

April 2017

Leading Practice Mining Acts Review A Summary of GPSA's Submission

Increasing recognition of the rights of grain producers as landowners is at the centre of Grain Producers SA's submission to the State Government's review of mining laws in South Australia.

Given only 4.6% of SA's land is available for cultivation and agricultural production, the ability to be able to protect this land for future production is a priority for GPSA.

GPSA's policy is that valuable grain growing land with its long-term benefits should be protected against mining, which usually brings only short-term benefits and leaves the land unusable by future generations.

At March 2017, there was an estimated 770 exploration leases pending over South Australian land, totalling 41.5% of the State's area. This includes 95% of Yorke Peninsula and 90% of Eyre Peninsula.

GPSA would have preferred the *Leading Practice Mining Acts Review* be conducted by an independent panel, rather than the Department of State Development, which is both the regulator and promoter of SA's mining industries. The short time for consultation is also concerning, particularly given the process started at the beginning of SA's largest ever harvest.

GPSA consulted with more than 200 growers and has developed the following recommendations for consideration in redrafting the *Mining Act 1971*:

1. Landowner right of veto

In relation to future mining applications, all cultivated and improved pasture land should be exempt land and not explored or mined without the approval of the landowner. This means cultivated land required by the mining company should be exempt from mining and only be waived from exemption by the landowner.

2. Exempt land is exempt land

As the Act is currently drafted, exempt land is not exempt from mineral exploration or mining *in practice*, except in rare circumstances. The Act requires that to gain land access, the mining company must get the farmer to sign a waiver, otherwise the miner must apply to the Environment Resources and Development Court for an order granting access. GPSA believes the definition of exempt land needs to be clarified to account for different forms of agricultural production. For example, a cultivated field is exempt land for exploration purposes, but a fallow field is often not, and yet they all form part of the same production system. Mixed farming systems have cropping and grazing land in their farming production system, with the grazing land forming an important part of the farm's income.

3. Compensation

Mining companies should pay an uplift above market rates of at least three times the market value for the property. The landowner should have the right to require the miner to acquire the whole of the land for the mine at the uplifted value.

Landowners of properties explored for a potential mining lease must have immediate access to compensation for legal and other reasonable expenses incurred in assessing the application. At present, a landowner must incur all these costs upfront, with no likelihood of recovery until an agreement or court determination is made, which may not be for some years. Even then, the Court may adopt a policy that each party should bear their own costs.

Section 62A of the Mining Act needs to be amended in relation to existing mining applications. As it currently stands, the farmer can apply for an order that the balance of the land owned by an entity not required for a mine is acquired as well, although the Court will not automatically grant the application. This can create problems if the parcel of land required for mining is owned by a different entity from other land that forms part of the family enterprise.

Further, landowners of adjacent land who believe their properties will be devalued because of the dust, noise, toxic wastes, contaminated water, road traffic, and so on, should also be compensated. Any landowner who believes their property to be devalued by mining and exploration activities must be adequately compensated.

The Mining Act does not at any stage mention the mental health and wellbeing of the landowner. Compensation should also be considered for the impact on their mental health and wellbeing.

4. Rights of adjoining landowners

GPSA recommends adjoining and impacted landowners also be provided with the same level of compensation as the primary landowner (including the sale of their land) once the exploration is likely to enter into the mining phase (as opposed to exploration). This is so that adequate conditions and compensation can also be negotiated for those adjacent properties.

5. Right to claim damages

Any government approval of a mine (or grant of an exploration licence) should not prevent the landowner or an adjoining landowner from seeking damages for nuisance and other common law claims against the miner. A landowner should still be able to exercise their right to claim damages for nuisance for noise if, for example, approval has been granted for a mine to work 24 hours a day next door and the noise levels render an adjoining farm unliveable. The Act needs to be amended to make it clear this common-law right is retained.

6. Landowners' costs covered

Given the imbalance between individual landowners and well-resourced miners, their subsidiaries or related corporations, GPSA recommends that all legitimate costs be met by the company seeking access to the farmer's land. This includes that the landowner should be entitled to all legal costs so they are not left out of pocket and that they have access to a similar quality of advice as the miner – as is the case with NSW's Mining Acts.

7. Land access

GPSA recommends that the 'Notice of Entry' in its current form needs to be amended. A more appropriate name would be a 'Notice to Negotiate Land Access', which better reflects the nature and the purpose of the document. In addition, the timeframes for landowners to review and respond to notices in relation to exempt and non-exempt land need to be substantially increased to take into account the difficulty in obtaining legal and other expert advice in some country regions.

8. Impacts on pre-existing business

The Program for Environment Protection and Rehabilitation (PEPR) should be broadened to include the social, environmental and economic assessment impacting on rehabilitation, taking into account impacts on the business and community. GPSA recommends a Business Impact Study (BIS) be conducted on the farming operations where a mining lease is sought to determine the real cost of each activity, taking into account the whole farm operation and the length of time the exploration or mining activity will occur.

9. Distance from dwellings

At present, the land within 400 metres of a residence is exempt land, but for a development of a mine this is inadequate. A mine is an incredibly large, noisy, and dusty operation that should not be within 400m of someone's home. It is legislated that wind turbines are required to be a minimum of 1.3km from a place of residence and, it could be argued, that they are relatively quiet in comparison with a mining operation. Therefore, GPSA recommends that the exempt radius for a mining operation from the nearest residence should be substantially increased to a minimum of 5 kilometres.

10. Enforceable timeframes

There should be enforceable timeframes for mines to be up and running with no extensions, giving landowners certainty to develop or exit their businesses. As with all other development applications, the mining company needs to be held accountable with an end date.

11. Transparency

GPSA recommends more open and transparent access to paperwork including all licence and lease applications, all submissions and supporting documents, the terms and conditions of grant of a licence or lease, approved PEPRs, and all compliance and incident reports submitted to DSD as the regulator by explorers and operators.

12. Increased compliance powers

The compliance powers of DSD should be increased to compel mining companies to meet their obligations, funded by the miners on a cost-recovery basis.

13. Increased royalties and fairer distribution

GPSA recommends increasing the level of royalties, which is the only direct return the government receives. It also recommends a separate royalty, over and above the State contribution, be paid to the community based on the economic value of the land as a reflection of the value of the farming/production system and ancillary industries supported by that land. This would recognise the productive capacity of the land that will be lost and acknowledge the investment made by the community in establishing and maintaining infrastructure. It is recommended this be charged on a sliding scale with higher royalties charged for mining on high value agricultural land down to the current 3% royalty on non-exempt land. This would ensure a more consistent return to SA for the loss of the most arable land and still retain a benefit for mining on non-arable land.

14. Independent manager for mining queries and information

GPSA is seeking a new, government-funded role of 'Mining Industry Executive Manager' to be situated within Primary Producers SA. This independent role will provide information and support to farmers faced with exploration or mining land access issues and providing a direct link to DSD.