GRAIN PRODUCERS SA
The voice of South Australian growers

Grain Producers SA Ltd
Level 2, 180 Flinders Street Adelaide SA 5000
PO Box 7069 Hutt Street Adelaide SA 5000
P: 1300 734 884 F: 1300 734 680
ABN: 43 154 897 533
grainproducerssa.com.au

Shannon Riggs
Parliamentary Officer
Select Committee on Land Access
GPO Box 572
ADELAIDE SA 5000

28 May 2021

Dear Mr Riggs

Thank you for the opportunity to make a submission to the Select Committee on Land Access.

Grain Producers SA's (GPSA) principal interest in this matter relates to South Australia's cultivated cropping land and the interaction between producers and mining companies.

GPSA has a long history of policy advocacy in this area, including in relation to the *Leading Practice in Mining Review*. GPSA's Mining Act Review Taskforce has previously identified a number of areas for statutory reform, and have strongly advocated for an independent review of South Australia's resources law.

South Australia grows about four million hectares of grain crop each year, including wheat, barley, lentils and canola. Farmgate value totals $1.7 billion. Yields continue to grow whilst maintaining minimal impact on South Australia's clean soils and water resources, with the grain industry set to contribute $6 billion to gross food revenue by 2030.

Attached for your consideration is a response to the terms of reference of the Select Committee on Land Access, where GPSA has identified as of concern to our industry. On behalf of South Australian grain producers, GPSA will continue to advocate for the need to balance primary industries with competing land uses such as mining, to protect the sustainability of primary production for future generations.

GPSA stands ready to participate in a future public hearing of this important inquiry and welcomes ongoing dialogue with members of the Select Committee. Please do not hesitate to contact me should you have any further questions in relation to our submission.

Yours sincerely

Caroline Rhodes
Chief Executive Officer

1. BACKGROUND

On behalf of the farm sector, Grain Producers SA (GPSA) first became involved with reform to SA's mining law through the consultation process associated with the *Leading Practice in Mining Review* which commenced upon its announcement on 27 September 2016.

In its 2018 election policy statement, GPSA identified the need to balance primary industries with competing land uses. This statement was released to all major political parties for response. In the document, GPSA also advocated for an independent review of the *Mining Act 1971* ('the Act').

Following the introduction of the *Statutes Amendment (Mineral Resources) Bill 2018*, GPSA convened a Mining Act Review Taskforce that included representatives from across the primary industries sector including GPSA, Livestock SA, South Australian Dairyfarmers' Association, and the Winegrapes Council, as members of Primary Producers SA (PPSA).

The Taskforce assisted GPSA in the development of the following submissions and policy documents:

- 10 October 2018: GPSA provided the Small Business Commissioner with a submission on the Mining and Resources Industry Land Access Dispute Resolution Code. Read GPSA's submission here.
- 19 November 2018: GPSA provided the Department for Energy and Mining with a submission on proposed draft regulations concerning the land access regime. Read GPSA's submission here.
- 28 February 2019: GPSA provided the Minister with a detailed mining policy document that sets out GPSA's required legislative amendments. Read GPSA's Mining Policy document here.
- 10 April 2019: GPSA, PPSA, and Livestock SA reiterated their call for an independent review of the state's mining laws after learning that the Bill had again stalled. Read the media release here.

The Taskforce formed the view that the Bill left substantive issues unresolved for agriculture. As such, GPSA did not the support Bill as it stood then and provided a comprehensive list of amendments to improve the Government's legislation. On 3 July 2019, GPSA responded to the passage of changes to the Mining Bill in the House of Assembly. Read the media release here.

GPSA also updated its Mining Policy document to reflect the passage of the Bill through the House. Read the updated document here.

Notwithstanding a range of minor concessions achieved, GPSA expressed its disappointment upon the passage of the Bill, noting in a media release[1] at the time that:

a. the Bill failed to meaningfully address the imbalance between primary industries and competing land uses; and

b. South Australian landholders will be saddled with a legal framework which will put prime agricultural land at risk.

