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Leading Practice Mining Acts Review – March 2017

Dear Review Panel,

I am a Registered Landscape Architect and environmental consultant with over 35 years' experience working in the extractive industry, 31 of which at management level with one of Australia's largest construction materials company's.

During my time working in this industry I have prepared mine development and rehabilitation plans for many large and small scale hard rock quarries and sand pits together with environmental site management and EPA licensing. In my current capacity as a private consultant I am engaged by small to medium sized independent operators to prepare mineral claims, mining proposals, MOP's, PEPR's and rehabilitation plans for a variety of extractive industry sites.

My comments below reflect my knowledge and experience with the Mining Act and the Mines and Works Inspection Act. We acknowledge the need to update the Acts and Regulations that regulate the South Australian mining industry and we appreciate this opportunity to provide our response to this Review.

1. Mines and Works Inspection Act 1920

4.3 (p19) – Environmental matters

- YES we think the Act should continue to regulate environmental issues.
- YES it does need to be modernised to reflect current best practice.

Some environmental matters are already covered in other legislation e.g.

- Environment Protection Act 1993

- National Resources Management Act 2004

We are concerned that the term 'environment' is seen by some to relate to the human workplace environment rather than the natural environment in which we live. The workplace environment comes under the umbrella of OHS and therefore we believe that component of the Act should become a part of the Work Health and Safety Act.

Schedule 6 of the Act – Mine plans and programs – authorised operation of mines

if not to remain in this Act mine authorisation needs to be transferred into the Mining Act.

Appendix D (p.126 or No.61) – Discussion Points for review of Mine Manager Competency Requirements - Template for comment/response to 7 questions:

7(a). Is an examination on mining law, environment and safety necessary?

- Yes or how else can you assess their knowledge of these critically important elements?

7(b). Should it be the responsibility of the regulator to determine a person's understanding of mining law and safety?

- Yes if not the regulator, who else? It is a matter of government responsibility and cannot be delegated to a third party.

Options (p20) – Option C – only with the proviso that:

- All Mining Act tenements remain included not exempted.

- Council & DPTI mining operations should not be exempted from the Act – they should be accountable to the same rules and regulations that apply to the mining industry.

2. Mining Act 1971

2.1 (p.45) - re PEPR's, the review document states:

"A standard, generic PEPR is usually approved for common low impact operations".

We can cite a number of cases where PEPR's for a "low impact operation" have been subject to unnecessary, lengthy and intense levels of scrutiny and unreasonable requests for unjustifiable levels of detail by DSD assessment staff many of whom lack mining industry experience.

The current assessment and approval processes have caused lengthy delays, additional costs and a great amount of frustration to many members of the extractive industry over the past couple of years. In some instances applicants have not proceeded with their applications due to the unreasonable and unnecessarily large amount of work needed to satisfy DSD requirements. (See also response comments reference sections 3 and 3.6 below).

2.1 (p46) - Discussion

"How can we make the PEPR development and assessment process, and transparency after approval, better for the community, the environment, landowners, and operators?"

Why do 'Operators' (the miners) take last place in this list for consideration? Why doesn't DSD talk more to those it is supposed to represent (the mining industry) and from whom it and the State derive so much of their income? That said, if there's no mining industry able to operate in SA then we won't need a government department to administer it.

2.1 (p46) – Discussion (cont.)

Speaking for the extractive industry, there are a lot of companies, both small and large, trying to make their businesses work in South Australia but it has got increasingly difficult. For many businesses it has reached the point where they are seriously questioning whether it is worth their while trying to continue when the regulatory framework within which they must now work is so overburdening. The level of detail sought by the assessment and regulation branches of DSD for any new extractive operation or new PEPR's for existing operations is not justifiable or necessary.

*Refer page 8 of this Review under; *"Principles of effective and efficient regulation"* the Department seeks to identify amendments throughout the Review consistent with the Principles, that will:"

"Grow South Australian businesses and drive increased investment and employment by abolishing obsolete and cumbersome legislative processes in concert with the Premier's ***Simplify*** red-tape reduction initiative"

Note: There still is a lot of red-tape to be reduced!

