Grain Producers SA

Grower-driven advocacy for a profitable grains industry

# Leading Practice Mining Acts Review

## MINING ACT 1971 AND REGULATIONS – DISCUSSION PAPER

**Submission to the Department of State Development**

**MARCH 2017**

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# Contents

# Introduction

The value of Australia's agricultural sector is expected to reach $63.8 billion dollars in 2016/17, with the total value of farm exports expected to reach a new record of $48.7 billion. The strong Australian agricultural sector performance was enhanced by South Australia's own food and wine revenue reaching a record $18.64 billion. In South Australia alone, 3400 jobs have been created in this sector in the past year, as at 18 December 2016. Total overseas exports of South Australia's food and wine increased by $6 million (or 0.1%) to reach $5.22 billion (or 45% of total merchandise exports). Finished (or processed) food and wine exports increased by $144 million (or 4%) to $3.4 billion. This is on track to reach the 2016–17 State target of $3.6 billion, as outlined in the State Strategic Plan.

The State Government's 2015-16 Food and Wine Scorecard shows gross revenue has increased by $443 million compared to the previous year, and employment in the sector increased by 3400 to 147,400 in the 12 months to August 2016. One in five working South Australians are employed in the agribusiness sector.

Data released in late 2015 showed that South Australian agriculture, food and wine businesses invested $41.6 million in research and development (R&D) in 2013-14, up 11% from 2011-12. The data has been released biennially since 2011–12, with the figures for 2015-16 expected to be released in late 2017.

Industry investment in R&D remains high, in the grains industry alone in 2016, SARDI entered into a $50 million, five-year bilateral agreement with the Grains Research and Development Corporation to secure the future of grain industry research in South Australia, focusing on programs of state and national importance including farming systems for low to medium rainfall areas, crop protection and crop improvement.

Grain Producers SA

## EMPLOYED

**147,400**
people employed in the sector

## EMPLOYED

**1 in 5**
working South Australians employed in agribusiness

## RESEARCH

**$50 million**
invested in research by growers every year

## EXPORTS

**$5.22 billion**
in food and wine exports

## REVENUE

**$18.6 billion**
in agriculture, food and wine revenue

## INVESTMENT

Estimated
**$40 billion**
invested in SA on freehold land

# Executive Summary

Grain Producers SA (GPSA) represents the interests of South Australia's 3,000 grain growing businesses and strives to achieve the best possible outcomes for the industry as a whole. GPSA is a founding member of Primary Producers SA, the State's peak farming body. It has the five key commodity groups as members, including Grain Producers SA, Livestock SA, Horticulture Coalition of SA, SA Dairyfarmers' Association and Wine Grape Council of SA.

The State's grain industries are large and diverse, making a significant contribution to the economy. Total grain production in South Australia from an estimated 3,000 grain producing businesses for the 2016-17 season was 11.1 million tonnes from 3.9 million hectares of crop. With an estimated farm gate value of $2.2 billion, the grains industry is not only a major contributor to this state's economy, it is also a significant export earner for this state.

A report by Deloitte Access Economics[1] identified agribusiness in the five "super growth" sectors of the next 20 years. The demand for protein-based food for Asia's middle classes was cited as a significant growth area, and this is a demand that SA grain producers can fulfil. Therefore, preserving SA's agricultural viability, sustainability and reputation as a world class exporter of high quality grain is critical for food security both in Australia and the world.

Only 4.6% of the State's land is available for cultivation and agricultural production, outside the pastoral zone. The ability to be able to protect this land for future production is a priority for GPSA. Climate change and global population growth make it even more vital to protect our premium food producing areas.

GPSA noted with interest a recent quote by Minister Barnaby Joyce, Deputy Prime Minister and Minister for Agriculture and Water Resources on ABC Q&A below:

> *"I've said quite clearly - and I've said the same since 2009 - that you shouldn't have mining on prime agricultural land."*
>
> (Barnaby Joyce, ABC Q&A Program, Monday 6 June 2016)

This was stated in the context of the prime farming land on the Liverpool Plains of NSW which are under threat from mining activities.

[1]Deloitte. (1/10/2013). Positioning for Prosperity? Catching the next wave. Deloitte. http://www2.deloitte.com/au/en/pages/building-lucky-country/articles/positioning-for-prosperity.html

GPSA has reviewed the NSW Valuer General's 2015 report on land values for the Liverpool Plains and note:

Summary of Typical Land Values for the Liverpool Plains 2015[2]:

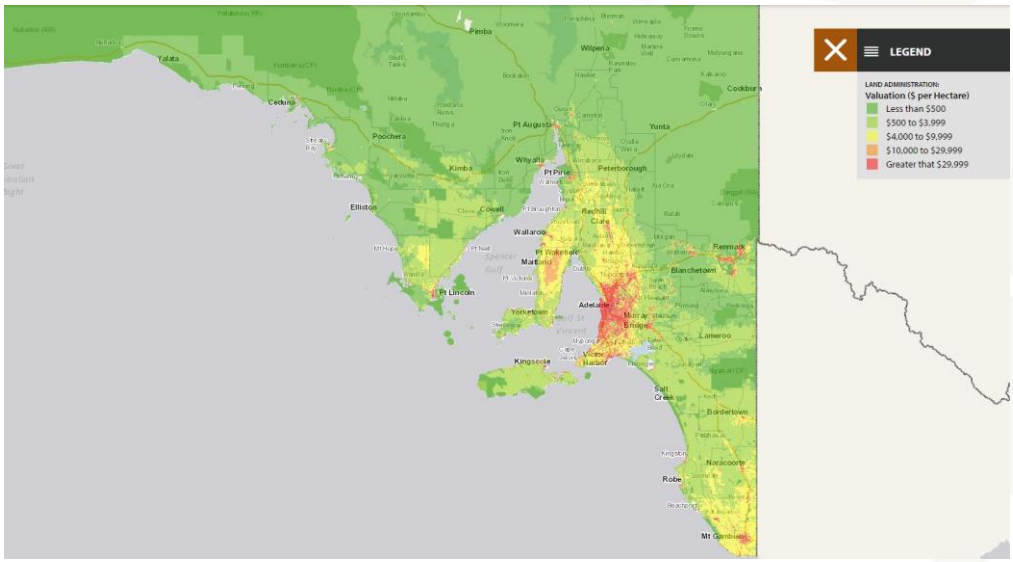
- Rural Mixed Farming and Grazing $2,900/ha
- Rural Grazing $1,750/ha

Further to this valuation, the Australian Farmland Values 2015 report[3] produced by Rural Bank has the 2015 average value for Liverpool Plains farmland at $3,752/ha. The same report concluded that, "Since 1995, the median price across all states has recorded average annual growth above 5%, outpacing inflation and proving the long-term value of Australian farmland and the resilience of land prices despite ever-changing market and climate conditions".

If the Liverpool Plains farmland is considered by the Federal Minister for Agriculture to be prime agricultural land and therefore a benchmark against which other regions and agricultural land can be judged, then there are many regions within South Australia that have a value equal to, if not greater than, the Liverpool Plains region.

The following map (Figure 1) highlights the value of South Australia's agricultural land in $/ha. The areas depicted in yellow are averaging at between $4,000/ha and $10,000/ha, well above the value of the prime agricultural land in the Liverpool Plains.

Figure 1. South Australian Land Valuations 2012-13 ($/ha)[4]




[2] NSW Valuer General – Liverpool plains land values report 2015
http://www.valuergeneral.nsw.gov.au/__data/assets/pdf_file/0020/207641/Liverpool_Plains_Final_Report_2015.pdf

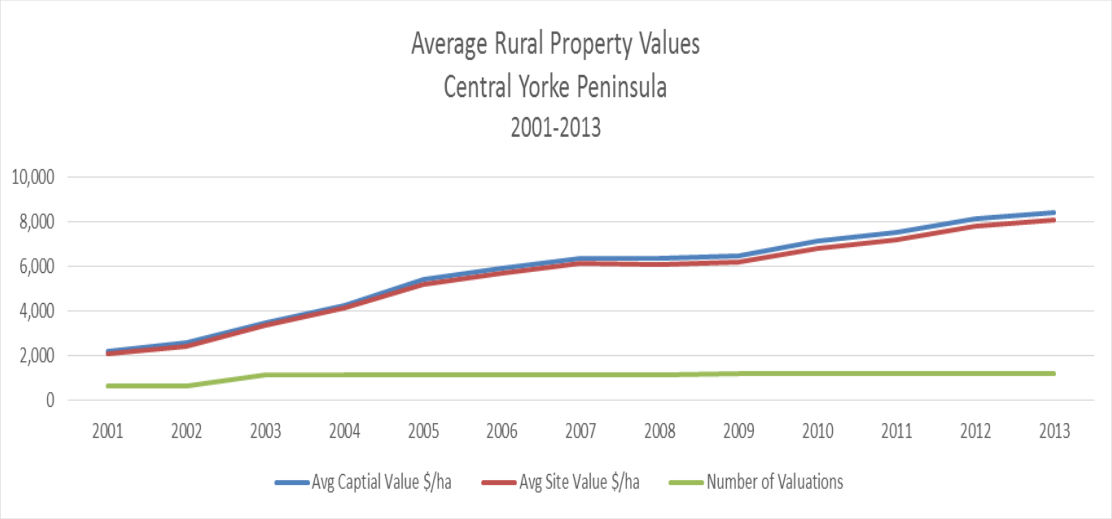
[3] https://www.ruralbank.com.au/assets/responsive/pdf/publications/farm-land-values-2015.pdf

[4] http://www.aginsight.sa.gov.au/

This is further emphasised in Figure 2, which depicts average land values for land on the Yorke Peninsula since 2001. Again, valuations for this land are well in excess of the values achieved for the Liverpool Plains 'prime agricultural land'. This is the very same land that is under threat from the proposed Hillside Mine at Ardrossan.

Figure 2. Average Rural Property Values on the Yorke Peninsula

Source: SA Valuer General




In fact, a significant amount of agricultural land in South Australia is valued at similar or in excess of the value of the land on the Liverpool Plains in NSW, the benchmark for so-called 'prime agricultural land'. GPSA concurs with Minister Joyce's statement, that there should be no mining on prime agricultural land.

GPSA policy is that valuable grain growing land within this State 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. There are an estimated 866 Mining Leases, 655 Extractive Mineral Leases, 235 private mines, and 450 operating mines of which over 20 are classified as major[5]. (Dr Paul Hethersay, 2/9/2014). Coupled with this, there are an estimated 770 exploration leases currently pending over South Australian land, totalling 41.5% of the state's land area. Given that 95% of Yorke Peninsula and 90% of Eyre Peninsula are subject to mining exploration leases, we know our members want direct input into the review process.

[5]http://minerals.statedevelopment.sa.gov.au/__data/assets/pdf_file/0012/241104/140903_GMUSG_PH_final.pdf

GPSA's position is that mining on exempt land should not take place other than with the agreement of the landowner. In relation to land currently subject to mining applications, we have prepared the following submission but we reserve the right to amend this submission and to continue to seek input and comments from our members.

GPSA continues to support the State Government's strategic priority of 'premium food and wine from our clean environment' and hopes that this is reflected in the review to these key pieces of legislation. GPSA expects further consultation with the grains industry and the wider primary industries on the draft amendments to the Mining Act and Mining Regulations, prior to them being submitted to the Parliament for consideration and adoption.

Further to the comments in our submission, GPSA would like to raise several other issues:

## Timing and independence of this review

This season's harvest was the biggest on record, further highlighting the importance of this industry to the state's economy. Given the importance of grains to this state and that only 4.6% of the State's land mass is suitable and currently used for dryland cropping, GPSA questions the timing and the process for the review into the Mining Act.

### THE TIMING

The Department of State Development (DSD) Mineral Resources Division recent announcement that the Leading Practice Mining Acts Review of the *Mining Act 1971*, *Mines and Works Inspection Act 1920* and *Opal Mining Act 1995* had commenced was initially welcomed by GPSA.

When the review was announced, the discussion papers were expected to be released in October with submissions due by late December. However, the discussion paper was not released until the 23rd of December, (which in practical terms meant January 2017) with submissions due by the 24th of February 2017.

Unfortunately, this was right in the middle of grain harvest, and at the commencement of the annual holiday period for many food producers (after completion of harvest). This year's crop was not only of record size, but due to weather delays, many growers were still busy harvesting and trying to secure their year's income right through February. While GPSA appreciated the Government's response to our call for an extension for our submission and our member's submissions, we feel the short extension until the 31st of March 2017 in these circumstances was unreasonable.

That such a major piece of State legislation should be rushed through with such a short consultation process is of major concern to GPSA.

However, despite the short timeframe for submissions to be accepted and the timing, being through harvest and the holiday period, GPSA still managed to host four grower meetings at Wudinna, Cummins, Maitland and Murray Bridge in early February 2017.

There were over 200 growers at these meetings and we welcomed the attendance of DSD officers who provided technical input at the meetings. The summary of discussion from these meetings is attached.

A significant number of our members engaged separately with us to raise their concerns, but many have stated that they have not had the time to complete a submission for themselves. We feel that a less rushed process of engagement would have resulted in more of our members having time to complete submissions to ensure a more complete review of the Act.

Therefore, in relation to land currently subject to mining applications, we have prepared the following submission. This submission should be considered in its entirety and reflects the issues raised by our members and, as such, is endorsed by the GPSA Board.

We reserve the right to amend this submission in view of the unreasonably short timeframe within which it was prepared, and to continue to work on seeking input and comments from our members.

## THE INDEPENDENCE OF THE REVIEW

GPSA questions the independence of the review into such major legislation given that the Resource Land Access Strategy Branch of DSD is the group conducting the review and making recommendations to Parliament.

Independence cannot be guaranteed when DSD works so closely with the mining industry, actively assists and controls the approvals process, and is so far removed from primary production. DSD is both the promoter of SA's mining industry, and also the industry's regulator.

GPSA seeks to ensure our important industry's views are heard as part of this review, and as such we request that the review into the Mining Acts be undertaken by an Independent Panel like the one set up by the Queensland Government when it reviewed its Acts.