In conjunction with the *Statutes Amendment (Mineral Resources) Act 2019*, the Taskforce determined that the draft regulations provided incremental improvement for landowners, while other aspects required further refinement. Accordingly, on 11 September 2020 GPSA provided a written submission to the Department for Energy and Mining's (DEM) consultation on draft mining regulations.

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[1] http://grainproducerssa.com.au/latest/media-releases/passage-of-mining-bill-a-disappointing-outcome-gpsa/

2. EXECUTIVE SUMMARY

GPSA considers that a structural imbalance remains between the primary production and resources sectors in so far as it relates to those matters governing land access under South Australian law.

We believe this imbalance will only be properly and fully resolved through a whole-of government approach that considers the full spectrum of land use, development, and land access.

The land access process in relation to mineral and petroleum resource exploration and development for primary producers is burdensome, stressful, and complex. While the Act establishes rights with regard to access to land and provide for compensation for any resulting damage, these do not provide sufficient certainty or clarity, nor protections for landowners.

Any protections for primary producers are in reality superficial, in that the system provides resource companies with a general right of access subject to the landowner demonstrating to a court that the proposed operations would likely result in substantial hardship or substantial damage to the land.

Furthermore, even in respect of exempt land, the mechanisms permit the protections to be waived by a relevant court, with the possibility of conditions surrounding access imposed by the court. These processes are time consuming and costly, and the Act provides only moderate liability for resource companies to cover associated costs to landowners.

In this submission, GPSA has outlined a range of improvements to South Australia's land access regime for the Committee to consider. Many of these issues have been dealt with previously, and quite extensively, in GPSA's 28 February 2019 response to the then *Statutes Amendment (Mineral Resources) Bill 2018*- see **attached** document titled *'Proposed legislative amendments to the Mining Act 1971 as amended by the Statutes Amendment (Mineral Resources) Bill 2018'* (**'GPSA's 2019 Bill comments'**).

GPSA encourages the Committee to benchmark South Australia's existing land access arrangements against leading practice as identified by the Productivity Commission (which in many cases are already in place in other Australian jurisdictions) in formulating recommendations for fair and equitable legislative reform.

GPSA will continue its advocacy on this issue and stands ready to assist the Committee in its deliberations.

3. TERMINOLOGY

For the avoidance of doubt, in this submission:

Cultivated cropping land means land used as a cultivated field.

The Department means the Department for Energy and Mining.

Landowners means the owners of land vested in fee simple.

Resources entity or **resources entities** means tenement holders.

Resources means mineral resources within the scope of the Act.

4. GPSA POLICY PRINCIPLES

GPSA Policy is determined by the GPSA Board after considering input from industry, through close involvement with grain producers, grain production groups, grains sector groups and the conduct of regular regional and state industry forums.

GPSA's Mining Act Review Taskforce developed a range of principles which underpinned GPSA's approach to the draft regulations put in 2020. GPSA's advocacy focuses on ensuring that these principles are adopted by the Committee and incorporated into the land access regime.

Given the innate structural imbalance between the primary production and resources sectors that is inherent in the Act, GPSA approached DEM's Mining Regulations consultation from the perspective of improvements to the process of land entry, as well as building landholder understanding.

GPSA welcomes the Select Committee's consideration of the below policy principles as the 'lens' through which GPSA views land access and mining on agricultural land.

1. **Activity**

   Ensure that:

   1.1. Resources activity on primary production land is only undertaken by fit and proper operators, having regard to the technical, operational, financial, and resourcing capacity, and history of compliance and practices of the operator.

   1.2. The rights and responsibilities of resource entities and landowners are clearly understood and provide assurance of permissible activity.

   1.3. Full cost recovery of the Department is undertaken to ensure adequate resourcing.

2. **Information & Consultation**

   Ensure that:

   2.1. Information provided by Government and resource entities is timely, clear, accessible, in plain English, and relevant to actual or proposed operations on cultivated cropping land.

   2.2. Landowners have priority access to information as to actual or proposed operations on their land, subject to market disclosure requirements.

   2.3. Landowners are afforded reasonable periods of time within in which to respond, which take into account factors which may affect a landowner's ability to respond (such as cropping).

   2.4. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted before land access occurs.

