the Crown? The significance of Local Government having the ability to rate mining operations cannot be understated. *In New South Wales in 2013/14 $37 million was paid as rates to Local Government plus planning fees and developer contributions of an additional $21.5 million, a total of $58.5 million dollars. South Australian Councils currently receive very nominal funding, if any from mining companies operating in their areas. *NSW Mining Industry/Economic Impact Assessment 2013/14.

39—Rights conferred by lease (2) A mining lease may, in prescribed circumstances, authorise the recovery, use and sale or disposal of extractive minerals produced as a result of operations conducted in pursuance of the lease. (6) The royalty payable on extractive minerals within the ambit of an authorisation under subsection (2) will be imposed at the rate that applies under section 17(4)(a).	Rubble royalties 55 cents per tonne. Should Local Government be exempt from royalties for extraction of road making materials that are used solely for the construction of public roads and for no other purpose and are not mined for commercial sale?

Section 2 – Discussion Paper -December 2016 Leading Practice Mining Acts Review

Leading Practice Mining Acts review, Discussion Paper Heading	Comments and/or suggestions
1.1 Using simple, accurate terms and language in the Mining Act so it makes sense to everyone	The Notice of Entry received by a landholder from a Mining Exploration Company should clearly define their activities in detail that are proposed to be conducted on the land. The Notice of Entry should use appropriate wording that clearly details all exploration processes and any implications for the landowner. The Mining Act should clearly define any differences between a Mining Lease Operator and the Exploration Licensed Company and their associated permitted activities. In supporting the State Government's promotion to reduce 'Red Tape' the mining of 'Extractive Minerals' by broad acre farmers and Local Governments for road base construction on private and public roads should be excluded from Mining Act & Regulations. Local Government should be exempt from the payment of royalties for the use of extractive minerals in road construction. Essentially it is double taxation, wherein the Local Government body pays royalties to the Government, Local Government then taxes its ratepayers to recover funds and the State government grants road construction funding back to local governments.
1.2 Ensuring you have the information you need at the right time, and that our technical assessment processes are transparent	For the sake of transparency and ensuring the dissemination of information to the community is accurate, there should be open, free and online access to the following documents at appropriate times: • all licence and lease applications (at appropriate times given commercial sensitivities); • public submissions (and summaries of those submissions); • the terms and conditions of grant of a licence or lease; • approved Programs for Environment Protection and Rehabilitation (PEPRs); and • compliance and incident reports submitted to the Regulator by explorers and operators. The early release of information provided to DSD from exploration and mining companies, except that of a commercial nature will circumvent much misinformation and apprehension and answer many questions and concerns a community may have. Public notices in local newspapers in relation to Exploration Licences and Mineral Leases should have greater detail than the minimum as required under the Act such as timing and description the mineral activities and works, timing of property access and activity completion.

Leading Practice Mining Acts review, Discussion Paper Heading	Comments and/or suggestions
1.3 Making sure everyone understands land access processes and expectations	Should the definition of 'Exempt Land' be expanded to include 'Grazing or Agricultural' land as well as 'Cultivated' land. The impact of exploration and mining activities could be significant on stocked and unstocked grazing land. Is 'grazing' land already identified in the Mining Act form 21 'Notice to enter land' in regard to negotiating with the property owner?
	The Mining Taskforce supports the Department seeking to grant landowners faster, cheaper and less-formal agreement processes to resolve any 'exempt land' issues that may arise. Should there be a defined formulae regulated to compensate land owners for material impacts on their businesses to circumvent disputes through the Court system? Such as loss of cultivation area, loss of grazing access based on prior year average production, impact on infrastructure and replacement cost etc. If negotiations to access exempt land takes considerable time, say in excess of 12 to 18 months, should the mining applicant be mandated to negotiate the purchase of a property if the owner is in agreement to sell? Prolonged dispute over access to property will defer capital investment and improvements by the owner and/or the applicant due to lack of long term certainty of security or tenure.
	It does seem reasonable that a landowner's right to commence negotiations should arise at the time the applicant/operator has presented adequate information about the scope, location and likely impacts of mining operations. The landowner should have at least 60 days (not 21 days) from receiving notification to seek further information from the applicant if required and a statutory 90 days to formally lodge an objection or agree to property access. Detailed information regarding actual and potential impacts on the property and farming activities together with the applicant's operational activities and timeframe should be supplied to the landowner as a minimum.
	Access to the court process to object to a notice of entry should be retained, so that landowners have a right to object to operations that will have substantial impacts on their business.
	An appropriate time for a landowner to issue proceedings is at a time when the operator has provided sufficient information as is required under the Act and Regulations.