The potential conflict between mining and agriculture is real, which has been recognised in Queensland, leading that State to undertake an extensive review by commissioning an independent Land Access Review Panel to report into its equivalent mining legislation. That panel consisted of representatives of the farming, mining and business sectors with an independent Chair, and heard submissions from interested parties.

In NSW, the Government appointed barrister Brett Walker SC to analyse corporate governance arrangements under the Petroleum (Onshore) Act and the Mining Act. Again, an independent review, not one conducted by the Department responsible for administering the Act.

GPSA believes that an independent review by a panel free from potential influence from powerful lobbying "behind the scenes" should take place in South Australia if the Government (of whichever political persuasion) seriously wishes to reach any middle ground with the farming community in the future. This would help to remove any perception that this is a review that could be characterised as "Caesar judging Caesar".

## DUAL ROLE OF THE DEPARTMENT OF STATE DEVELOPMENT

GPSA believes that part of any independent review of the Mining Act should include, a review of the dual role of DSD. In the development of the GPSA Mining Policy, a key issue that GPSA raised was the confusion of roles of DSD. DSD's role as the principal promoter of mining industry development is in potential conflict with its other role as the regulator of the industry.

While we understand that DSD has now been split and that the Minerals and Energy Division is now part of Premier and Cabinet, this does not detract from the fact that this division of DSD has dual roles of promoter and regulator for the mining industry.

## MINING INDUSTRY EXECUTIVE MANAGER

GPSA recommends that consideration be given to establishing an independent Mining Industry Executive Manager employed by Primary Producers SA (PPSA), but funded by Government. Currently, PPSA has a Natural Resource Management Liaison Officer employed by PPSA, funded by DEWNR, who is there to be the first point of contact for farmers with NRM issues/concerns and a direct link to DEWNR.

GPSA believes a similar, but higher level role, should be created within PPSA dedicated to providing information and support to farmers faced with exploration or mining land access issues and providing a direct link to DSD.

GPSA believes such a position would be of great benefit to our members by providing an independent first point of contact for farmers and supplying them with the information they require to understand their rights with land access negotiations.

While DSD may already have such a person within the Department, we believe that locating that high level, independent role within PPSA would provide landowners with greater confidence not only in the information they are provided with but that person would also be seen to be independent from the Department, which is vital given the Department's obvious and vocal pro-mining stance.

# Key Policy Points for Consideration

1. In relation to future mining applications, all cultivated and improved pasture land should be exempt land and not explored or mined upon without the approval of the landowner. As set out above, this is GPSA's policy and most of our comments below relate only to current mining applications.

   As the Act is currently drafted, exempt land is not in practice exempt from mineral exploration or mining, except in rare circumstances. The Act requires that to gain land access, the mining company has the additional condition of getting the farmer to sign a waiver. If that is not achieved, then the miner must apply to the Environment Resources and Development (ERD) Court rather than the Warden's Court for an order granting access.

   In practice, in the past with the Warden's Court, mining has been allowed on farming land in almost all cases, notwithstanding it was otherwise exempt land.

   The definition of exempt land needs to be clarified in terms of taking into account different forms of agricultural production. For example, a cultivated field is exempt land, but a fallow field is often not, for exploration purposes 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. Therefore, exempt land status should take into account the effect on the production system for the whole property if that land is taken out of production and the flow-on effect on the business and farm viability.

2. For many family farming businesses, the business structure has evolved into numerous trusts and business entities, often with different trusts and members of the family owning the titles to different parcels of land that make up the farming entity. So, if the miner wants to explore or mine on one of the titles, this is likely to impact on the viability and profitability of the other titles, for which they may not be granted compensation.

   It is important that the entire farm business structure and profitability is considered when dealing with exempt land and compensation/conditions for entry and the notice of entry served on all persons who come within the definition of the "owner of the land".

   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 a problem if the parcel of land required for mining is owned by a different entity from other land that forms part of the family enterprise. For example, the mine might be on Block A owned by Family Trust A, but it's effective acquisition by the mining company impacts on the profitability of Block B and Block C owned by other entities being Family Trust B and C, which the landowner may also wish to transfer to the miner.

3. Additionally, Section 62A (b) limits compensation to the market value of the land and a further amount "for disturbance" which seems more limited than the compensation payable under Section 61(1) and (2) which clearly encompass economic loss and loss of profits.

   GPSA recommends that Section 62A (b) should also take into account this further provision for economic loss and therefore be consistent with Section 61 of the Act in terms of compensation.

4. As already stated, cultivated land required by the mining company should be exempt from mining and only be waived from exemption by the landowner, as per the requirements in Western Australia for open cut land.

   However, GPSA recommends that consideration be given to requiring adjoining and impacted landowners to 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. Any approval of a mine (or grant of an exploration licence) by the Government 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. In the definition of exempt land, consideration also needs to be given to amending the distance from dwellings. Currently the land within 400m 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 5km. The exemption radius for buildings, dams, springs and so on should also be increased considerably. GPSA recommends this change to reflect how mining has evolved from a couple of miners with picks and shovels and perhaps a horse and dray when the original distances were set. Mining today uses heavy machinery such as excavators, diggers with elevators, and other large and intrusive equipment, and generally operates 24 hours a day, seven days a week. It is therefore recommended that the exempt land radius be increased to take into account the technological developments in mining.

***7.*** Consideration should be given to the fact that exempt land provides other significant benefits to the State, such as tourism or environmental benefits. Where the existing use of that land provides an additional benefit to the State, there needs to be a value attached to that land, and that value needs to be assessed prior to any exploration being allowed to occur. There are some obvious locations where the tourism or other benefit could be very adversely impacted, such as the Yorke Peninsula, Barossa Valley, Clare Valley and other similar regions.

***8.*** GPSA recommends that the “Notice of Entry” in its current form needs to be amended. This should not be a “Notice of Entry” but more aptly named a “Notice to Negotiate Land Access” or something similar. A “Notice of Entry” immediately makes the landowner feel that they have no choice. A Notice to Negotiate Land Access is more reflective of 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.

***9.*** Timeframes are important. Farmers need certainty in this process. They need real and enforceable timeframes for the mining company to be accountable to, not continued extensions while the mining company sorts out its finances or paperwork. As with all other development applications, there needs to be an end date to which the mining company is accountable.

For farming properties caught up in a mining application, a definite timeframe (with no extensions allowed) must be agreed and adhered to by the mining company before mining start-up so that landowners do not endure uncertainty as to their future land use without any end date. If after a maximum of five years from the exploration lease grant date, as per the current Act, the miner has not completed the necessary approval processes, or raised enough capital to proceed with the mine, then its lease should be revoked with no further rights granted to that company or related corporation.

Landowners potentially suffer very adverse impacts on their land while subject to mining exploration, including reduction in land value (which can impact on financing or ability to sell), or to make capital improvements.

GPSA does not support the continued extensions to existing exploration or mining leases, nor to the proposed increase in security of tenure as outlined in Sections 3.5.5, 3.5.9, and 3.8 of the discussion paper.

***10.*** As part of the PEPR, an in-depth Environmental Impact Study is conducted to minimise the impact on the environment and to establish rehabilitation protocols. GPSA recommends that a Business Impact Study (BIS) should 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.

Refer to Section 2.1 and our recommendation that the PEPR be broadened to include the Social, Environmental and Economic Assessment, Impact and Rehabilitation (PSEEAIR). These new requirements could apply to any mines not currently in operation.

***11.*** To ascertain the likely adequate and fair compensation, where extensive exploration takes place, or a mining lease is sought, the impact on the whole farm business and its many operations needs to be considered by the Government. The BIS (if the landowner consents to providing that material) should form part of the mining company's PEPR and be funded by the mining company but conducted by a relevant and qualified independent expert for, and on behalf of, the landowner, although it ought not to be binding on any Court that subsequently deals with a dispute.

***12.*** Given the imbalance between individual landowners and well-resourced miners, their subsidiaries or related corporations, GPSA is of the view that the landowner should be entitled to all legal costs (on a solicitor/client basis) pursuant to the Supreme Court scale, with a right to seek a higher scale to ensure firstly that the landowner is not left out of pocket in the case of a dispute, and secondly that the landowner has access to a similar quality of advice as the miner (see the NSW Mining Acts).

GPSA recommends that all costs should always be met by the company seeking access to that land except where those costs have been incurred frivolously or vexatiously. Section 9AA(10) of the Act offers some protection from liability for the miners costs but does not go far enough. Section 61(5A) of the Act would also need to be amended.

***13.*** Further, GPSA holds the view that landowners whose properties are explored for a potential mining lease must have immediate access to compensation for legal and other

reasonable expenses incurred to assess an application pending any agreement or court decision as they are rendered.

Under the present legislation, 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.

Due consideration must be paid to the emotional and financial costs incurred by farming families upon the invasion of their properties which are not only their place of business, but usually their family home. This compensation must be paid before exploration commences and then as it is incurred subsequently.

In any litigation or defence of a farmer's legal rights to claim an exemption landowners should be able to claim their legal and other out of pocket costs.

***14.*** Further, 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 at the uplifted value.

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

***15.*** The extraction of minerals provides a once-off return to the State and community through Royalties. GPSA considers that the current level of Royalty payments is not only too low but the recent Ministerial decision to waive the first five years of Royalty payments, means the benefits are not being realised by the State and especially not by the local community who are the most affected.

Since the release of the Mining Act Review Discussion Paper, the Government has acknowledged the detrimental impact on the landowner from exploration and mining through its recent announcement to allocate 10% of Royalties to landowners whose property overlies a petroleum field which is brought into production.

GPSA is of the view that the level of Royalties, which is the only direct benefit/return that the State receives, should be increased. Also, in line with the recent State Government announcement on gas Royalties, provision should be made to allocate a proportion of

that Royalty to the neighbouring landowners who are adversely affected, and the local community.

While this announcement of a 10% Royalty to landowners from gas production is an acknowledgement by the Government of the negative impact on landowners from such a discovery, GPSA would like to have a further discussion on royalties in terms of the amount, and when the Royalty is accessed.

GPSA believes consideration should be given to the beneficiaries of the Royalty payments. Currently, Royalties are allocated to general revenue, with little or no direct benefit accruing to the adjacent landowners or the communities most affected.

GPSA further recommends that a percentage of the Royalty income, over and above the State Government allocation, be allocated to community for their benefit and use, and as compensation for the maintenance and investment in infrastructure such as roads and rail that the miner is subsequently accessing. The communities that have invested in such essential infrastructure, and need to continue to maintain it, would therefore receive a return on their investment which can be channelled towards maintenance or new infrastructure investment.

With regard to the recent Ministerial decision to waive the first five years of Royalty payments for new mining operations, GPSA recommends that this not be at the expense of the allocation to the affected community. The allocation to the community should be separate from the State Government share of the Royalty and not be subject to waiver.

***16.*** In line with GPSA's desire to protect agricultural land from being mined and lost to production, we recommend that consideration be given to basing the level of the Royalty on the value of the land as a reflection of the value of the farming/production system of that land and ancillary industries. GPSA recommends that the level of the Royalties paid be increased on a sliding scale, with higher Royalties being 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 the State for the loss of the most arable land and still retain a benefit for mining on non-arable land.

GPSA accepts that a Royalty may not be feasible for mining projects already underway, given investments based on current Royalty formula, but it could be introduced in relation to existing mining applications (including explorations) where there has been no major work or expenditure undertaken.

***17.*** GPSA also recommends that a cost recovery framework be included in the legislation that ensures that all the Departmental compliance activities are funded on a cost per service basis by the explorer or mining company. As with Fisheries Management in this

State, the mineral resources are a common property resource that a select few have been granted access to mine. Therefore, as with Fisheries management principles, the cost of the management of those fisheries are funded by those who benefit the most from accessing this resource – the fishing industry. So, too, should be the case for the mining industry. As the miners are the ones to benefit from the extraction and sale of these resources, they should be made to cover the cost of the management, compliance and approvals process.

***18.*** 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 programs for environment protection and rehabilitation (PEPRs), and all compliance and incident reports submitted to the Regulator by explorers and operators.

***19.*** The Mining Act does not at any stage mention the mental health and wellbeing of the landowner. The adverse consequences on mental health and wellbeing are well known among those who must endure this invasion and were recognised in the review of the EPLUS program. Compensation should also be considered for the impact on the mental health and wellbeing of the landowner. Any processes to deal with this could be incorporated into a PSEEAIR, as mentioned in point 10 above and Section 2.1 in the Discussion Paper.

# Responses to the discussion paper

## 1. EXPLORATION, MINING, QUARRYING, COMMUNITY AND LAND ACCESS

### 1.1 Using simple, accurate terms and language in the Mining Act so it makes sense to everyone (p24)

***What terms in the Mining Act and Regulations need clarifying?***

- In relation to future mining applications, all cultivated and improved pasture land should be exempt land and not explored or mined upon without the approval of the landowner. As set out above, this is GPSA's policy and most of our comments below relate only to current mining applications.

  As the Act is currently drafted, exempt land is not in practice exempt from mineral exploration or mining, except in rare circumstances. It just means that the mining company has the additional requirement, to gain land access, to get the farmer to sign a waiver. If that is not achieved, then the miner must apply to the Environment Resources and Development (ERD) Court rather than the Warden's Court for an order granting access.

  In practice, in the past with the Wardens Court, mining has been allowed on farming land in almost all cases.
- The definition of exempt land needs to be clarified in terms of taking into account different forms of agricultural production. For example, a cultivated field is exempt land, but a fallow field is often not, for exploration purposes 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 farms income. Therefore, exempt land status should take into account the effect on the production system for the whole property if that land is taken out of production and the flow on effect on the business and farm viability.
- For many family farming businesses, the business structure has evolved into numerous trusts and business entities often, with different trusts and members of the family owning the titles to different parcels of land that make up the farming entity. So if the miner wants to explore or mine on one of the titles, this is likely to impact on the viability and profitability of the other titles, for which they may not be granted compensation.

It is important that the entire farm business structure and profitability is taken into account when dealing with exempt land and compensation/conditions for entry and the notice of entry is served on all persons who come within the definition of the "owner of the land".