   2.5. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted on the proposed operations on their land, how the land will be used, when the operations will commence and cease, when the land will be rehabilitated, and the standard of rehabilitation.

   2.6. Adjoining landowners are reasonably informed and respectfully, meaningfully, and properly consulted on relevant aspects of proposed operations where they might reasonably impact the use or enjoyment of their land.

2.7. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted prior to the surrender of a tenement.

3. Agreement making and disputes

Ensure that:

3.1. All requests of landowners are made in writing and include clear information on their rights and responsibilities, including:

3.1.1. Mandatory dispute resolution, and

3.1.2. Advising landowners to seek legal advice and their right to compensation.

3.2. Landowners have clear and advance notification of a request for land entry.

3.3. Landowners are adequately compensated for their time and the cost of obtaining advice from professionals (including legal, accounting and valuation professionals)

4. Compliance

Ensure that:

4.1. The Department strongly enforces compliance, including by declining to grant licenses and leases where there is a history of non-compliance or where the resources entity does not possess the capability or capacity to ensure compliance.

4.2. The Department regularly, strongly, actively, and transparently monitors and reports against compliance to strengthen confidence of stakeholders, including by providing notice to landowners in any such failure to comply.

4.3. Risk-based audits and investigations are undertaken on a periodic basis.

5. Operating approvals

Ensure that:

5.1. Consideration be given to all the outcomes that are expected to occur in connection with proposed operations, including the impact on businesses, families, neighbours, and communities, local infrastructure (including roads), and local government.

5.2. The Department has the power to vary, impose, or revoke conditions relating to operations on cultivated cropping land where circumstances change during the time-based period of authorised operations.

ALIGNMENT WITH NATIONAL POLICY PRINCIPLES

GPSA's policy principles align with the National Farmers' Federation's (NFF) policy position on both Land Use and Prime Agricultural Land.

NFF Land Use Policy

The land use decisions of governments must:

- Recognise agriculture as a pillar of our local, state, territory and national economies;
- Support growth in the agriculture sector enabling farmers to intensify, improve productivity, and change enterprises;
- Ensure that any change in land use is compatible with agriculture by ensuring that water resources are protected, food safety and biosecurity are not compromised and that the ability of farmers to implement modern farming practices is not restricted;
- Be based on up-to-date land use trend information and the best scientific knowledge;
- Ensure that farmers have the right to genuinely influence decisions about the activities that happen on their land; and
- Recognise the role sustainable and profitable agriculture can play in preserving Australia's biodiversity and managing our natural resources.[2]

Read the full NFF Land Use Policy here.

NFF Policy Position on Prime Agricultural Land

The agricultural sector is seeking that all levels of government:

- Recognise the important role that the agriculture sector plays — and will continue to play — in the economies of our local communities, our states and territories and our nation;
- Develop a national agriculture strategy to guide Australia's vision for long term and sustainable production of food and fibre;
- In acknowledgement of farmers' local understanding, respect the right of an individual farmer to determine his/her own priority land use within existing planning requirements;
- Strive for coexistence between land use practices where possible;
- Recognise the importance of consulting local communities. They have a deep understanding of local issues, challenges and opportunities, especially for projects of significant scale;
- Recognise that prime agricultural land is an irreplaceable resource that must be protected from permanent loss for agricultural use;

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[2] National Farmers Federation, 'Land Use Policy' (March 2017) <https://nff.org.au/wp-content/uploads/2020/12/2017.03.08_Policy-Summary_NRM_Land-Use.pdf>.

- Invest in ongoing research efforts to improve land productivity and sustainable intensification;
- Invest in resources that provide stronger scientific knowledge base to support regulators who make decisions on developments which have the potential to impact prime agricultural land;
- Safeguard and invest in infrastructure to maximise the potential and sustainable intensification of agricultural land and enables greater control of supply chains, including water infrastructure;
- Build a shared, public understanding of prime agricultural land and the role it plays in the production of food and fibre, and the broader environmental and social benefits it provides for farmers and the broader community; and
- Provide certainty in the regulatory framework to support long-term investment for the sustainable development and management of prime agricultural land.[3]

Read the full NFF policy position on Prime Agricultural Land here.