Currently there is an over-emphasis placed upon 'preventative' measures, increasing penalties and other punitive measures to achieve regulatory compliance. This is contrasted by a distinct lack of support and encouragement towards the extractive industry where operators are trying to maintain their 'right to operate'. There is a very strong undercurrent of dissatisfaction within the extractive industry over the way in which DSD has put so many hurdles in the way of operators simply being able to conduct their day to day business.

If the industry only gets stifling over-regulation and can't get the support it needs from the regulator then businesses will close in SA and they will move somewhere where support and encouragement are provided. The extractive industry in SA is rapidly becoming uncompetitive compared with other jurisdictions and the state will undoubtedly be all the worse off for it. At a time when South Australia desperately needs investment and jobs, the extractive industry should not be discouraged and hounded to provide unjustifiable levels of detail to obtain necessary approval.

2.5 (p.56) – The regulation of private mines

The Review states: "....the current provisions relating to private mines do not provide an environmental regulation regime as rigorous as that provided for elsewhere in the Mining Act. Examples of some challenges and uncertainties with private mines include:"

"Only the objectives and criteria of a mine operations plan (MOP) (the rough equivalent of the PEPR operations approval (see paragraph 2.1)) are made publicly available and are subject to approval. This can create community concern due to the 'unknown' scope of operations."

2.5 (p.56) – The regulation of Private Mines (cont.)

For some years within some sections of the department there has been a thinly veiled objective to abolish Private Mines. The questions raised in this section clearly reflect a continuance of that objective.

We strongly dispute that there is any community concern about the level of publicly available information relating to Private Mines.

"A number of large metropolitan quarries involve a mix of private mines and other tenements, as a result of private mines having expanded their operations after 1971. It is very difficult to align the overlapping obligations of mine operations plans and PEPRs at those sites, and can be costly for operators to submit overlapping MOPs and PEPRs for approval."

We strongly dispute that operators experience any difficulty preparing and submitting combined MOP/PEPR's. We can cite a number of examples where combined MOP/PEPR's have been submitted and approved with no more difficulty than that experienced with normal PEPR's.

"There are no clear provisions for development assessments on private mines, e.g. constructing additional mine related plant and infrastructure."

We are not aware of any instances where the operators of a Private Mine have built crushing plant or other infrastructure within their mining tenement boundaries that has caused any concern. From my own experience, we always made it a point to liaise with the local Council and provided them with copies of plans for information.

"There are limited transparent compliance reporting requirements."

Who perceives that there is actually any problem with this?

"The aspects of the environment that must be considered in a MOP is narrower in scope than under the Mining Act."

Is this just someone's perception of there being a problem or is it simply a case of them feeling they don't have enough control?

"The enforcement provisions around private mines are not as comprehensive."

Ditto above

"Private mines are difficult to administer, because comprehensive current and historical details do not appear on the Mining Register, and it is difficult to keep ownership details up to date."

Whose fault is this? Isn't this the role of the Mining Tenements branch? The sale of Private Mines should trigger an automatic change of ownership notification from the LTO to DSD. Surely together the LTO and DSD can sort this out?

"It is difficult to revoke unused or exhausted private mines (of which there are many)."

2.5 (p.56) – The regulation of Private Mines (cont.)

We would argue that sufficient legislative powers already exist to revoke unused or exhausted Private Mines.

"Bonds do not apply to private mines, and there is not a consistent royalty regime."

We have no issue with the payment of royalties and bonds for Private Mines and believe they should be consistent with those applicable to EML's.

"Discussion

- Do you think private mines should be regulated in a similar way to other mining activities under the Mining Act? If so, in which respects?"

We agree that Private Mine operations relating to safety and responsible environmental management mining activities should be regulated in a similar way to mining activities under the Mining Act. However, Private Mine holders do not want to see any diminishment of their tenure rights.

- Do you agree that there should be an efficient and cost – effective process for revoking inactive private mines?