Leading Practice Mining Acts review, Discussion Paper Heading	Comments and/or suggestions
2.1 Protecting South Australia's environment through Programs for Environment Protection and Rehabilitation	The PEPR development and assessment process and transparency could be improved for the benefit of the community, the environment, landowners, explorers and operators by shortening the assessment and approval period, from acceptance of the completed application by DSD to statutory approval within 90 days. Significant compliance costs are borne by the applicant to meet regulatory approval standards, yet the time taken to approve or reject a mining lease application and PEPR can be extensive, creating a significant financial cost in maintaining company operations and timing delays in seeking financing opportunities to progress mining activities. The Mining Lease and PEPR application process should be combined to expedite the approval process and reduce costs. It appears that an applicant must receive a Mining Lease approval prior to lodging a PEPR, extending a mine approval and development process significantly. Can the two applications be combined?
	A Miner should be able to commence activities once all regulatory and environmental approvals have been granted by the Minister. Any conditions that need to be met prior to operations commencing should be checked by Mining Regulatory Staff.
	The Department should prohibit or delay the expiry of a tenement until an explorer or operator has complied with all outstanding obligations. The process should also 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.
	There is benefit in publishing relevant government, explorer and operator documents (where appropriate) online to increase government and industry transparency and accountability.
	The Department should increase the accountability of explorer and operators by prohibiting tenement renewals, cancellations, surrenders or transfers until all outstanding obligations are performed.

Leading Practice Mining Acts review, Discussion Paper Heading	Comments and/or suggestions
2.4 A modern leading practice financial assurance model and the rehabilitation of former mine sites	The following components may assist in developing a cost effective leading practice financial assurance model for South Australia to assist in funding the rehabilitation of legacy sites. • Create a model that is structured to capture different Tenements. • Ensure the funding model is adequately described in the approved PEPR • Apply and accumulate a % of mine royalty payments in lieu of bonds on a life of mine basis in a tenement account. The % can be amended by regulation if mining activities vary in the future. Progressive contributions from mine operations will reduce the burden of any significant initial bond payment from the operator. • Utilise the Tenement Rehabilitation account during the operational life of the mine. Once rehabilitation is deemed complete, the balance of funds can be returned to mining company together with release of Tenement. • Any shortage of funds to complete rehabilitation of mine site should be recovered through Regulation/Court proceedings against the Owners/Directors who are personally liable for rehabilitation of site as agreed to in initial Mining Lease and PEPR approval as signed by all parties.
2.7 Transfer of ownership and responsibility for mine infrastructure, productive assets and mining landforms to third parties	Rather than the required dismantling of significant infrastructure such as roads, pipelines, bores, dams, power lines and railways etc. as approved under a Miscellaneous Purposes Licence such infrastructure could be retained for the benefit of a community. If Local Government or private enterprise could see an opportunity to utilise such infrastructure in their communities, a process to transfer title and ownership and gain approval under the Development Act 1993 should be explored. The transfer of assets and infrastructure from Mining Companies to third parties in lieu of the cost of dismantling would be mutually beneficial. Site rehabilitation requirements should not be compromised if transfer of asset ownership was to occur and provision in the Mining Lease and PEPR approval should be made to cater for such occurrences.