[3] National Farmers Federation, 'Prime Agricultural Land' (October 2019) <https://nff.org.au/wp-content/uploads/2020/09/2019.10.16_Policy-Summary_NRM_Prime-Agricultural-Land.pdf>.

5. RESPONSE TO TERMS OF REFERENCE

(A) LAND ACCESS REGIMES AS THEY RELATE TO MINING AND MINING EXPLORATION UNDER THE MINING ACT 1971, THE OPAL MINING ACT 1995 AND THE PETROLEUM AND GEOTHERMAL ENERGY ACT 2000.

Overview

GPSA has played a critical role in advocating for a better balance between agriculture and resources as part of the debate on the *Statutes Amendment (Mineral Resources) Bill 2018*.

GPSA could not support the Bill as presented and provided a comprehensive list of amendments to improve the Government's legislation. The agriculture sector was able to secure some incremental improvements to SA's mining law, *inter alia*:

- 42 days' notice for land entry will now be required from 1 January 2021; and
- Statutory compensation rights for legal advice on receiving a notice of entry has grown from $500 to $2,500.

However, the *Mining Act* 1971 (as amended) leaves substantive issues unresolved for agriculture. Such issues include:

Increasing the distance from structures - Section 9(5)

This section sets out that land which is exempt from authorised operations, unless that exemption is waived. This section also prescribed the distances from a building or structure used for an industrial or commercial purpose and from a spring, well, reservoir or dam.

GPSA believes that the distances in the *Mining Act* 1971 fall far short of community expectations and do not recognise the fact that the privacy and amenity of a place of residence or a building or structure used for an industrial or commercial purpose (valued at equal to or above the prescribed amount - $2,500) can be severely hampered by exploration and recovery operations. Similarly, it does not recognise the impact on areas used for the grazing of livestock, particularly water points such as a dam.

GPSA's members rightly expect that due consideration is given to the use of these structures and adequate buffer zones are established. GPSA's amendments to section 9(5) are designed to increase the allowed distance between operations and places of residence.

Refer to GPSA's 2019 Bill comments.

Compensation arrangements, including costs - Sections 9AA and 61

Sections 9AA (for exempt land) and 61 (for land more broadly) sets out the right of compensation for landowners and the process in which that compensation is determined. These sections are of critical importance if landowners are to be properly protected following authorised operations by a tenement holder.

GPSA believes that compensation to landowners is inadequate. Section 9AA and 61 need to be amended to strengthen and clarify the rights of landowners to compensation. This needs to include:

1. Compensation being specifically provided for in respect of legal advice and other such advice incurred reasonably as a result of a land access request and/or a land access dispute (noting that the provisions only suggest there may be compensation for this issue and the limits around quantum).
2. Additional factors which ought to be considered when determining the appropriate level of compensation payable to a land owner, including but not necessarily limited to:
   (a) any negative business impact;
   (b) any negative reputational impact;
   (c) any negative impact on a residence and residential amenity;
   (d) any negative impact on neighbouring property, including a residence and residential amenity;
   (e) any loss in property value; and
   (f) any anxiety or stress imposed on the landowner.
3. Allowance being made for the fact that the landowner is not a willing seller. There needs to be a substantial uplift for compensation payable based on fair market value.

In addition, GPSA believes that nearby properties affected by authorised operations ought to be able to seek compensation for consequential loss suffered, which could include impacts on amenity and impacts on farming operations.

Refer to GPSA's 2019 Bill comments.

Tenement holder bonds - Section 62

Section 62 allows for the Minister to establish bonds payable by a tenement holder in order to compensate for any liability owed by the tenement holder or to rehabilitate land affected by authorised operations.

Currently, this bond is discretionary. GPSA believes that landowners deserve certainty in relation to compensation owed to them.

GPSA's amendments seek to make this bond mandatory on all tenement holders conducting any form of authorised operation under the Act. GPSA is aware of landowners who have not been paid compensation for mining operations, despite there being a legal obligation to do so. A compulsory bond would mitigate this risk and ensure that landowners are able to access any compensation owed, even in the event of default.