We agree there should be an efficient way to revoke inactive Private Mines however, we believe every effort must be made to contact the Private Mine tenement holder giving them a minimum of 6 months' notice to respond and if they do not wish to surrender it, provide good reason why they should be allowed to retain the tenement.

2.6 (p.58) – The Extractive Areas Rehabilitation Fund

- What ways could the EARF be improved to better protect the environment and facilitate operator's needs?

Despite the introduction of the EARF Guidelines in 2004 which attempted to draw a line in the sand on what the fund could reasonably be expected to cover and what it could not, there has since been a considerable amount of confusion and misunderstanding within many sectors of the SA extractive industry. A common question asked is "why do we pay a portion of our royalty payments into the EARF when we can't get anything out of it?" Many companies have given up trying to understand what it stands for and presume they aren't eligible to apply for EARF financial assistance to complete rehabilitation. In many cases this has been a dis-incentive to the commencement of any rehabilitation.

It is my personal opinion that it is reasonable to expect extractive operators to progressively rehabilitate their sites to ensure there isn't a residual liability left at the cessation of mining. I also believe that an industry that impacts upon the environment must accept responsibility to repair the landscape it has degraded not only as a demonstration of good sustainable management but for the good of future generations. The industry's right to operate depends on it.

2.6 (p.58) – The Extractive Areas Rehabilitation Fund (cont.)

DSD could facilitate operator's needs by running an information/education program inviting all operators/lease holders of extractive tenements to attend. The operation

of the EARF needs to be far more transparent to industry members and this may lead to a better understanding of what their rehabilitation responsibilities are and under what conditions the EARF can provide financial assistance.

- Do you think the EARF has performed as a successful fund of 'last resort' for ensuring adequate rehabilitation of extractive mines in South Australia?

The EARF has been uniquely South Australian although I understand that WA has recently introduced a similar scheme. I believe that the EARF has provided funds for many fine examples of good quarry rehabilitation in SA. The fund is able to continue supporting good rehabilitation but needs better management to re-invigorate industry understanding and encourage greater participation in mine-site rehabilitation.

3 (p.63) - The Benefits of a Streamlined, Rigorous and Competitive Regulatory Environment & 3.6 (p.88) – Decreasing tenement assessment times.

Whilst we applaud the department's stated commitment to *"identifying leading practice regulation that leads to better processes and shorter approval times,"* it has been our experience, and that of other consultants submitting mine development plans for approval, that there is a lack of consistency in the assessment process.

The inconsistencies appear to be dependent upon which assessment officer reviews the submitted documents. In some cases, following the lodgement of documents, a period of up to four months can elapse before any departmental response is received. In contrast however, we are frequently only given a couple of months to revise and re-submit documents.

In many cases consultants find that revised documents are further reviewed and additional amendments sought by departmental assessment staff. Such further reviews have in some cases resulted in up to five revisions of a document being submitted to satisfy changing assessment criteria. The significant project delays caused as a direct result of this additional work is difficult to explain and justify to our clients. A collateral effect are unnecessary additional costs to our clients which we frequently partially absorb resulting in a loss of business for all concerned.

This is a very serious issue that is causing mounting frustration within the extractive industry and one which cannot continue to be ignored.

The main question to be asked is why can't the initial assessment reviews identify all of the required changes? In many cases the changes sought by assessment staff are seemingly petty, pedantic, minor grammatical amendments that do not detract from the clear intent of the document.

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Unfortunately, due to work commitments we are unable to make further comment or response due a lack of available time.

Whilst we hope that our attached response provides some useful feedback to the department we strongly request that the source of our comments regarding tenement assessment times is not relayed directly back to the Mining Regulation and Assessment branches.

The reason for our concern in this regard is the experience of at least one consultant who has been ostracised for expressing similar comment directly to the Mining Regulation and Assessment branch.

We are happy to discuss any questions you may have resulting from our review response and if we can assist the review in any other way please do not hesitate to contact us.

Yours sincerely,

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Director

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