- 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 a problem if the parcel of land required for mining is owned by a different entity from other land that forms part of the family enterprise. For example, the mine might be on Block A owned by Family Trust A, but it's effective acquisition by the mining company impacts on the profitability of Blocks B and Block C owned by other entities being Family Trust B and C which the landowner, may also wish to transfer to the miner.
- Additionally, Section 62A (b) limits compensation to the market value of the land and a further amount " for disturbance " which seems more limited than the compensation payable under Section 61(1) and (2) which clearly encompass economic loss and loss of profits.

  GPSA recommends that Section 62A (b) should also take into account this further provision for economic loss and therefore be consistent with Section 61 of the Act in terms of compensation.
- As already stated, cultivated land required by the mining company should be exempt from mining and only be waived from exemption by the landowner, as per the requirements of the Western Australia situation for open cut land.
- GPSA recommends that consideration be given to requiring adjoining and impacted landowners to 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) so that adequate conditions and compensation can also be negotiated for those adjacent properties.
- Also, any approval of a mine (or grant of an exploration licence) by the Government 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 his 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, then a claim for damages should be considered. We consider the Act should state that approval does not preclude landowners from enforcing common law rights.
- In the definition of exempt land, consideration also needs to be given to amending the distance from dwellings. Currently the land within 400m of a residence is exempt land,

but for a development of a mine surely this should be considerably more? A mine is an incredibly large, noisy, and dusty operation that should not be within 400m of someone's home. Even wind turbines are required to be a minimum of 1.3km for 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 5km. Further the exemption radius for buildings, dams, springs etc should also be increased considerably. GPSA recommends this change to reflect how mining has evolved from a couple of miners with picks and shovels and perhaps a horse and dray when these figures were set. Mining today uses heavy machinery such as excavators, diggers with elevators, other large and intrusive machinery and generally operate 24 hours a day, 7 days a week. It is therefore recommended that the exempt land radius be increased to take into account the technological developments in mining.
- Consideration should also be given to the fact that exempt land provides other significant benefits to the State, such as tourism or environmental benefits. Where the existing use of that land provides an additional benefit to the State there needs to be a value attached to that land, and that value needs to be assessed prior to any exploration being allowed to occur. There are some obvious locations where the tourism or other benefit could be very adversely impacted on such as the Yorke Peninsula, the Barossa, Clare Valley and other similar regions.

***What are appropriate 'personal uses' for extractive minerals?***

Extractive minerals for personal use should not have undue limitations placed upon them. If they minerals are being extracted for personal use such as infill or road maintenance and are not being sold or profited from, there should be no restrictions placed on their personal use.

***What opportunities are there to define new terms?***

No comment at this point

## 1.2 Ensuring you have the information you need at the right time, and that our technical assessment processes are more transparent (p25)

***Should there be, at a minimum, an open, free, and online access to the documents listed on Page 25, at appropriate times?***

GPSA's position is that there should be open, free, and online access to the following documents at all times:

- all licence and lease applications;

All applications and supporting information should be public knowledge and as such available on line at the very least (with multiple hard copies available at no cost to the landowner and their advisers). Also, all landowners should be notified in writing at the time of lodgement of a licence or lease application over their land, not just hope to pick it up in the public notices in the paper. The adjoining neighbours should also be notified, as future exploration and mining activities could have deleterious impacts on their operations as well. The wider community should also continue to be notified, possibly the notice in the local paper would suffice in that instance as well as an online notification system.

- all submissions and supporting documents;

Should be freely available on line, and if requested, in print format to landowners and their advisors.

- the terms and conditions of grant of a licence or lease;

It is essential that this information is made clear and freely available. The landowner needs to know what conditions the miner needs to comply with otherwise how can the landowner be sure that the miner or explorers are not breaching their conditions of entry, of rehabilitation etc. The adjoining neighbours also need access to this information for the same reasons.

- approved programs for environment protection and rehabilitation (PEPRs);

The PEPR should be provided to the landowner at the same time as the miner serves a notice of entry. How can landowners be expected to sign a waiver for access to their land or decide whether to apply to the Wardens Court to prevent access in the case of non-exempt land when they do not know what is being explored, when, how, by whom etc? This is at the core of farmers concerns when faced with a Notice of Entry.

- Compliance and incident reports submitted to the Regulator by explorers and operators;

Landowners need to know if the explorer or miner are compliant with their conditions of entry and, if not, what action DSD is going to take or has taken. They need certainty that the miner will be held to account for any breaches of conditions or if any incidents happen on their land.

Landowners also need to be able to see that breaches they have reported on have been pursued by the Regulator.

Operators that are non-compliant should be “named and shamed” and made to be compliant or face heavy penalties. DSD should publish details of all actions taken by the nature of that action and against whom and the outcome.

As well as access to:

- Rehabilitation agreement and progress reports

The rehabilitation program should be agreed to at the very start of the mining process and there should be sufficient bond or insurance policy in place to ensure against failed miners walking away and leaving a mess behind. Further to this, ongoing rehabilitation is expected to occur through the life of the mine, but how would the landowner or DSD know if this is actually occurring if it is not publicly reported upon? By making the rehabilitation program and progressive reports available through the life of the mine and after, this will put a stronger emphasis on the need for progressive rehabilitation to occur.

- Royalty audits

To ensure the miner is complying with its fiscal responsibilities as well.

***Should operators be required to disclose geological information for the benefit of the public at appropriate times (if that information is no longer deemed commercially sensitive)?***

All information gained from either exploration or mining should be publicly available, except to the extent that it is commercially sensitive in which case those parts, and only those parts, should be redacted.

***What other information do you think should be disclosed and at what times?***

See above

***What restrictions should be placed on disclosure, and should different types of information be restricted in different ways?***

Full disclosure should be the aim, including disclosure of exploration intent, conditions of entry, compliance and non-compliance, rehabilitation etc. The landowner and the community need to know what is proposed, how it is being managed, ongoing progress and compliance etc. in order to have any form of confidence in the system.

## 1.3 Making sure everyone understands land access processes and expectations (p28)

### 1.3.1 Entry to land generally (p28)

***What opportunities are there to improve the entry to land processes?***

***Cross reference: section 57-58A Mining Act 1971***

Refer to page 29 of the discussion paper, the following statement is strongly challenged by GPSA. This is clearly DSD's view, not the landowner or the view of communities.

> *The Department's view is that the 'exempt land' framework under the Mining Act has been working well at striking the right balance around land access for over a century, and that it is fairer than the frameworks used in other jurisdictions*.

We would like to be provided with the Department's analysis that enables it to provide such a confident statement that it is fairer than other jurisdictions. There are many cases from the Warden's court where mining has taken place on exempt land contrary to the landowner's wishes.

How can it be fairer than Western Australia which prevents mining above ground on exempt land unless the landowner consents or the Government otherwise intervenes?

How DSD could think that the Mining Act has been striking the right balance around land access is of real concern to GPSA and our members. With respect, we question how much practical experience DSD has had dealing with the landowner's issues on a day to day basis when they are confronted with miners, many of whom have substantial financial and political resources compared to landowners.

With respect, we submit this shows a lack of understanding of the connection between farmers and their land, being not only their place of business but also their home.

GPSA also considers that this comment by DSD highlights again the lack of independence on the part of DSD which has already reached the view that the exempt land framework works well, notwithstanding the feedback that we have received from our members which will be highlighted in their submissions.

The uncertainty facing a landowner when served a 21-day Notice of Entry or other form of entry notice and the subsequent battles to determine their rights, if any, to be able to continue to farm their land brings with it debilitating emotional, psychological and financial consequences.

In addition, they face a subsequent inability to maintain, or plan for the future to grow their businesses through capital improvements while the application process hangs over their heads.

Evidence of these issues could be provided to an independent enquiry which might persuade the Government that in fact the existing system is not fair to landowners.

Further, under existing legislation, a landowner of grazing land is served a notice of entry and given 21 days' notice that mining exploration is about to commence on their property. The landowner then has three months to lodge an application to dispute that entry with the Wardens Court.

GPSA believes that the Notice of Entry ought to be extended from 21 days to 90 days, with 6 months' notice to refer the matter to the appropriate Court to take into account the nature of agricultural practices, including seasonal commitments and the remoteness from legal advice.

If the land is cultivated then technically it is exempt land, which means the miner must make a reasonable attempt to enter into an agreement with the landowner to gain access, but if no agreement is reached then the miner can apply to the ERD Court to gain access.

The landowner will necessarily have incurred legal and other costs in those circumstances to be fully advised of their rights. The landowner must fund their own legal and other costs upfront.

Communication, engagement and negotiation is essential and must be open and transparent. Early and ongoing consultation and ethical and responsible business practices should be followed in dealings between mining proponents, farmers and the wider community. Community engagement at the earliest stage must be encouraged and listening and responding to community and landowner's concerns must be a priority.

Unfortunately, in many instances, little or no communication or engagement either with the landholder or the community has occurred prior to either the serving of the notice (for grazing land) or the notice to enter into an agreement to gain land access (for exempt land). This creates unnecessary stress and anguish for the landholder and the community, who are not sure what their rights are, if any, and what is likely to happen going forward. In that environment, the mental health and wellbeing of the landholder, the family and community must be considered.

GPSA recommends that the "Notice of Entry" for grazing land in its current form needs to be amended. This should not be a "Notice of Entry" but more aptly named a "Notice to Negotiate Land Access" or something similar. A "Notice of Entry" immediately makes the landowner feel that they have no choice. A notice to negotiate land access is more reflective of the nature and the purpose of the document. In addition, the timeframes for landowners to review and respond to notices in relation to exempt land and non-exempt land needs to be substantially increased to take into account the difficulty in obtaining legal and other expert advice in some country regions.

Timeframes are important. Landowner's need certainty in this process. They need real and enforceable timeframes for the miner to be accountable to, not continued extensions while the miner sorts out its finances or paperwork.

As with all other Development Applications, there needs to be an end date to which the miner is accountable. For farming properties caught up in a mining application, a definite time frame (with no extensions allowed other than in exceptional circumstances, with compensation), must be agreed and adhered to by the miner before mining start-up so that landowners do not endure uncertainty as to their future land use without any end date. If after a maximum of 5 years from the exploration lease grant date, as per current Act, the miner has not completed the necessary approval processes or raised enough capital to proceed with the mine, then its lease should be revoked with no further rights granted to that company or any related corporation.

Landowners potentially suffer very adverse impacts on their land while subject to mining exploration, including reduction in land value (which can impact on financing or ability to sell), or the ability to make capital improvements.

GPSA does not support the continued extensions to existing exploration or mining leases, nor to the proposed increase in security of tenure as outlined in Sections 3.5.5, 3.5.9, and 3.8 of the discussion paper.

### 1.3.2. Entry on to 'exempt land' (p29)

***What terms need to be better defined to better clarify what is 'exempt land'?***

- In relation to future mining applications, all cultivated and improved pasture land should be exempt land and not explored or mined upon without the approval of the landowner. As set out above, this is GPSA's policy and most of our comments below relate only to current mining applications.

  As the Act is currently drafted, exempt land is not in practice exempt from mineral exploration or mining, except in rare circumstances. The Act requires that to gain land access, the miner has the additional condition of getting the landowner to sign a waiver. If that is not achieved, then the miner must apply to the Environment Resources and Development (ERD) Court rather than the Warden's Court for an order granting access.

  In practice, in the past with the Wardens Court, mining has been allowed on farming land in almost all cases.

- The definition of exempt land needs to be clarified in terms of taking into account different forms of agricultural production. For example, a cultivated field is exempt land, but a fallow field is often not, for exploration purposes 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. Therefore, exempt land status should take into account the effect on the production system for the whole property if that land is taken out of production and the flow on effect on the business and farm viability.

- For many family farming businesses, the business structure has evolved into numerous trusts and business entities often, with different trusts and members of the family owning the titles to different parcels of land that make up the farming entity. So, if the miner wants to explore or mine on one of the titles, this is likely to impact on the viability and profitability of the other titles, for which they may not be granted compensation.

  It is important that the entire farm business structure and profitability is taken into account when dealing with exempt land and compensation/conditions for entry and the notice of entry is served on all persons who come within the definition of the "owner of the land".

- Section 62A of the Mining Act needs to be amended in relation to existing mining applications. As it currently stands, the landowner 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 a problem if the parcel of land required for mining is owned by a different entity from other land that forms part of the family enterprise. For example, the mine might be on Block A owned by Family Trust A, but it's effective acquisition by the mining company impacts on the profitability of Blocks B and Block C owned by other entities being Family Trust B and C which the landowner, may also wish to transfer to the miner.

- Additionally, Section 62A (b) limits compensation to the market value of the land and a further amount " for disturbance " which seems more limited than the compensation payable under Section 61(1) and (2) which clearly encompass economic loss and loss of profits.

  GPSA recommends that Section 62A (b) should also take into account this further provision for economic loss and therefore be consistent with Section 61 of the Act in terms of compensation.

- As already stated, cultivated land required by the miner should be exempt from mining and only be waived from exemption by the landowner, as per the Western Australia situation for open cut land.

  However, GPSA recommends that consideration be given to requiring adjoining and impacted landowners to 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) so that adequate conditions and compensation can also be negotiated for those adjacent properties.

- Also, any approval of a mine (or grant of an exploration licence) by the Government 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 his 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, then a claim for damages should be considered. We consider the Act needs to be amended to make it clear that landowner's common law rights are retained.

- In the definition of exempt land, consideration also needs to be given to amending the distance from dwellings. Currently the land within 400m of a residence is exempt land, but for a development of a mine surely this should be considerably more? A mine is an incredibly large, noisy, and dusty operation that should not be within 400m of someone's home. Even wind turbines are required to be a minimum of 1.3km for 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 5km. Further the exemption radius for buildings, dams, springs etc should also be increased considerably. GPSA recommends this change to reflect how mining has evolved from a couple of miners with picks and shovels and perhaps a horse and dray when these figures were set. Mining today uses heavy machinery such as excavators, diggers with elevators, other large and intrusive machinery and generally operate 24 hours a day, seven days a week. It is therefore recommended that the exempt land radius be increased to take into account the technological developments in mining.