GPSA recognises that this will add an upfront layer of cost to tenement holders, but it must be recognised that tenement holders should not be conducting any form of activity without the financial resources to rectify the impact of that activity and compensate the landowner for any costs or inconvenience incurred.

Refer to GPSA's 2019 Bill comments.

Rehabilitation Funds

Section 62AA enables the Minister to establish a rehabilitation fund payable by a tenement holder in order to reinstate or rehabilitate land affected by authorised operations. This fund is discretionary.

GPSA believes, for the reasons outlined above (see section 62) that such funds should be mandatory on all tenement holders conducting authorised operations.

Uplift

Section 62A allows a landowner to, following a court order, have a tenement holder purchase land where the landowner's use of it is substantially impaired. GPSA believes that there should be an uplift in the value of this in order to appropriately compensate the landowner for the inconvenience, as well as costs, tax, or other liabilities that may result from the acquisition.

The Act's provisions for compensation should be further investigated by the Select Committee. GPSA notes the Rowan Ramsey MP, Federal Member for Grey, had previously developed a policy proposal to establish a 'Protected Minimum Offer' as a legislated compensation scheme for landowners such that:

> *"Should a mining approval be granted over a property to commence operations the proponent must make a minimum offer of three times (suggested figure for the purposes of this discussion paper) an independent valuation of the whole contiguous property."* [4]

Refer to GPSA's 2019 Bill comments.

RECOMMENDATION:

1. **The Select Committee investigate those matters set out in the GPSA's 2019 Bill comments document, including:**
    - **Consideration being given to the use of structures and the need for adequate buffer zones;**
    - **Strengthening and clarifying the rights of landowners to compensation;**
    - **Expanding compensation for nearby properties affected by authorised operations;**
    - **The imposition of mandatory bonds on all tenement holders conducting any form of authorised operation under the Act;**
    - **The imposition of a mandatory rehabilitation fund; and**
    - **The provision of an uplift in respect of consideration payable for land acquisition.**

[4] Ramsey (2015) *Agriculture and Mining: How to manage co-existence,* Discussion Paper (unpublished).

(B) SUCH OPERATIONS OF THE DEPARTMENT FOR ENERGY AND MINING AS MAY RELATE TO, OR BE AFFECTED BY, LAND ACCESS REGIMES;

As noted in the Terms of Reference for the Productivity Commission Study into Resources Sector Regulation ('the Productivity Commission's Report'), regulation plays a critical role in ensuring that resources projects across Australia meet community and environmental management expectations.[5]

In cultivated cropping areas South Australia's mining law has fallen short of those expectations.

GPSA has previously identified, and continues to have, concerns with the Department's dual role as both proponent and regulator of SA's resources sector.

Compliance and Enforcement

As set out in Section 4, the Policy Principles or 'lens' through which GPSA believes this issue needs to be considered is ensuring as follows:

1. The Department strongly enforces compliance, including by declining to grant licenses and leases where there is a history of non-compliance or where the resources entity does not possess the capability or capacity to ensure compliance.
2. The Department regularly, strongly, actively, and transparently monitors and reports against compliance to strengthen confidence of stakeholders, including by providing notice to landowners in any such failure to comply.
3. Risk-based audits and investigations are undertaken on a periodic basis.
4. The Department has the power to vary, impose, or revoke conditions relating to operations on cultivated cropping land where circumstances change during the time-based period of authorised operations.

On behalf of our members, GPSA has previously raised concerns in relation to the enforcement of existing aspects of mining law, including regulations, and operating approvals (including Program for Environment Protection and Rehabilitation ('**PEPRs'**).

As with many aspects of the *Mining Regulations 2020*, the prescribed requirements will only be effective if the regulator has the appropriate capacity, industry intelligence, and motivation to ensure adherence.

