

**Grain Producers SA Ltd**

Level 2, 180 Flinders Street Adelaide SA 5000  
PO Box 7069 Hutt Street Adelaide SA 5000  
P: 1300 734 884 F: 1300 734 680

ABN: 43 154 897 533

[grainproducerssa.com.au](http://grainproducerssa.com.au)

Mr John Chapman  
Small Business Commissioner  
GPO Box 1264  
ADELAIDE SA 5001

Sent electronically: [sasbc@sa.gov.au](mailto:sasbc@sa.gov.au)

10 October 2018

Dear Mr Chapman

**Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations  
2018 – draft for comment**

Grain Producers SA (GPSA) is the peak industry body for South Australian grain growers. GPSA is non-political and represents producers to government, the community and industry, including grain marketers, exporters, storage and handlers, researchers and farm input suppliers.

We develop and implement policies and projects that promote the economic and environmental sustainability of South Australian grain growing businesses.

We appreciate the opportunity to provide feedback on the draft of the Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018 (the Code), released for comment by the Minister for Industry and Skills, the Hon David Pisoni MP.

The attached submission reflects our feedback in line with GPSA's policy deliberations in relation to mining on agricultural land.

If you have any queries, please don't hesitate to contact me on 1300 734 884.

Yours sincerely



**Caroline Rhodes**

Chief Executive Officer

**Submission by Grain Producers of South Australia (“GPSA”) to the Small Business Commissioner (“SMC”) on the draft *Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018 (“the Code”)*.**

## **1.0 Introduction**

The entire process surrounding land access issues in relation to mineral and petroleum resource exploration and development for farmers is expensive, stressful and complex under the Mining Act 1971 (“the Act”). This is brought about by the substantial imbalance between resource companies and individual farmers created by the current system under the Act. While the Act is said to provide some comfort and security to landholders, the view sometimes expressed is the purpose of the Act is to promote and enable the exploration and exploitation of the State’s mineral resources. Any protections for farmers are, in reality, superficial; in that the system provides resource companies with the mechanisms to have the protections waived by a relevant court, subject to conditions. These processes are time consuming and costly, and the Act provides only moderate liability for resource companies to cover legal costs to farmers for initial advice of rights under section 9AA (Waiver of Exemption).

Primary producers in South Australia assert the clear re-balance of the system so that farmers are on level playing field with the resources industry, and so that the farmers’ rights of property ownership and their means of conducting their farming enterprises are adequately recognised.

When the Government of SA released its policy on supporting farmers in their dealings with resources companies prior to the 2018 state election (see Liberal Election Policy), primary producers were expecting a process that would be an advocate for farmers in land access related matters. The development of the proposed code does not fully bear this out.

The SBC should note that GPSA continues to seek a full independent review of the Mining Act. This would include further amendments to the land access provisions, exempt land – including court processes, compensation, legal costs.

## **2.0 The Code fails to fully embody the stated intent of the Government’s own policy**

The key enabling mechanisms of the proposed code are simply a carbon copy of other industry codes under the *Fair Trading Act 1987*, specifically Regulations 5-7 and clause 4 of schedule 1. This does not take into account the full specifics of the Governments policy.

The Code is said to meet the first objective of the Government’s policy to enable the SBC to fully and effectively implement its functions in resolving land access issues between primary producers and resources companies as an alternative dispute resolution process to the available court options under the Act.

GPSA holds some reservation that such a process will be of any benefit to farmers, since the stated aspiration of many farmers is to have the right to prohibit access by resources companies on their land because of the impact on their rights to farm freely. It is quite likely this alternative dispute resolution process will only reinforce the existing court process under the Act, that enables mining

operations to be undertaken subject to conditions and compensation. This regime has demonstrably not served farmers well.

It is the view of GPSA that until there is a fairer and balanced mining regulation system in place, the functions of the SBC enabled by this code is unlikely to be taken up by farmers.

The proposed code falls well short of the Governments election commitment which clearly indicated that the SBC would be enabled to work on behalf of primary producers to resolve land access issues, extending the Office's role to be an advocate on behalf of a farm business when dealing with resource companies. This policy was supported by primary producers.

The Code needs to be strengthened to clearly articulate the governments intent for the SBC to be an advocate on behalf of farming businesses. In any case, this power would only serve to assist farmers were there a fair and balanced system for land access in SA.

### **3.0 The ability to compel all parties**

The Code (Clause 4(1)) enables any party to a dispute to make an application to the SBC and gives authorised officers the power to compel all parties to the table to resolve a dispute.

The consequence which does not appear to be in keeping with the intent of the Governments policy, nor the expectations of GPSA in the policy, is that resource companies would be able to use the Code to make an application to the SBC. This could be used to compel farmers to engage in mediation. This is of real concern to the farming sector and GPSA is firm that this code should only be a mechanism available to farmers.

The role of the SBC should be to represent small farming enterprises in conflict with large resources companies wanting to explore or mine on their land, consistent with the election commitment made by the Marshall Government.

### **4.0 Costs**

GPSA position is that fees for mediation under Regulation 7 should be met by the resources company. These costs should be paid in addition to those paid to indemnify farmers for legal assistance under Section 9AA(14) of the Mining Act.

The notion of payment of such costs is a mechanism which resources companies are accustomed to when dealing with traditional owners and Native Title holders.

### **5.0 Recommendation**

GPSA recommends that the implementation of the Code should be deferred until the review of the Act has run its full course.

### **6.0 Definitions**

Due to the proposed amendments to the Act, the SBC is advised that a number of definitions will need to be changed if the changes to the Act proposed in the Mining Bill receive assent.

### **Regulation 3 - Interpretation**

1. *mining operations* – delete and replace with '*authorised operations*' which is new in the Act and covers exploration, mining and ancillary operations.
2. *mining operator* – delete entire sentence. This definition is deleted in the Mining Bill.
3. Insert – '*mineral tenement* has the same meaning as in the Mining Act 1971'. This definition is new in the Mining Bill.

### **Regulation 4 – Prescription of mining and resources industry and industry participants**

These amendments would need to be made due to the proposed changes in definitions in section 3.

1. Section 4(a)(i) – delete 'mining operations' and replace with 'authorised operations'.
2. Section 4(b)(i) – delete 'mining operators' and replace with 'holder of mineral tenement'.

## **7.0 Information for farmers**

As the peak representative body for South Australian growers, GPSA should be kept up to date on progress in developing the detailed material for farmers and other primary producers as to their rights and obligations in relation to land access by resource companies.

GPSA requests an opportunity to review and comment upon any such documents prior to their approval and publishing by the SBC.

**ENDS.**