- Consideration should also be given to the fact that exempt land provides other significant benefits to the State, such as tourism or environmental benefits. Where the existing use of that land provides an additional benefit to the State there needs to be a value attached to that land, and that value needs to be assessed prior to any exploration being allowed to occur. There are some obvious locations where the tourism or other benefit could be very adversely impacted on such as the Yorke Peninsula, the Barossa, Clare Valley and other similar regions.

### *What opportunities are there to clarify or amend the exempt land provisions in the Mining Act?*

- ***Cross reference: section 9-9A Mining Act 1971***

GPSA is concerned that the Department appears to have already made its determination regarding exempt land provisions and the existing framework as per the quote from Page 30 of the Discussion paper.

> *"Sensible, sustainable development for the benefit of the State and communities should be everyone's goal. For this reason, the Department does not propose changing the foundations of this framework or the special protections afforded to landowners, aside from seeking to grant landowners some further rights to faster, cheaper and less-formal agreement making and court processes to resolve any 'exempt land' issues that may arise."*

As already stated above, the definition of "exempt land" needs to include all land used in the production systems of that farm. The contribution of that parcel of land (which may be grazing land) to the farming system and to the economic viability of the farm needs to be taken into account.

Similarly, as previously stated a place of residence needs to be more than 400m from a mine. GPSA suggests that, at the very least, land within 5km from a residence should be considered exempt land, to bring invasive mining regulations in line with Wind turbine regulations and to afford some protection that a home will not have a mine right next door. The dust and noise arising from mining practices are considerably greater than those raised from wind turbines, and therefore landowners and adjoining land owners should be afforded the same level of protection.

GPSA requests that exempt land status also be considered for adjoining landowners once the exploration looks like entering into the mining phase so that adequate conditions and compensation can also be negotiated for those adjacent properties.

Approval of a mine by the Government should not prevent the landowner or an adjoining landowner from seeking damages for nuisance and other common law claims against the miner and this needs to be clearly defined in the Mining Act.

### 1.3.3. Notices to landowners under the Mining Act (p31)

GPSA is concerned that the Department has already formed a view of the earliest time that an explorer or operator should be required to contact an owner of the land as per the following quote from Page 31 of the Discussion Paper:

> "The Department is of the view that, for practical reasons, this is the earliest time that an explorer or operator should be required (under legislation) to contact an owner of land".

GPSA recommends that all applications should be public knowledge and as such available on line at the very least. All landowners should be notified in writing if a licence or lease application has been taken out over their land, not just hope to pick it up in the public notices in the paper. The adjoining neighbours should also be notified, as future exploration and mining activities can have deleterious impacts on their operations as well.

Under existing legislation, a landowner (of grazing land) is served a notice of entry and given 21 days' notice that mining exploration is about to commence on their property while under the Exempt land provisions, the explorer must make a reasonable attempt to negotiate with the farmer to waiver their exempt land status and gain access and if that fails, then they must apply to the ERD court to gain access.

GPSA recommends that the nature of agricultural practices, including seasonal commitments and the remoteness from legal advice must be taken into account.

GPSA also recommends that landowners (in relation to non-exempt land) should have 6 months to apply to the Wardens court if there is no agreement with the miner regarding land access. In the interim, the miner should have no right of access.

There should be a similar time frame in relation to exempt land to enable a landowner to obtain full advice, although this suggestion would be of no relevance in relation to future mining if farmers are given a right of veto for exempt land.

GPSA recommends that the "Notice of Entry" in its current form also needs to be amended. This should not be a "Notice of Entry" but more aptly named a "Notice to Negotiate Land Access" or something similar. A "Notice of Entry" immediately makes the landowner feel that they have no choice. A notice to negotiate land access is more reflective of the nature of the purpose of the document.

The PEPR should be provided to the landowner at the same time as the mining company serves a notice of entry or notice to negotiate land access. How can landowners be expected to sign a waiver for access to their land when they do not know what is being explored, when, how, by whom etc.? This is at the core of farmers concerns when faced with any notice from the mining company.

### 1.3.4. Fast and fair court processes and access to justice (p33)

***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?***

While our clear position is that mining on exempt land should not take place under any circumstances other than with the agreement of the landowner, in relation to land currently subject to mining applications, the landowner should have the right to seek a declaration that the land is exempt from mining rather than potentially be left in limbo for some years as has been the case with some mining developments in the past. This is because a landowner's property can be substantially devalued while it remains subject to a potential mining application, where it is uncertain whether the land will be considered exempt or not exempt or whether the mine will proceed or not.

***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?***

***What time should that be?***

While our clear position is that mining on exempt land should not take place under any circumstances other than with the agreement of the landowner, in relation to land currently subject to mining applications, the landowner should have the right to seek a declaration that the land is exempt from mining rather than potentially be left in limbo for some years as has been the case with some mining developments in the past. This is because a landowner's property can be substantially devalued while it remains subject to a potential mining application, where it is uncertain whether the land will be considered exempt or not exempt or whether the mine will actually eventuate or not.

GPSA agrees that a landowner's rights to commence negotiations should be when they are fully informed of what operations the mining company is proposing. They should not be encouraged or offered incentives to waive their rights until they have full disclosure of what is being proposed, in the same way that purchasers of land are protected from making contractual commitments without full disclosure.

How can the landowner commence negotiations on waiving 'exempt land status' without knowing what the mining company is proposing, without the PEPR etc? That would be like giving up their rights, without knowing what they were giving them up for? They should certainly be able to set the conditions under which they would consider waiving their exempt land status, but those conditions would not be known unless they knew what operations were being proposed.

Farmers, in the case of where a mining lease is granted, suffer substantially more of a loss than a home owner facing compulsory acquisition of their land as the farmer loses not only their home, their social networks and also their livelihood. Additionally, they may have to relocate themselves and their family to another region far from family, friends and schools due to the lack of alternative, available farmland within the same area. Agricultural land is tightly held, usually they are generational farms with a cultural tie to their land, and as a result farming land is not turned over at a high rate. If a miner takes over a farm, then in all likelihood the landowner and their family will need to move out of the District due to not being able to find other available land in the area.

As part of the PEPR, an in-depth Environmental Impact Study is conducted to minimise the impact on the environment and to establish rehabilitation protocols. GPSA recommends that a Business Impact Study (BIS) should be conducted on the farming operations (subject to the landowner's consent) to determine the real cost of each activity where it involves substantial exploration or granting of a mining lease, taking into account the whole farm operation and the length of time the exploration or mining activity will occur. Refer to Section 2.1 and our recommendation that the PEPR be broadened to include the Social, Environmental and Economic Assessment, Impact and Rehabilitation (PSEEAIR). These new requirements could apply to any mines not currently in operation.

To ascertain the likely adequate and fair compensation, where extensive exploration takes place, or a mining lease is sought, the impact on the whole farm business and its many operations needs to be taken into account by the Government. The BIS should form part of the mining companies PEPR and be funded by the mining company but conducted by a relevant and qualified independent expert for, and on behalf of, the landowner.

***What opportunities do you see to streamline the notice of declared equipment process, and the other notification processes?***

***In light of the fact that no landowner, pastoralist or native title holder has ever exercised their rights under the Mining Act to object to the use of declared equipment, are notices of declared equipment still relevant?***

The fact that no landowner has ever exercised their rights to object to the use of declared equipment may just be because they were unaware that they had that right, or it is ancillary issue only to the primary issue of access to the land itself. More work should be done by the Department and mining operator to ensure the landowner is aware of their rights with regard to declared equipment and it should form part of the conditions of entry process.

GPSA agrees that in an ideal world, the forms and documents issued to the landowner should be streamlined or rolled into one, although this cannot be at the expense of the understanding by the landowner of their rights to object (in the case of grazing land) or the obligation (in the case of exempt land) of the miner to seek an agreement before going to the ERD Court.

We note however, that section 1.3.4 does not clearly highlight the difference in the process between grazing land and cultivated (exempt) land. In relation to grazing land, there is a formal Notice of Entry and the landowner has the obligation to apply to the court if it objects to entry whereas the burden of applying to the court (usually ERD court) is on the miner in relation to exempt land.

***What information do landowners want to receive from explorers and operators, and at what point in time during the exploration or production stage should that be provided?***

- ***Cross reference: section 9AA, Mining Act 1971; section 58, Mining Act 1971; section 59, Mining Act 1971; reg. 60, Mining Regulations 2011; reg. 61, Mining Regulations 2011; reg. 62, Mining Regulations 2011; reg. 63, Mining Regulations 2011***

GPSA recommends that all applications should be public knowledge and as such available on line at the very least. All landowners should be notified in writing if a licence or lease application has been taken out over their land, not just hope to pick it up in the public notices in the paper. The adjoining neighbours should also be notified, as a future exploration and mining activities could have deleterious impacts on their operations as well.

GPSA also recommends that landowners should be provided with the PEPR when they are served with either a Notice of Entry for grazing land or a notice seeking a waiver for exempt land. However, best practice would be for the mining operators to discuss their exploration activities prior to serving the relevant Notice. These discussions should form part of the determination of the conditions of entry outlined in the PEPR and should be done with the farmer before serving the relevant Notice. The farmer needs to know exactly what is being proposed and when, how will this impact on the farm production system, where on the property will be affected, what

people and equipment will be entering the property, how often and for how long, what mitigation measures will be put in place to minimise damage to the affected piece of land and to the property overall, what rehabilitation will occur, what compensation the landowner will receive etc.

This communication and information from the explorer/miner should not be a once off event as part of negotiating land access. The mining operator should be in constant contact with the landowner while exploration applications are being made and after approvals are in place.

The miner should also be required to pay the landowner's reasonable legal expenses and any other costs incurred by the landowner to gain expert advice to fully assess the situation.

***Do you agree that 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?***

While our clear position is that mining on exempt land should not take place under any circumstances other than with the agreement of the landowner, in relation to land currently subject to mining applications, the landowner should have the right to seek a declaration that cultivated land is exempt from mining rather than potentially be left in limbo for some years as has been the case with some mining developments in the past. This is because a landowner's property can be substantially devalued while it remains subject to a potential mining application, where it is uncertain whether the land will be considered exempt or not exempt or whether the mine will proceed or not.

If a proposal to explore or to build a mine is not a substantial impact, what is? GPSA, of course, seeks to retain the rights of landowners to object to a notice of entry (for grazing land) and to exclude entry on exempt land and to otherwise object to operations that will have substantial impacts on their land. In the same way that normal landowners can prevent a land acquisition (which is essentially what a longterm mining lease constitutes) unless it is approved by a Court.

Farmers, in the case of where a mining lease is granted, suffer substantially more of a loss than a person facing compulsory acquisition of their land in most circumstances, as the farmer loses not only their home but also their livelihood, and additionally may have to relocate themselves and their family to another region due to the lack of alternative, available farmland within the same area.

Therefore, GPSA also seeks the wording the Section 58A be changed from "substantial hardship" or "substantial damage to the land" to just "hardship" in relation to non-exempt land. The degree of hardship should not be the case, the fact that it has created hardship should be grounds enough.

As part of the PEPR, an in-depth Environmental Impact Study is conducted to minimise the impact on the environment and to establish rehabilitation protocols. GPSA recommends that a Business Impact Study (BIS) should be conducted on the farming operations (subject to the

landowner's consent) to determine the real costs of each activity where it involves substantial exploration or granting of a mining lease, taking into account the whole farm operation and the length of time the exploration or mining activity will occur. Refer to Section 2.1 and our recommendation that the PEPR be broadened to include the Social, Environmental, and Economic Assessment, Impact and Rehabilitation (PSEEAIR).

To determine the real cost to the community and the landowner, the impact on the whole farm business and its many operations needs to be taken into account. The BIS should form part of the mining companies PEPR and so should be funded by the mining company but conducted by a relevant and qualified independent expert for, and on behalf of, the landowner.

Clearly however, in the event of a dispute, it is for a Court to make its own determination as to any cost or compensation.

***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?***

The landowner should be able to lodge a complaint or issue proceedings as soon as they become aware of the mining company's intentions if they are against any exploration or mine proceeding.

***What other opportunities do you see to provide fast and fair access to justice for all?***

- ***Cross reference: section 9AA Mining Act 1971; section 58(3), Mining Act 1971***

The current situation pits the individual landowner against companies which are often multinational, usually well financed, experienced in legal matters, and otherwise well resourced.

Based on past decisions, the Warden's Court in most cases for all practical purposes, seems to consider that exempt land can be explored or mined, and it is just a matter of what conditions and compensation are awarded to allow access for the miner.

GPSA has a very real concern with how the conditions of entry and the compensation rates are set by the Courts which are guided by the Mining Act for land access decisions. The Mining Act, at best, provides compensation for economic loss, hardship, and inconvenience, assuming the Court accepts the landowner's expert valuations for land and economic loss.

In litigation, if the landowner and the miner cannot agree the assessments, then it is left to the Court to determine which expert's evidence is accepted. In normal circumstances, if for example, a Court accepts the miner's expert valuation and evidence, and the landowner receives a lesser sum than that offered by the miner as being fair and reasonable then the landowner may potentially be unable to recover their very substantial legal and other costs (see Section 61(5A) of the Act).

Because of the imbalance between a well-resourced miner and an individual landowner who faces a substantial risk in relation to recovery of costs this will often force the landowner to accept less than what they are entitled to for the loss of their land and their livelihood, or the interruption to their business.

The landowner, in those circumstances and indeed during any commercial negotiation, (and litigation) must fund their own legal, valuation, accounting, environmental and other costs, when assessing an application to mine (and/or explore) their farmland. Uncertainty about all future events such as plans for farm improvement, soil amelioration work, home renovation or renewal, infrastructure such as sheds, yards, roadways, water points, are all thrown into limbo because the landowner has no idea as to how long before he/she can no longer farm, or whether he/she will ever be compensated for improvements the landowner wishes to invest in. Current farm management and profitability is compromised. Therefore, GPSA recommends that all costs should always be met by the miner seeking access to that land.