We note that other groups also share similar concerns with respect to enforcement. In its submission to the Productivity Commission, the Australian Environment and Planning Law Group stated that: *"… there is anecdotally very little monitoring undertaken by regulatory authorities and similarly very little compliance action taken in respect of any breaches discovered."*[6]

Additionally, GPSA raised the transparency and accessibility of compliance and enforcement undertaken by the Department during the consultation process with the Productivity Commission. GPSA notes the Productivity Commission's statements in regard to this aspect:

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[5] Productivity Commission, *Resources Sector Regulation, Study Report* (November 2020) https://www.pc.gov.au/inquiries/completed/resources/report/resources.pdf iv ('*Productivity Commission's Report'*).
[6] Ibid 199.

"While regulators in all jurisdictions produce reports summarising their compliance activities, the format and content is not always accessible for a lay audience. It can be difficult for the public to get a picture of the most consequential activities undertaken by a regulator and their rationale for doing so, and to assess the overall state of play regarding compliance monitoring and enforcement. As a result, communities may have a limited understanding of how regulators are discharging their compliance and enforcement responsibilities, which risks damaging confidence in the regulatory system." [7]

RECOMMENDATION:

2. **The Select Committee investigate an independent regulatory body for the mining sector to ensure the upkeep of the Mining Register as well as ensuring an independent assessment of mining or mining exploration applications.**

Waiver of Exemption and Land Access more generally

As set out in Section 4, the Policy Principles or 'lens' through which GPSA believes this issue needs to be considered is ensuring as follows:

1. The rights and responsibilities of resource entities and landowners are clearly understood and provide assurance of permissible activity.
2. Information provided by Government and resource entities is timely, clear, accessible, in plain English, and relevant to actual or proposed operations on cultivated cropping land.
3. Landowners have priority access to information as to actual or proposed operations on their land, subject to market disclosure requirements.
4. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted before land access occurs.
5. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted on the proposed operations on their land, how the land will be used, when the operations will commence and cease, when the land will be rehabilitated, and the standard of rehabilitation.
6. All requests of landowners are made in writing and include clear information on their rights and responsibilities, including:
   - 6.1. Mandatory dispute resolution; and
   - 6.2. Advising landowners to seek legal advice and their right to compensation.

Section 9AA of the Act establishes a process by which a tenement holder may seek access to cultivated cropping land through a waiver of the benefit of exemption. Access may be by agreement in writing with the landowner, or through an order of an appropriate court.

A Court may refuse an application for a waiver of the benefit of exemption if the information set out in Regulation 6 is not provided to the landowner. Regulation 6 established that this information includes:

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[7] Productivity Commission's Report (n 4) 202-203.

1. a copy of an approved PEPR;
2. a copy of the relevant proposal to conduct operations on the exempt land;
3. a copy of a response from the tenement holder to any submissions to the Minister in relation to an application to conduct mineral operations on the land; and
4. information sheets determined by the Minister.

By providing that a court may refuse an application for a waiver of the benefit of an exemption if the prescribed information is not provided, the Act in effect establishes a minimum standard for the provision of information to landowners.

Many (if not nearly all) cultivated cropping landowners will be unfamiliar with resource operations and mining law. The Productivity Commission's Report notes that landowners often lack capacity and knowledge when engaging with resources entities.[8] Specifically, the Report supports that "*Many landholders enter land access negotiations with resources companies with little prior experience or relevant knowledge. This information asymmetry provides a basis for government intervention*."[9]

We consider it essential that the Information Sheets established by the Minister provide landowners with a clear, accessible, and plain English understanding of their rights. We also consider it essential that landowners are reasonably informed, through the provision of information by the resources entity, before land access occurs (whether by court order or agreement).

It is GPSA's position that the information required by Regulation 6 is relevant to proposed operations on cultivated cropping land. The information in conjunction with other requirements under the Act in relation to entry to land under sections 58 and 58A ensures that landowners have sufficient time and information to consider the request and the exact nature of the operations as set out in the PEPR and the relevant proposal.

We note that the Information Sheets as currently produced provide a general overview of exempt land, rights of objection, agreement making, compensation generally, compensation for legal fees, mediation, the court process for a waiver of exemption, and the RBS Landholder Information Service.

It is the view of GPSA that, while the Information Sheets generally meet the standard we seek under Policy Principle 2.1, continuous improvements are required to render this information useful to landowners and could help to relieve any angst that may exist and build social license.