Leading Practice Mining Acts review, Discussion Paper Heading	Comments and/or suggestions
3.1 Ensuring our legislation doesn't restrict the adoption of modern, evolving e-commerce and information systems	The Mining Registrar is required to publish various notices in the Government Gazette and local newspapers under the Mining Act and Regulations. As the majority of mining activity in South Australia is in the Regions the use of the Gazette and Regional Newspapers for advertising is supported. As suggested previously the regional advertisements in regard to exploration licenses, mining leases and tenement information could be improved with additional information such as scope of activities, timing of operations, duration, company contact information, properties to be impacted by operations. Such information could also be promoted via Local Government websites and community newsletters. The greater the detail and dissemination of information to the community the better for allaying misinformation and uninformed opposition.
3.2 A modern, accurate and easy to access Mining Register	The provisions relating to the Mining Register should be amended to allow the following categories of registrable instruments: • mineral claims; • leases and licences; • transfers of proprietary interests in a mining tenement; • mortgages; • caveats; • dealings/instruments required to be registered under the Mining Act; • dealings/instruments not required to be registered under the Mining Act, but which the tenement holder may choose to register; and • instruments issued under the Mining Act (compliance and rehabilitation directions, bonds, penalties). In support of 'red tape reduction' ministerial consent should be limited to transfers of proprietary interest, and allow all other instruments or dealings in a tenement to be registered at the tenement owners own risk (with no liability flowing to the Crown in respect of that registration). For transparency purposes the Mining Register should also allow parties to see a history of dealings, instruments, transfers, tenement changes, caveats and mortgages over the life of the tenement
Providing certainty to businesses through the use of caveats	The flexible Western Australia caveats system appears to provide suitable protection and options. If parties determine between themselves whether or not there is a caveatable interest it would be a duplication of effort for the Mining Registrar to then review the caveats prior to registration. If disputes arise the parties could determine this in an appropriate Court.

Leading Practice Mining Acts review, Discussion Paper Heading	Comments and/or suggestions
3.4 The benefits of clear and efficient one-window-to-government assessment processes	Is there an opportunity to reduce the complexity of the MOP and PEPR application and approval process by combining the two activities?
3.6 Decreasing tenement assessment times	By ensuring there are clear and objective assessment criteria, established timeframes and appeal processes will lead to shorter approval times and attract greater investment in mineral exploration and mining.
3.7 Providing appropriate flexibility for necessary changes to operations	If an operator wants to propose changes to their operations, this may require changes to their approved PEPR or to the terms and conditions of their lease. The terms and conditions of a lease are set after the assessment of the lease application and the public consultation period. Should there be a clear category applied to operational changes such as: **Minor** – requiring departmental approval only with no public consultation **Significant/Material** – requiring lodgement of modified MOP and PEPR with public consultation and notification of proposed changes in regard to: • Scope change • Production change • Rehabilitation
3.8 Providing secure tenure	To support security of Tenure for a mining company granted a tenement and to assist the company in providing security for raising capital & operational funding, should the tenure period be extended to life of mine or 50 years? The inclusion of a provision may be to 'use the tenement or lose it.' After a defined period of say 3 years.
3.10 Regulating moss rock removal	Part 2 of the *Natural Resources Management Act 2004*, (NRM Act) may be a more appropriate vehicle to regulate the removal of moss rocks.
3.11 Making sure that appropriate statutory powers are held by the Director of Mines and the Chief Inspector of Mines	To improve efficiencies, the removal of the requirement for the Minister to approve sub-delegations of power made by the Director of Mines should be made. Sub delegations should also be delegated to the position not the person.
3.12 Making sure that the Department's cost recovery is competitive and sufficient	Fees collected to offset departmental costs should remain competitive with other States. Review of the Mining Act and associated administration costs and reduction in 'red tape' should in time, support full cost recovery.

Leading Practice Mining Acts review, Discussion Paper Heading	Comments and/or suggestions
3.13 The collection and use of royalties, and their importance to the State	Could a rate in the dollar be calculated per ton of extractive minerals based on total sales invoices over a prior period, say 12 months and applied to all similar quarry materials? It would require the Department to Gazette a schedule of fees per ton of extractive mineral mined each year with annual review based on market price of material sold. Regular Royalty payments could then be made, say quarterly based on tonnage x scheduled fee. Possibly outside the scope of this review but something that should be considered, is a Royalty for Regions program for South Australia similar to what has been established in Western Australia. In the first five years of operation the Western Australian Royalties for Regions program delivered four billion dollars back into regional economies. As previously noted, the majority of mining operations in South Australia are located in the regional areas. Investment back into the economies of these regions through investments such as rail, road, energy and port development would be a major economic driver for the entire state as well as supporting regional growth.