Again, this places the landowner under undue duress to give way to the miner and to accept potentially substantially less than they are entitled to by way of compensation. This again highlights the need for a full Business Impact Study to be conducted at the same time as the PEPR, as this may assist the parties subsequently in negotiations which may avoid litigation.

The adverse consequences on mental health and wellbeing are well known amongst those who must endure this invasion and were recognised in the review of the EPLUS program. Compensation should also be considered for the impact on the mental health and wellbeing of the landowner. This was recognised in the review undertaken by Barrister, Brett Walker into the NSW Mining Acts where all of the farmer's legal costs are now to be covered by the mining company.

Given this imbalance between well-resourced miners, their subsidiaries or related entities, and landowners, GPSA is of the view that the landowner should be entitled to all legal costs (on a solicitor/client basis), with an uplift to cover any additional costs, to be met by the miner during the negotiation stage, and subsequently during litigation (except where found to be frivolous or vexatious) to ensure that the landowner is not left out of pocket in the case of a dispute and has access to a similar level of advice as the miner, as per the NSW Mining Acts.

Further, GPSA holds the view that landowners whose properties are explored for a potential mining lease must have immediate access to compensation for the above legal and other reasonable expenses pending any agreement or court decision.

Under the present legislation, 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 have a policy that each party should normally bear their own costs.

Due consideration must be paid to the emotional and financial costs incurred by farming families upon the invasion of their properties which are not only their place of business, but usually their family home, and this compensation must be paid before exploration commence. In any litigation or defence of a farmer's legal rights to exemption landowners should be able to claim their legal and other out of pocket costs as in NSW.

Further, mining companies should pay an uplift above market rates of three times the market value for those properties it wants to acquire as well as any Royalty. Those farming families who neighbour the affected farms that find their properties devalued because of the dust, noise, toxic wastes, contaminated water, road traffic, and so on must also be adequately compensated.

An additional issue for consideration is that the Wardens Court has jurisdiction to $250,000 whereas the Magistrates Court jurisdiction for civil commercial disputes is $100,000.

GPSA is of the view that the Warden's jurisdiction should be no more than the sum that applies to other monetary disputes.

There is no reason why landowners should not have access to higher courts in the same way as others, where the claim is for more than $100,000. Restricting landowner's abilities to have their case heard only in the Warden's Court for claims between $100,000 - $250,000 deprives the Landowner of the rights applicable to others to seek referral to a higher Court.

It is also unclear whether the landowner in circumstances where the landowner and miner cannot reasonably reach agreement, can recover reasonable costs of legal (or a solicitor/client or other basis), valuation, accounting and other costs, whether in the Warden's Court, the ERD Court or elsewhere.

It is also unclear whether compensation includes compensation for the loss of value of land not acquired by the miner, and or reduction of the value of the ongoing business.

The Mining Act should be amended to entitle the landowner to receive either a share of the Royalty (as in the US system) and as recently announced by the State Government for landowners faced with gas exploration/extraction from their properties. While this announcement of a 10% Royalty to landowners from gas production is an acknowledgement by the Government of the negative impact on landowners from such a discovery, GPSA would like to have a further discussion on Royalties in terms of the amount, and when the Royalty is accessed.

If not a share of the Royalties, then at the very least a substantial uplift in compensation to minimise the likelihood of the landowner receiving less than their full entitlement, including for the reasons outlined above.

Farmers, in the case of where a mining lease is granted, suffer substantially more of a loss than a person having compulsory acquisition of their land in most circumstances as the farmer loses

not only their home but also their livelihood and additionally may have to relocate themselves and their family to another region far from family, friends and schools due to the lack of alternative, available farmland within the same area.

If the landowner does not want the mining company having access to their financial and business information, then an alternative would be to set compensation at a prescriptive level but it must take into account the long-term damage to the property and the farm business system.

### 1.3.5 Ensuring that Aboriginal communities are engaged and well informed (p37)

***What opportunities are there to work together to design and build a better system for land access to benefit everyone?***

Exempt land should be exempt land and Native Title land is no different.

***Do we need better access to information and tools to make sure everyone has the best opportunity to understand the South Australian native title process and learn more about mining and exploration?***

***How would you like to access information?***

- ***Cross reference: part 9B Mining Act 1971***

## 1.4 Ensuring that payments and fees can be recovered (p39)

The extraction of minerals provides a once off return to the State and community through royalties. GPSA considers that the current level of Royalty payments is not only too low but the recent Ministerial decision to waive the first 5 years of Royalty payments, means the benefits are not being realised by the State and especially not by the local community who are the most affected.

Since the release of the Mining Act Review Discussion paper, the Government has acknowledged that there is a detrimental impact on the landowner from exploration and mining through the recent Government announcement regarding allocating 10 per cent of Royalties to landowners whose property overlies a petroleum field which is brought into production.

GPSA is of the view that the level of the royalties, which is the only direct benefit/return that the State receives, should be increased and, in line with recent State Government announcements regarding gas Royalties, provision should be made to allocate a proportion of that Royalty to the local community.

While this announcement of a 10% Royalty to landowners from gas production is an acknowledgement by the Government of the negative impact on landowners from such a

discovery, GPSA would like to have a further discussion on royalties in terms of the amount, and when the Royalty is accessed.

GPSA believes consideration should also be taken into account as to the beneficiaries of the Royalty payments. Currently, Royalties are allocated to general revenue, with little or no direct benefit accruing to the adjacent landowners or the communities most affected. Therefore, GPSA recommends that a percentage of the Royalty income, over and above the State Government allocation, be paid to the local community for their benefit and use and as compensation for the maintenance and investment in infrastructure such as roads and rail that the mining company are subsequently accessing. The communities that have invested in such essential infrastructure and need to continue to maintain it, would therefore receive a return on their investment which can be channelled towards maintenance or new infrastructure investment.

In line with our desire to protect agricultural land from being mined and lost to production, we recommend that consideration be given to basing the level of the Royalty on the value of the land as a reflection of the value of the farming/production system of that land and any ancillary industries attached to that. GPSA recommends that the level of the Royalties paid be increased on a sliding scale, with higher Royalties being 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 the State for the loss of the most arable land and still retain a benefit for mining on non-arable land.

GPSA accepts that a Royalty may not be feasible for mining projects already underway, given investments based on current Royalty formula, but it could be introduced in relation to existing mining applications (including explorations) where there has been no major work or expenditure undertaken.

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

GPSA recommends that a proportion of the royalty payments due to the SA Government should be returned to the local communities for infrastructure maintenance and investment for the benefit of the local community. Any other payments due, over and above this, should be paid as a priority to the SA Government for the express use of covering any/all mine rehabilitation costs for this and other mines.

***What other opportunities do you see to ensure that explorer and operators pay outstanding amounts when due?***

- ***Cross reference: section 40 Mining Act 1971; section 41E, Mining Act 1971; section 52, Mining Act 1971; part 3, Mining Act 1971; schedule 1, Mining Act 1971; section 40, Mining Act 1971; part 2, Mining Regulations 2011; reg. 42, Mining Regulations 2011; reg. 54, Mining Regulations 2011; reg. 109, Mining Regulations 2011.***

Increasing the bond upfront and the Extractive Areas Rehabilitation Fund (EARF) to ensure there are adequate funds to rehabilitate the land back to agriculture production if the miner becomes insolvent or similar is a priority. Tax payer funds should not be used to cover any of the miner's agreed requirements for rehabilitation. GPSA recommends that consideration should be given to using the Bond to insure against the miner reneging on its conditions of approval.

Compensation for access to landowner's land needs to be paid up front. What is DSD's role in ensuring the compensation for land access is paid prior to the land being accessed? What penalties are in place and who reports/records these infringements?

## 1.5 Ensuring that the community is informed of any changes (p41)

***What changes to approved mining operations should give rise to a statutory right for a landowner to be notified and consulted on the proposed change?***

Any change in the approved mining operations should be advised to the landowner and the community before those changes are approved by DSD. Any changes to conditions, access arrangements or mining operations need to have the approval of the affected landowner and any other affected parties. Without that, the change to operations should not be allowed to proceed. Even if they are only minor changes then it is still part of good corporate practice and open communication to ensure all affected are notified. That includes, size, scope, timing, extractive processes, lease conditions etc.

If these changes are considered major or may lead to substantial new or increased impact that was not considered in the original lease assessment then notification should include a further round of public consultation and/or changes to the PEPR and approval process to ensure all impacts are fully assessed, including environmental, social and business impacts.

Affected parties should have the right to veto or object to any proposed changes until such assessments have occurred and new conditions or compensation negotiated with the landowner and the community.

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

- ***Cross reference: section 34(9) Mining Act 1971; section 70C, Mining Act 1971; reg. 67, Mining Regulations 2011; reg. 68, Mining Regulations 2011***

Any change in the approved mining operations should be advised to the landowner and the community before those changes are approved by DSD. That includes, size, scope, timing, extractive processes, lease conditions etc. If these changes are considered major or may lead to substantial new or increased impact that was not considered in the original lease assessment

then notification should include a further round of public consultation and/or changes to the PEPR and approval process to ensure all impacts are fully assessed, including environmental, social and business impacts. Affected parties should have the right to veto or object to any proposed changes until such assessments have occurred and new conditions or compensation negotiated with the landowner and the community.

# 2. SUSTAINABLE FUTURES (p43)

## 2.1 Protecting South Australia's environment through Programs for Environment Protection and Rehabilitation (p45)

GPSA is concerned that the Department appears to think that the Mining Act already is the leading legislative framework for the achievement of positive environmental outcomes as per the quote on Page 44 of the Discussion Paper:

> *"The Regulator and the Commonwealth are confident that the Mining Act establishes a leading legislative framework for the achievement of positive environmental outcomes."*

GPSA would like assurance that the following comments will be considered.

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

- ***Cross reference: part 10A Mining Act 1971; part 7, Mining Regulations 2011; minerals general determination (MD001); mineral general determination (MD013); mineral general determination (MD002); mineral general determination (MD005)***

We understand that in other State's, prior to a PEPR or EIS being prepared, a scoping study is conducted outlining what is proposed which is then referred to relevant agencies equivalent to DEWNR, EPA, DSD etc. for their consideration and comment on what needs to be assessed and included in the preparation of the PEPR. In South Australia, it seems that DSD is the only agency that reviews the PEPR prior to granting approval.

GPSA recommends that a more robust process, such as employed in other States, be considered here to ensure that all relevant agencies are consulted prior to the preparation of the PEPR, and all additional conditions recommended by these agencies and how they are to be met are included and must be addressed as part of the PEPR.

While PEPR's serve a purpose to consider environmental impact of the exploration or mining activities, and the outcomes that must be achieved while undertaking that exploration or production, what about the social and economic/business impacts?

Under the COAG Agreement all Australian governments regulatory legislations should promote:

- A Triple Bottom Line assessment (i.e. a combined social, environmental and economic assessment).
- Effective consultation with stakeholders.
- Proportionate government action.

GPSA recommends that, in line with the COAG Agreement, a Triple Bottom Line Assessment must form part of the PEPR, or more aptly named "Program for Social, Environmental and Economic Assessment, Impact and Rehabilitation (PSEEAIR)". Included in the PSEEAIR should be the Business Impact Study referred to in point 1.3.4 above.

Also, included in this agreement is the need for effective consultation with stakeholders. To that end, the PEPR or PSEEAIR, should be made available to the affected landowner, their neighbours and the wider community before the Notice of Entry is served and forms part of the stakeholder consultation and engagement process.

### 2.1.1. The scope of preventative regulatory measures (p46)

***Do you think that the Minister should be able to place conditions on PEPRs so that explorers or miners cannot commence activities until after a particular point in time (e.g. until the payment of a bond or the satisfaction of a compliance direction)?***

GPSA supports that exploration or mining activities cannot commence until after all conditions and approvals are in place, and until after the payment of the landowner's reasonable costs of review of the bond and completion of a compliance direction.

GPSA recommends that the compliance/preventative tools that are available under the current Act should be more strongly enforced to ensure safeguards are set to offset any serious damage caused. Mining should not be allowed to proceed without these safeguards (bond or insurance) being in place.

GPSA also recommends that a cost recovery framework be included in the legislation that ensures that all the Departmental compliance activities are funded on a cost per service basis by the explorer or mining company.

As with Fisheries Management in this State, the mineral resources are a common property resource that a select few have been granted access to mine. Therefore, as with Fisheries management principles, the cost of the management of those fisheries are funded by those who benefit the most from accessing this resource, the fishing industry. So too should be the case for

the mining industry. As the miner are the ones to benefit from the extraction and sale of these resources, they should be made to cover the cost of the management, compliance and approvals process.

***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?***

Yes, this is essential. Unless a company has complied with all their obligations they should not be allowed to release a tenement and get their bond back. An explorer or mining company should not be able to release a tenement until all fees, charges and outstanding royalties under the Mining Act, have been paid; they have submitted a final compliance report and royalty return; have declared that operations have ceased and there are no ongoing liabilities (including litigation liabilities), or there is an acceptable management plan in place for managing or transferring those liabilities.

***Should the Department adopt a more streamlined surrender and/ or expiry process whereby the Department and the community can be assured that all outstanding liabilities are complied with prior to surrender or expiry?***

GPSA recommends that if DSD adopt a more streamlined process to surrender and/or expiry process for a tenement, that this is not done at the expense of the company meeting all of its environmental, social and economic obligations as outlined in the PEPR or PSEEAIR (refer to section 2.1 above).

***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?***

A further round of public consultation prior to surrender or expiry date should be conducted to ensure all liabilities of concern to DSD, the landowner and the community have been addressed.

***What other preventative tools do you think should be introduced to ensure damage to the environment can be prevented?***

- ***Cross reference: section 14-14F Mining Act 1971; section 62, Mining Act 1971; reg. 67, Mining Regulations 2011; reg. 86, Mining Regulations 2011; reg. 87, Mining Regulations 2011; reg. 90, Mining Regulations 2011***

GPSA recommends that the miner must not only meet all of its environmental obligations but also the social and economic obligations as well, as outlined in the PEPR or PSEEAIR (refer to section 2.1 above) so that damage to not only the environment has been addressed, but also the social and economic impacts. A further Triple Bottom line analysis at the end of the mine life should also be conducted prior to releasing the tenement and if there is a significant difference between the initial assessment of the impacts and the final assessment, then the obligation should be on the miner to address/mitigate or resolve these impacts.

### 2.1.2. The scope of compulsive tools (p49)

***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.***

***What other compulsive tools do you think should be introduced to ensure explorers and operators comply with their environmental obligations?***

> ***Cross reference: section 70E Mining Act 1971; section 70F, Mining Act 1971; section 30(4), Mining Act 1971; section 34(8), Mining Act 1971; section 52(4a), Mining Act 1971; section 45(2), Mining Act 1971***

GPSA supports the enforcement and enhancement of DSD's compulsive tools to ensure explorers and operators are forced to meet and comply with their environmental obligations. As per section 2.1.1 above, GPSA further recommends that the miner must not only meet all of its environmental obligations but it's social and economic obligations as well, as outlined in the PEPR or PSEEAIR (refer to section 2.1 above) so that damage to not only the environment have been addressed, but also the social and economic impacts. A further Triple Bottom line analysis at the end of the mine life should also be conducted prior to releasing the tenement and if there is a significant difference between the initial assessment of the impacts and the final assessment, then the obligation should be on the miner to address/mitigate or resolve these impacts.

GPSA also recommends that a partial closure of a mine not be allowed for an indefinite period. Rehabilitation should occur throughout the life of the exploration or mining operation. Therefore, the partial closure of a mine should not enable the miner to renege on its rehabilitation obligations or delay rehabilitation processes unduly. All compulsive tools outlined above, should be invoked in the case of a deliberate delay or partial closure of a mining operation. This is especially the case as is so often seen, when falling commodity price cycles make the production no longer viable. If it is no longer viable, then the mine should be shut and all rehabilitation work completed.

## 2.2 Ensuring greater government and industry environmental accountability and transparency (p50)

***Do you see benefit in publishing relevant government, explorer and operator documents (where appropriate) online to increase government and industry transparency and accountability?***

GPSA strongly supports such transparency and accountability.

### *What other documents in addition to the abovementioned list should be publically disclosed to improve industry accountability?*

GPSA strongly supports the public disclosure of the following documents:

- Compliance directions;
- Rehabilitation directions;
- Public liability insurance limits and insurance compliance certificates;
- Notices for failure to comply;
- PEPRs;
- Bond amounts;
- Minimum expenditure obligations; and
- Expenditure reports containing actual exploration expenditure.

GPSA also recommends that the following be publicly disclosed:

- all licence and lease applications;
- public submissions (and/or summaries of those submissions);
- the terms and conditions of grant of a licence or lease;

It is essential that this information is made clear and freely available. The landowner needs to know what conditions the miner needs to comply with otherwise how can the landowner be sure that the miner or explorers are not breaching their conditions of entry, of rehabilitation etc. The adjoining neighbours also need access to this information for the same reasons.

- Compliance and incident reports submitted to the Regulator by explorers and operators;

  Landowners need to know if the explorer or miner are compliant with their conditions of entry and, if not, what action DSD is going to take. They need certainty that the miner will be held to account for any breaches of conditions or if any incidents happen on their land. Landowners also need to be able to see that breaches they have reported have been pursued by the Regulator.

  Operators that are non-compliant should be “named and shamed” and made to be compliant or face heavy penalties.

- Rehabilitation agreement and progress reports

  The rehabilitation program should be agreed to at the very start of the mining process and there should be sufficient bond or insurance policy in place to ensure against failed miners walking away and leaving a mess behind. Further to this, ongoing rehabilitation is expected to occur through the life of the mine, but how would the landowner or DSD know if this is actually occurring if it is not publicly reported upon? By making the

rehabilitation program and progressive reports available through the life of the mine and after, this will put a stronger emphasis on the need for progressive rehabilitation to occur.

- Royalty audits.

  To ensure that the miner is are complying with its fiscal responsibilities as well.

***Do you agree that the Department can increase the accountability of explorer and operators by:***

- ***Ensuring the timely payment of rents;***
- ***Prohibiting tenement renewals, cancellations, surrenders or transfers until all outstanding obligations are performed?***

***What other opportunities are there to increase Government and industry accountability?***

***Cross reference: section 77D Mining Act 1971; reg 88 Mining Regulations 2011***

GPSA agrees and recommends that such accountability would be enhanced by the publication of the documents as listed above and by increasing the penalties for breaching any of the agreed conditions.

## 2.3 Enforcing leading practice mine closure planning, and progressive rehabilitation to promote sustainable mine completion outcomes (p52)

***Do you think the current tools and the proposed changes to regulatory tools in paragraph 2.12.1 will be sufficient to ensure leading practice mine closure and progressive rehabilitation (including the progressive rehab of exploration operations)?***

GPSA agrees with the proposed changes to regulatory tools, but they are only as good as the enforcement and compliance. Progressive rehabilitation is essential and should be closely monitored for compliance. Tougher penalties should be put in place for non-compliance.

***What changes can be made to our financial assurance model to further encourage or guarantee appropriate mine closure practices and/or rehabilitation outcomes?***

***What other mechanisms should the Department consider to promote or mandate leading practice mine closure and progressive rehabilitation behaviours?***

***What powers or mechanisms should the Department adopt to ensure that administrators and liquidators or explorers and operators could not transfer assets where it would be unsafe to do so, or would result in environmental harm or a breach of outcomes?***

***Cross reference: part 10A Mining Act 1971; part 7, Mining Regulations 2011***

Please refer to our comments in paragraph 3.1. The parent company of the miner should be required to guarantee the obligations of the licence holder.

## 2.4 A modern leading practice financial assurance model and the rehabilitation of former mine sites

***What type of model do you think will achieve a cost effective leading practice financial assurance model for South Australia?***

***In addition to the examples above, what other financial assurance models do you think will achieve the three criteria outlined this paragraph?***

***Cross reference: section 62 Mining Act 1971***

No comment at present.

## 2.5 The regulation of private mines (p56)

***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?***

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

***Cross reference: part 11B, Mining Act 1971; part 10, Mining Regulations 2011***

No comment at present.

## 2.6 The Extractive Areas Rehabilitation Fund (p58)

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

GPSA believes that the EARF is an important tool and as such the contributions should be increased to ensure EARF has adequate funds to cover rehabilitation requirements when the miner has either reneged on its obligations or become insolvent.

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

***Cross reference: section 63 Mining Act 1971; part 9, Mining Regulations 2011***

GPSA believes that the EARF is an important tool and as such the contributions should be increased to ensure EARF has adequate funds to cover rehabilitation requirements when the miner has either reneged on its obligations or become.

## 2.7 Transfer of ownership and responsibility for mine infrastructure, productive assets and mining landforms to third parties (p60)

***What opportunities are there to maximise the benefit of permanent infrastructure at the end of mining activities?***

GPSA recommends that any permanent infrastructure assets on the landowner's land be transferred to the landowner to either use or dispose of as they see fit if sought by the landowner or should otherwise be removed in such manner that leaves the land as it was. Any other

infrastructure assets such as roads, rail, power or other assets not on the landowner's property should be considered a community asset, and used or disposed of as seen fit by that community.

***What ways could Mining Act assessment processes and other assessment processes under other Act such as the Development Act 1993 be improved?***

***How can maintenance and monitoring of post-surrender assets and infrastructure be better managed?***

GPSA recommends using the landowner or community to review, monitor, report, and oversee the maintenance of any post-surrender assets on a fee for service basis paid for either by DSD or as part of the cost recovery process outlined in section 2.1.1 above or through an increased EARF.

***How can the transfer of post-surrender assets and infrastructure be regulated to ensure any rehabilitation (if any) is appropriately addressed?***

GPSA recommends using the landowner or community to review, monitor, report, and oversee the maintenance of any post-surrender assets on a fee for service basis paid for either by DSD or as part of the cost recovery process outlined above.

# 3. THE BENEFITS OF A STREAMLINED, RIGOROUS AND COMPETITIVE REGULATORY ENVIRONMENT (p63)

## 3.1 Ensuring our legislation doesn't restrict the adoption of modern, evolving e-commerce and information systems (p66)

### 3.1.1 Moving towards a digital by default e-commerce future (p66)

***What opportunities are there to create efficiencies in the current application and registry processes by updating digital methods and processes?***

The requirement for the Mining Registrar to publish various notices in the Government Gazette and local newspapers to inform the public of changes to regulations or new tenements is still important but GPSA would support more online services of relevant notifications as well. Online services may help DSD streamline its processes but lack of decent internet coverage in many parts of rural South Australia will remain a limiting factor in its effectiveness.

GPSA strongly recommends that there be a requirement in the new Act for any landowner affected by a new tenement, exploration or mining lease, to be notified in writing by DSD. As it currently stands, the landowner may have no idea that a mining tenement may have been placed over their land unless they happen upon it by reading their local newspaper. This open and early notification, accompanied with information that the landowner may need to consider, while still a shock would be better than no notification.

***What digital advances to the Mining Register will improve accessibility and effectiveness?***

***What other opportunities are there to modernise our regulatory services through advances in digital processes?***

- ***Cross reference: section 28(5) Mining Act 1971; section 35A(4), Mining Act 1971; section 35B, Mining Act 1971; section 41BA(1), Mining Act 1971; section 53(2), Mining Act 1971; section 73M(4), Mining Act 1971***

The issue of the Mining Register raises another concern for landowners. It is not uncommon for companies to register licences in the name of subsidiaries with little or no assets (other than the licence) which may prevent the landowner (and indeed the Government) from recovering damages for any subsequent breach of the Act or failure to meet its obligations.

The parent company (and any substantial shareholders that has effective control) of the licensee should be required to provide a guarantee

### 3.1.2 Using modern methods of mapping (p67)

***Should we move to a graticular block system and, if so, what is the preferred method of transitioning to a graticular block system?***

- ***Cross reference: section 33A Mining Act 1971***

## 3.2 A modern, accurate and easy to access Mining Register (p69)

***What type of dealing or instruments should be on the Mining Register, and which of those should be made publically available?***

All instruments lodged on the Mining Register should be publicly available. An increase in the number of instruments or types of caveats that can be lodged may help protect third party interests, but does that then make it less clear to the landowner who has the actual interest in their property and the right to explore it? Could this lead to a third party that the landowner has not met or negotiated with conducting the exploration or mining? If so, what protections or processes are in place to ensure that the conditions of entry etc. are adhered to? Who has the ultimate responsibility for the rehabilitation at the end of the exploration or mine life, if there are numerous interests lodged on that title?

These are issues that GPSA considers need to be addressed before the Minister removes the need for his consent to register these various new instruments. At the very least, the current situation requiring ministerial consent for the lodgement of transfers and any of the new instruments outlined on Page 69 of the Discussion Paper, means that the interested parties need to follow due process.

***How can the framework of the Mining Register be updated to best suit the needs of the mineral resources industry and the community?***

***What other opportunities are there to modernise the Mining Register?***

- **Cross reference: section 15A Mining Act 1971; part 11A, Mining Act 1971; section 83, *Mining Act 1971***

The Mining Register should be modernised to the point where it can be searched, similar to the Courts Administrative Authority website, which enables the court lists and cases to be accessed for various information

### 3.2.1. Providing certainty to businesses through the use of caveats (p71)

***What type of caveat system will best protect dealings in tenements and promote investment in South Australia?***

***Should the Department determine caveatable interests (either at registration or dispute) or should this be determined by a competent court or another process?***

***What other opportunities are there to modernise the caveat system?***

Where there is a dispute, the Court should make the final determination, thereby caveats should be left to be determined by either the Warden's Court or the ERD Court (depending on the value of the interest).

- ***Cross reference: part 11A Mining Act 1971; Form 24 – Caveat against a mining tenement; Form 25 – Caveat by consent***

## 3.3 The benefits of the timely release of information and transparency of process (p72)

***What information do you think should be made publically available and at what times?***

GPSA believes that there should be open, free, and online access to the following documents at all times:

- all licence and lease applications;

  All applications and supporting information should be public knowledge and as such available on line at the very least (with multiple hard copies available at no cost to the landowner and their advisers). Also, all landowners should be notified in writing at the time of lodgement of a licence or lease application over their land, not just hope to pick it up in the public notices in the paper. The adjoining neighbours should also be notified, as future exploration and mining activities could have deleterious impacts on their operations as well.

  The wider community should also continue to be notified, possibly the notice in the local paper would suffice in that instance or as well as an online notification system.

- public submissions (and/or summaries of those submissions);

Should be freely available on line, and if requested, in print format to the landowner and their advisors.

- the terms and conditions of grant of a licence or lease;

  It is essential that this information is made clear and freely available. The landowner needs to know what conditions the miner needs to comply with otherwise how can the landowner be sure that the mining company or explorers are not breaching their conditions of entry, of rehabilitation etc. The adjoining neighbours also need access to this information for the same reasons.

- approved programs for environment protection and rehabilitation (PEPRs);

  The PEPR should be provided to the farmer at the same time as the mining company serves a notice of entry. How can farmers be expected to sign a waiver for access to their land, or decide whether to apply to the Warden's Court to prevent access in the case of non-exempt land when they do not know what is being explored, when, how, by whom etc? This is at the core of farmers concerns when faced with a Notice of Entry or the need to negotiate land access arrangement with a mining company.

- compliance and incident reports submitted to the Regulator by explorers and operators;

  Farmers need to know if the explorer or miner are compliant with their conditions of entry and, if not, what action the Department is going to take. They need certainty that the mining company will be held to account for any breaches of conditions or if any incidents happen on their land. Farmers also need to be able to see that breaches they have reported on have been pursued by the Regulator.

  Operators that are non-compliant should be "named and shamed" and made to be compliant or face heavy penalties.

As well as access to:

- Rehabilitation agreement and progress reports

  The rehabilitation program should be agreed to at the very start of the mining process and there should be sufficient bond or insurance policy in place to ensure against failed miners walking away and leaving a mess behind. Further to this, ongoing rehabilitation is expected to occur through the life of the mine, but how would the landowner or DSD know if this is actually occurring if it is not publicly reported upon? By making the rehabilitation program and progressive reports available through the life of the mine and after, this will put a stronger emphasis on the need for progressive rehabilitation to occur.

- Royalty audits

To ensure they are complying with their fiscal responsibilities as well.

***What restrictions should be placed on disclosure and on what type of information?***

- ***Cross reference: section 77D Mining Act 1971; reg. 88 Mining Regulations 2011***

All information gained from either exploration or mining should be publicly available, except to the extent that it is commercially sensitive in which case those parts, and only those parts, should be redacted.

## 3.4 The benefits of clear and efficient one-window to- government assessment processes (p73)

***What opportunities are there to provide further guidance and clarity around the various stages of the assessments process?***

***What other opportunities are there to streamline assessment processes?***

***How can the department improve its relationship with the other States, Territories and Federal Governments to increase efficiencies in assessment processes?***

- ***Cross reference: section 29 Mining Act 1971; section 35, Mining Act 1971; section 41B, Mining Act 1971; section 53, Mining Act 1971; part 10A, Mining Act 1971***

GPSA is concerned by the following quote from page 73 of the Discussion Paper:

> "The Regulator's role under the Mining Act is to ensure that mineral resources are developed in a way that delivers balanced environmental, economic and social outcomes, and our rigorous and transparent assessment system is recognised as being best practice".

We would like to ask, who recognises our current system as best practice – other jurisdictions, miners, landowners or overseas investors?

GPSA would like consideration to be given to processes followed in other jurisdictions and to see any independent analysis evidence that supports this statement particularly from landowners.

We understand that, in other State's, prior to a PEPR or EIS being prepared, a scoping study is conducted outlining what is proposed which is then referred to relevant agencies equivalent to DEWNR, EPA, DSD etc. for their consideration and comment on what needs to be assessed and included in the preparation of the PEPR.

In South Australia, it seems that DSD is the only agency that reviews the PEPR prior to granting approval.

GPSA recommends that a more robust process, such as employed in other States, be considered to ensure that all relevant agencies are consulted prior to the preparation of the

PEPR, and all additional conditions recommended by these agencies and how they are to be met are included and must be addressed as part of the PEPR.

## 3.5 Ensuring that we have a modern, flexible tenement structure 74

### 3.5.1 Opportunities to modernise ELs and Exploration Licence Applications (ELAs) (p75)

***What changes to the tenement structure of exploration licences will promote flexibility and modern exploration methods in South Australia?***

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

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

***Would the ability to sub-divide exploration licences with commercial freedom (subject to ministerial consent to transfer) transfer to a third party increase investment and promote exploration in South Australia?***

***What other opportunities are there to modernise and streamline the tenement structure in South Australia?***

- ***Cross reference: part 5 Mining Act 1971; part 5, Mining Regulations 2011***

GPSA is concerned by the proposal to increase the flexibility in the tenement structure based around separate minerals or mineral classes or the possibility of two or more explorers being able to explore for different minerals in the same area. As the situation currently stands, the uncertainty and fear facing a farmer when served a 21-day Notice of Entry in terms of grazing land or notice to seek a waiver of their exempt land status, and the subsequent battles to determine their rights, if any, to continue to farm their land brings with it debilitating emotional, psychological and financial consequences. In addition, they face a subsequent inability to maintain, let alone to plan for the future to grow their businesses, while the application process hangs over their heads. For DSD to then propose that the farmer may need to deal with more than one mining company seeking access to the land is untenable.

Timeframes are important. Landowners need certainty in this process. They need real and enforceable time frames for the miner to be accountable to, not continued extensions while the miner sorts out its finances or paperwork. As with all other Development Applications, there needs to be an end date to which the mining company is accountable.

For farming properties caught up in a Mining Application, a definite time frame (with no extensions allowed other than in exceptional circumstances and with compensation) must be agreed and adhered to by the miner before mining start-up so that landowners do not endure uncertainty as to their future land use without any end date. If after a maximum of 5 years from the exploration lease

grant date, as per current Act, the miner has not completed the necessary approval processes or raised enough capital to proceed with the mine then its lease should be revoked with no further rights granted to that company or any related corporation other than in exceptional circumstances.

Landowners potentially suffer very adverse impacts on their land while subject to mining exploration, including reduction in land value (which can impact on financing or the ability to sell), or the ability to make capital improvements.

GPSA does not support the granting of mineral EL's to two or more miners over the same tenement, nor the continued extensions to existing exploration or mining leases, nor to the proposed increase in security of tenure as outlined in Sections 3.5.1, 3.5.5, 3.5.9, and 3.8 of the discussion paper.

### 3.5.2 Opportunities to streamline the EL renewals and subsequent EL grant processes (p77)

***What opportunities are there to modernise and improve the scope of exploration licences and subsequent exploration licences in South Australia?***

- ***Cross reference: part 5 Mining Act 1971; part 5, Mining Regulations 2011***

Again, GPSA does not support any increase or extension of an EL over and above the 5 year period, as outlined in section 3.5.1 above. GPSA understand that subsequent licences are new tenements and that this may create an issue for miners with regards to their legal and contractual obligations, but as a subsequent licence can be further defined and refined from the original EL, GPSA believes that as such it should be considered a new tenement, deserving the development of a new and more refined PEPR than possibly originally existed with the initial EL.

### 3.5.3 Opportunities to improve the Department's administration of competitive processes for Exploration Release Areas (ERAs) (p77)

***Would the flexibility to share or amalgamate ERA areas with adjacent applications or exploration licences benefit explorers?***

While it may benefit explorers, what is the impact on landowners? As outlined in Section 3.5.1 above, GPSA is concerned by the proposal to increase the flexibility or amalgamate ERA's due to the potential impact on the existing landowner. The possibility of two or more explorers being able to explore for different minerals in the same area requiring the landowner to deal with more than one miner seeking access to the land is untenable and, we believe, would put the landowner under undue stress to negotiate away their exempt land status.

***What opportunities are there to clarify and improve the ERA process?***

- ***Cross reference: part 5 Mining Act 1971; part 5, Mining Regulations 2011***

### 3.5.4 The EL renewals process in specially protected areas (p78)

***Do you agree that repeated consultation between Ministers during the renewal process may not be necessary?***

- ***Cross reference: section 30A(7) Mining Act 1971***

GPSA considers that revoking the need for the Minister for Mineral Resources and Energy and the Minister for Sustainability, Environment and Conservation to consult over the renewal of an EL in specially protected areas may reduce the effectiveness of the environmental considerations required for the renewal to be approved. If DSD can ensure that streamlining the process will not undermine its effectiveness or the protection afforded to specially protected areas, then consideration will be given to accepting this point.

### 3.5.5 Terms of ELs (p79)

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

- ***Cross reference: section 30A(7) Mining** Act 1971*

While GPSA's clear position is that mining on exempt land should not take place under any circumstances other than with the agreement of the landowner, in relation to land currently subject to mining applications, the landowner should have the right to seek a declaration that the land is exempt from mining rather than potential be left in limbo for some years as has been the case with some mining developments in the past. This is because a landowner's property can be substantially devalued while it remains subject to a potential mining application, where it is uncertain whether the land will be considered exempt or not exempt or whether the mine will proceed.

Timeframes are important. Landowners need certainty in this process. They need real and enforceable timeframes for the miner to be accountable to, not continued extensions while the miner sorts out its finances or paperwork. As with all other Development Applications, there needs to be an end date to which the miner is accountable. For farming properties caught up in a mining tenement, a definite time frame (with no extensions allowed other than in exceptional circumstances and with compensation) must be agreed and adhered to by the miner before mining start-up so that landowners do not endure the uncertainty as to their future land use without any end date. If, after a maximum of 5 years from the exploration lease grant date, as per the current Act, the miner has not completed the necessary approval processes or raised enough capital to proceed with the mine then its lease should be revoked with no further rights granted to that company or any related corporation.

### 3.5.6 Forfeiture, and other means for ensuring that explorers meet their expenditure and survey obligations (p80)

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

GPSA supports the 'use it or lose it' forfeiture processes that apply to mineral claims, retention leases and mining leases. GPSA recommends that the same forfeiture processes be applied to exploration licences. Again, this is due to the time some of these EL's have been in place and the fact that the landowner is left in limbo until either the EL expires or the mine commences. A landowner's property can be substantially devalued while it remains subject to a potential mining application in the nature of an exploration licence. Exploration can also involve very invasive works, which can impact on the landowners ability to operate their business or even enjoy their property.

***What type of workable and accessible forfeiture process would explorers and operators benefit from?***

- ***Cross reference: section 69 Mining Act 1971; section 70, Mining Act 1971***

### 3.5.7 The future of mineral claims (p82)

***What benefit do mineral claims provide to the mineral resources industry, and should mineral claims be retained?***

GPSA supports the following quote from page 82 of the Discussion Paper, with regard to streamlining the mineral claims process:

> "The Department is committed to ensuring that any modern tenement structure, with or without mineral claims, will not lead to increased approval times."

However, improving approval times will assist landowners by providing certainty as to whether the mine is going to go ahead or not, and not leave them in limbo unduly. That said, any streamlining of approval times should not be done at the expense of the requirement for extensive community and landowner consultation, and objective analysis of the PEPR or mining lease proposal.

***Could the mineral claim stage be replaced by other regulatory process?***

***What other opportunities are there to modernise mineral claims, or the processes commonly undertaken when establishing a mineral claim?***

- ***Cross reference: part 4, Mining Act 1971; part 3 div 1, Mining Regulations 2011***

As we understand it, at present the various steps in the mining process are that an Exploration Licence (EL) is granted first for a period of 5 years. If the Miner becomes aware of the fact that portion of the EL has a reasonable prospect of recovering minerals for profit they then peg out and negotiate a Mineral Claim (MC) over a particular area of that Land and they are then bound

to apply within 12 months for a Mineral Lease (ML) over that land or the MC expires. The EL will continue to run but if some steps are not taken with regard to the MC it simply lapses. If an ML is applied for it can be over all or, part of the land in the MC.

GPSA recommends that the MC step be retained to ensure the process is robust and that there is a timeframe for within which a ML must be applied for. Without a MC, the miner cannot approach the landowner for access.

### 3.5.8 Opportunities to introduce a more flexible 'generic' mineral lease (p83)

***Would a generic mining lease which covered both minerals and extractive minerals (with flexibility for change) benefit operators?***

***What issues could a generic mining lease create for landowners?***

While it may benefit explorers, what is the impact on landowners? As outlined in Section 3.5.1 above, GPSA is concerned by the proposal to issue generic mining leases that covers both minerals and extractive minerals due to the potential impact on the existing landowner.

The possibility of two or more explorers being able to explore for different minerals and/or extractive minerals in the same area requiring the landowner to need to deal with more than one miner seeking access to the land is untenable and, we believe, would put the landowner under undue stress to negotiate away their exempt land status.

Currently, landowners have access to extractive minerals for personal use. GPSA would be concerned that this right would be negated due to the extractive minerals being sought after by a miner who may then lay claim to all of the resource. Extractive minerals should be left in the hands of the landowner.

***What other opportunities are there to improve or modernise mining leases?***

***Cross reference: part 6 Mining Act 1971; part 4 div 1, Mining Regulations 2011***

If more flexible leases were to be introduced, GPSA would support the Departments view that the following aspects of the existing scheme would not be changed:

- The Extractive Areas Rehabilitation Fund would remain as a fund of last resort for extractive minerals rehabilitation.
- The Ministerial Determinations (MD003, MD006, MD002 and MD005, www. minerals.statedevelopment.sa.gov.au/ ministerial_determinations) would be retained (although appropriately simplified), and application requirements for extractive operations would remain less onerous than minerals type applications (and would be consistent with a risk-based approach).
- Consultation and/or consent from a landowner for the quarrying of extractive minerals would still be required.
- A specific royalty rate for extractive minerals is likely to be retained.

But GPSA also seeks consideration to be given to the following:

- If after a maximum of 5 years from the lease grant date, as per current Act, the miner has not completed the necessary approval processes or raised enough capital to proceed with the mine (either for mineral or extractive minerals) then its lease should be revoked with no further rights granted to that company or related corporation.
- The impact on the landowner of the possibility of two or more explorers to be able to mine for different minerals or extractive minerals in the same area requiring the landowner to need to deal with more than one miner seeking access needs to be re-considered.
- The requirement for progressive rehabilitation as the mine proceeds could lead to issues of timing if different operations, minerals or extractive minerals are sought at the same time.
- A percentage of the Royalty be payable to the local community to compensate for business disruption, and also to assist in the maintenance of local community infrastructure utilised by the mine.

### 3.5.9 Ensuring that lease terms are referable to the mine life (p84)

***What benefits and opportunities do you see in allowing for the grant of mining leases for a term that reflects the predicted mine life?***

GPSA's clear position is that mining on exempt land should not take place under any circumstances other than with the agreement of the landowner. In relation to the term of the mining lease, a landowner's property can be substantially devalued while it remains subject to a potential mining application, especially where it is uncertain whether the mine will proceed or not, and this leaves the landowner in limbo with regard to their personal and business decisions regarding that land.

Timeframes are important. Landowners need certainty in this process. They need real and enforceable timeframes for the miner to be accountable to, there needs to be an end date. Granting the lease term to the end of the mine life, just amplifies this uncertainty. In the first place, the life of the mine is only an estimate, it may end up short or longer so what does that do for the landowner who just wants to get back to business? Also, if the commodity prices fall and the miner mothballs the mine until prices improve, then that could extend the tenure of that mine indefinitely.

For farming properties caught up in a mining tenement, a definite time frame (with no extensions allowed other than in exceptional circumstances and with compensation) must be agreed and adhered to by the miner before mining start-up so that landowners do not endure the uncertainty of their future land use without any end date.

***What term should be the 'maximum' term for which a lease could be granted?***

GPSA does not support granting of the mining lease to the end of the mine life due to the uncertainty that would create in terms of actual end dates and the unpredictability and delays that could occur during the process of extraction.

***What other disadvantages or risks are there to granting mining leases for a term that reflects the predicted mine life?***

- ***Cross reference: section 38(1) Mining Act 1971***

As per above, no further comment.

### 3.5.10 Opportunities to clarify the operation of MPLs (p85)

***What changes can be made to miscellaneous purposes licences to increase the benefits to operators?***

***Are miscellaneous purposes licences still a practical and useful tenement type, or could relevant operations be approved under the associated mining lease?***

***What opportunities are there to improve the miscellaneous purposes licence framework?***

- ***Cross reference: part 8 Mining Act 1971; part 5 div 2, Mining Regulations 2011***

No further comment.

### 3.5.11 Retention status (p86)

***Should we adopt a 'retention status' similar to that under the Western Australian system, and what conditions should restrict that scheme?***

GPSA has concerns with the granting of retention status as it may provide the ability for the miner to delay a mine start up if commodity prices fall or other approval processes are not in place without incurring any costs such as minimum expenditure requirements which currently exist under mineral leases. While GPSA is against mining on exempt land without the landowner's consent, any delay in a mine start up just leaves the landowner in limbo, with no certainty as to when the mine will start or finish, and comes at a considerable cost to the landowner as explained above. This is not supported if that is the case.

Also, what processes or structures would DSD put in place to ensure that "land banking" does not occur?

***What tenements should any 'retention status' apply to in South Australia?***

***Should we consider removing retention leases all together if a 'retention status' was introduced?***

***What other opportunities are there to improve and modernise retention leases?***

- ***Cross reference: part 6A Mining Act 1971; part 4 div 2, Mining Regulations 2011***

### 3.5.12 Special Mining Enterprises (SMEs) and indenture operations (p87)

***What changes can be made to the SME framework to better facilitate major projects?***

Major projects, as with any mining operation, should go through the planning and approvals processes that all mines go through under the Mining Act and other legislation. There should be no fast tracking of major projects, without the appropriate approvals processes in place.

***What improvements could be made to the scope and flexibility of special mining enterprises?***

***What opportunities are there to improve regulation of indentured mining operations in South Australia?***

- ***Cross reference: part 8A Mining Act 1971***

## 3.6 Decreasing tenement assessment times (p88)

***How could the Department further decrease assessment times?***

- ***Cross reference: section 29 Mining Act 1971; section 35, Mining Act 1971; section 41B, Mining Act 1971; section 53, Mining Act 1971***

GPSA cautiously agrees with the need to improve assessment times so that neither the landowner nor the miner are left in limbo for an extensive period. However, GPSA would not like to see approval times decreased at the expense of following due process and ensuring all relevant checks and studies have been completed and assessed.

## 3.7 Providing appropriate flexibility for necessary changes to operations (p89)

***What framework for flexible change would best facilitates the needs of operators and the expectations of the community?***

***What changes to approved operations should give rise to a statutory right for a landowner to be notified, and what changes should give rise to consultation?***

- ***Cross reference: section 34(9) Mining Act 1971; section 35, Mining Act 1971; section 70C, Mining Act 1971; reg. 67, Mining Regulations 2011, reg. 68 Mining Regulations 2011***

As outlined in Section 1.5 above, any change in the approved mining operations should be advised to the landowner and the community before those changes are approved by DSD. Any changes to conditions, access arrangements or mining operations need to have the approval of the affected landowner and any other affected parties. Without that, the change to operations should not be allowed to proceed. Even if they are only minor changes then it is still part of good corporate practice and open communication to ensure all affected are notified. Changes could include size, scope, timing, extractive processes, lease conditions etc.

If these changes are considered major or may lead to substantial new or increased impact that was not considered in the original lease assessment then notification should include a further round of public consultation and/or changes to the PEPR and approval process to ensure all impacts are fully assessed, including environmental, social and business impacts.

Affected parties should have the right to veto or object to any proposed changes until such assessments have occurred and new conditions or compensation negotiated with the landowner and the community.

## 3.8 Providing secure tenure (p90)

***In order to ensure that we have a tenure system that is both robust, modern, and practical, what benefits, opportunities and challenges do you see in:***

- ***allowing for the grant of mining leases for a term that reflects the predicted mine life (up to a maximum of 99 years);***

GPSA's clear position is that mining on exempt land should not take place under any circumstances other than with the agreement of the landowner. However, because a landowner's property can be substantially devalued while it remains subject to a potential mining application, especially where it is uncertain whether the mine will proceed or not or how long it will be active, this leaves the landowner in limbo with regard to their personal and business decisions regarding that land.

Landowners need certainty in this process. They need real and enforceable timeframes for the miner to be accountable to, and there needs to be an end date. Granting the lease term to the end of the mine life just amplifies this uncertainty. In the first place, the life of the mine is only an estimate, it may end up shorter or longer so what does that do for the landowner who just wants to get back to business or adjoining owners who suffer adverse nuisance and other impacts from the mine. Also, if the commodity prices fall and the miner mothballs the mine until prices improve, then that could extend the tenure of that mine indefinitely without any ongoing benefit to the State or the community.

For farming properties caught up in a mining tenement, a definite time frame (with no extensions allowed other than in exceptional circumstances and with compensation) must be agreed and adhered to by the miner before mining start-up so that landowners do not endure the uncertainty of their future land use without any end date.

In addition, the requirement that the miner needs to extend its licence increases the incentive on the miner to comply with its conditions.

Therefore, GPSA does not support granting of the mining lease to the end of the mine life due to the uncertainty that would create in terms of actual end dates and the unpredictability and delays that could occur during the process of extraction.

- ***allowing extended terms for exploration licences (see paragraph 3.5.5); and***

As outlined in Section 3.5.5 above, GPSA does not agree to allowing extended terms for exploration licences. Farmers need an end date and do not want the threat of a mine hanging over their business or their families for an indefinite period.

- ***balancing any extended terms by ensuring rigorous forfeiture or 'use it or lose it' principles (as discussed in paragraph 3.5.6); and***

GPSA does not support any extended terms for mining or exploration leases. GPSA does support the 'use it or lose it' forfeiture processes that apply to mineral claims, retention leases and mining leases. GPSA recommends that the same forfeiture processes be applied to exploration licences. Again, this is due to the time some of these EL's have been in place and the fact that the landowner is left in limbo until either the EL expires or the mine commences. A landowner's property can be substantially devalued while it remains subject to a potential mining application.

- ***ensuring flexibility of operations during extended tenure (see change of operations paragraph 3.7);***

As outlined in Section 1.5 and 3.7 above, any change in the approved mining operations should be advised to the landowner and the community before those changes are approved by DSD. Any changes to conditions, access arrangements or mining operations need to have the approval of the affected landowner and any other affected parties. Without that, the change to operations should not be allowed to proceed. Even if they are only minor changes then it is still part of good corporate practice and open communication to ensure all affected are notified. Changes could include size, scope, timing, extractive processes, lease conditions etc.

If these changes are considered major or may lead to substantial new or increased impact that was not considered in the original lease assessment then notification should include a further round of public consultation and/or changes to the PEPR and approval process to ensure all impacts are fully assessed, including environmental, social and business impacts.

Affected parties should have the right to veto or object to any proposed changes until such assessments have occurred and new conditions or compensation negotiated with the landowner and the community.

- ***any simplified grant process for leases where the environmental assessment of any operations is left to the PEPR stage (with appropriate assessment processes being introduced for that stage).***

***What other opportunities are there to provide improved security of tenure?***

- ***Cross reference: section 30A(1) Mining Act 1971; section 38(1), Mining Act 1971; section 41D(1), Mining Act 1971; section 55(1), Mining Act 1971; section 70B, Mining Act 1971***

## 3.9 Creating consistent processes for the surrender, suspension and cancellation of tenements (p91)

***Would consistent surrender, cancellation and suspension processes improve the current framework (subject to appropriate environmental, social and economic accountability obligations)?***

GPSA cautiously supports a consistent surrender, cancellation and suspension process for the relinquishment of EL's and ML's provided all outstanding obligations have been met. Knowing what the process is for cancellation or suspension of licences and leases would provide landowners with some degree of certainty that there actually is a process and it will be followed. Steps would need to be in place to ensure that all environmental, social, financial and community obligations had been met or where able to be covered by the EARF, prior to cancellation of the lease/licences. No liability should be left to be met by the community or the landowner.

***How can the current surrender processes be updated to ensure that environmental and financial liabilities are appropriately addressed before a surrender application is accepted?***

No comment at present time.

***What opportunities are there to improve surrender, cancellation or suspension processes?***

- ***Cross reference: section 26(4) Mining Act 1971; section 33, Mining Act 1971; section 56, Mining Act 1971; section 62, Mining Act 1971; section 82, Mining Act 1971; reg. 45, Mining Regulations 2011; reg. 59, Mining Regulations 2011***

No comment at present time.

## 3.10 Regulating moss rock removal (p92)

***Do you agree that the NRMA Act provides a more appropriate framework for the regulation of moss rocks in South Australia?***

GPSA supports that the NRMA Act provides a more appropriate framework for the regulation of moss rocks in South Australia and should be transferred to that Act.

## 3.11 Making sure that appropriate statutory powers are held by the Director of Mines and the Chief Inspector of Mines (p93)

***What opportunities are there to improve the delegation of statutory powers, and to improve the suite of powers granted under the various mining acts?***

- ***Cross reference: section 12 Mining Act 1971***

We understand that sub-delegation of the Director of Mines powers can only be done with the Minister's consent in the current Act. While the delegation of statutory powers is common in all legislation, just because DSD has inefficient intergovernmental communication processes to deal with sub-delegation, this does not mean these powers should be removed from the Minister. When talking about approving mines and ensuring environmental obligations are met, these are important issues that should not be delegated to junior public servants just to make the process more efficient. DSD should fix the inefficiencies of the communication processes, not the powers of the Minister.

## 3.12 Making sure that the Department's cost recovery is competitive and sufficient (p94)

***What opportunities are there to better balance the Department's cost recovery model?***

- ***Cross reference: reg. 109 Mining Regulations 2011; schedule 1, Mining Regulations 2011***

As stated in Section 2.1.1 above, GPSA recommends that a cost recovery framework be included in the legislation that ensures that all of DSD's compliance activities are funded on a cost per service basis by the explorer or miner.

As with Fisheries Management in this State, the mineral resources are a common property resource that a select few have been granted access to mine. Therefore, as with Fisheries management principles, the cost of the management of those fisheries are funded by those who benefit the most from accessing this resource, the fishing industry. So too should be the case for the mining industry. As the miner is the one to benefit from the extraction and sale of these resources, it should be made to cover the cost of the management, compliance and approvals process.

## 3.13 The collection and use of royalties, and their importance to the State (p95)

***Should an estimated assessment process be adopted?***

***Should any changes be made to the 'similar sales' royalty provisions?***

***Where 'similar sales' cannot be identified, how should operators determine an appropriate value for the mineral?***

***What other opportunities are there to modernise and improve the royalty scheme?***

***Cross reference: part 3 Mining Act 1971; section76, Mining Act 1971; part 2, Mining Regulations 2011***

As outlined in Section 1.4 above, the extraction of minerals provides a once off return to the State and community through royalties. GPSA considers that the current level of Royalty payments is not only too low but the recent Ministerial decision to waive the first 5 years of Royalty payments, means the benefits are not being realised by the State and especially not by the local community who are the most affected.

Since the release of the Mining Act Review Discussion paper, the Government has acknowledged that there is a detrimental impact on the landowner from exploration and mining through the recent Government announcement regarding allocating 10 per cent of Royalties to landowners whose property overlies a petroleum field which is brought into production.

GPSA is of the view that the level of the royalties, which is the only direct benefit/return that the State receives, should be increased and, in line with recent State Government announcements regarding gas Royalties, provision should be made to allocate a proportion of that Royalty to the neighbouring landowners who are adversely affected and the local community.

While this announcement of a 10% Royalty to landowners from gas production is an acknowledgement by the Government of the negative impact on landowners from such a discovery, GPSA would like to have a further discussion on royalties in terms of the amount, and when the Royalty is accessed.

GPSA believes consideration should also be taken into account as to the beneficiaries of the Royalty payments. Currently, Royalties are allocated to general revenue, with little or no direct benefit accruing to the communities most affected.

GPSA further recommends that a share of the Royalties, over and above the State Government allocation, be allocated to the local community for their benefit and use, and as compensation for the maintenance and investment in infrastructure such as roads and rail that the miner are subsequently accessing. The communities that have invested in such essential infrastructure and need to continue to maintain it, would therefore receive a return on their investment which can be channelled towards maintenance or new infrastructure investment.

In line with our desire to protect agricultural land from being mined and lost to production, we recommend that consideration be given to basing the level of the Royalty on the value of the land as a reflection of the value of the farming/production system of that land and any ancillary industries attached to that. GPSA recommends that the level of the Royalties paid be increased on a sliding scale, with higher Royalties being 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 the State for the loss of the most arable land and still retain a benefit for mining on non-arable land.

GPSA accepts that a Royalty may not be feasible for mining projects already underway, given investments based on current Royalty formula, but it could be introduced in relation to existing mining applications (including explorations) where there has been no major work or expenditure undertaken.

Therefore, GPSA recommends that a proportion of the royalty payments due to the SA Government should be returned to the local communities. Any other payments due, over and above this, should be paid as a priority to the SA Government for the express use of covering any/all mine rehabilitation costs.

Royalty audits should also be conducted on a regular basis and those found non-complying penalised appropriately and “named and shamed’

## 3.14 Ensuring we have up-to-date and relevant scientific data (p96)

***What opportunities are there to collect and share important geological, environmental, planning and regional information to ensure we have a fully informed industry, community and landowners?***

***What protections or consultation requirements should exist around the collection and sharing of sensitive information, e.g. commercially confidential information, or Aboriginal heritage information?***

GPSA would support stringent publicity requirements with regard to geological, environmental, planning and regional information to ensure that everybody is fully informed on precisely what is occurring, except to the extent that it is commercially sensitive in which case those parts, and only those parts, should be redacted.

### 3.14.1 The importance of a strong Geological Survey (p97)

***What other opportunities are there to clarify section 15, and other interacting legislation, to ensure GSSA can optimise their programs?***

- ***Cross reference: section 15 Mining Act 1971***

No comment at present time.