Furthermore, we believe that there should be a standard template agreement between landowners and resources entities to provide a comprehensive starting point for agreement making. The "*Engagement, negotiating, and agreement making - A guideline for explorers, miners and landowners*", resource only includes an agreement making checklist.

We do not consider this to be sufficient to meet the needs of landowners with substantial unfamiliarity with mining law and practice.

If a standard template is agreed upon by the resources industry and relevant landowner industries, this would potentially speed up the process, reduce angst, and improve economic outcomes for all parties. It

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[8] Productivity Commission's Report (n 4) 38.
[9] Ibid.

would also assist in minimising the legal costs involved as it would ensure there is a baseline standard which is afforded to all landowners and from which further negotiations could commence.

Any standard template agreement could then be referred to in the relevant Information Sheets.

Furthermore, the Information Sheets do not draw a clear distinction between the rights of access for exempt and non-exempt land. The current process and Information Sheets cause confusion as it is not made clear that:

1. when a notice for entry is provided that the only basis upon which it can be opposed is by lodging a Notice of Objection to entry and that this Notice of Objection is an objection to the mining process taking place on the basis that you will suffer substantial hardship or there would be substantial damage to the land as a result of the operations (on which there is no guidance);
2. the provision of a notice and proceeding with a Notice of Objection is separate to the process of commenting on the mining application itself;
3. the Notice of Objection process is an additional process to the process in respect of exempt land; and
4. even if a resources entity obtains approval it, cannot proceed without coming to an agreement in respect of the exempt land as the resources entity has to obtain a waiver.

GPSA's notes the inadequacy of landowner's entitlement to compensation for professional advice costs, which is explored under Term of Reference (D), under 'Professional Advice – Mining Act'.

RECOMMENDATIONS:

3. **The Select Committee review the adequacy of the information supplied to landowners by DEM, and recommend that:**
    a. **Communication material (such as Information Sheets) explicitly encourage landowners to seek legal advice on the terms of access and compensation offered by a resources entity.**
    b. **Landowners be clearly advised by DEM to seek professional assistance with the drafting or negotiation of a land access agreement.**
    c. **A standard template agreement between landowners and resources entities be developed.**
4. **The Select Committee investigate the adequacy of the landowner's entitlement to costs.**

(C) THE PRACTICES OF INTERSTATE AND OVERSEAS JURISDICTIONS AS THEY RELATE TO BALANCING THE RIGHTS OF LANDOWNERS AND THOSE SEEKING TO ACCESS LAND IN ORDER TO EXPLORE FOR OR EXPLOIT MINERALS, PRECIOUS STONES OR REGULATED SUBSTANCES;

GPSA supports the consideration and adoption of the practices of interstate and overseas jurisdictions as they relate to creating a better balance between the rights of landowners and those seeking to access land for mineral exploration or exploitation.

GPSA urges the Select Committee to consider Queensland and Western Australia's land access regimes and broader protection of agricultural land use policy, as case studies of best practice elements.

QUEENSLAND

Queensland's land access regime contains protective mechanisms for areas of regional interest and has created safeguards for landowners through establishing a more onerous land access process for resource companies, including mandatory agreement templates, additional alternate dispute resolution and incentivised negotiation structures.

This case study considers how Queensland's land access regimes achieve a better balance between the rights of landowners and those seeking to access land to explore for or exploit minerals in regard to:

(1) regional planning laws; and

(2) mineral and energy laws.

Queensland's Regional Planning Law

In recognition of the need to ensure greater protection for agricultural land from certain mining and petroleum exploration and development activities, Queensland originally implemented the *Strategic Cropping Land Act 2011* (Qld), which is now encompassed by the *Regional Planning Interests Act 2014* (Qld).[10]

The RPI Act achieves this by adding an additional layer of approval for projects to be undertaken on areas of regional interest, including strategic cropping land. Specifically, the RPI Act imposes an obligation that resource companies apply for a regional impact development approval (RIDA) in order to undertake resource activities in areas of regional interest (ARIs), with the intention that high output agricultural land has a higher protection status, in effect ensuring that the level of protection afforded to the land is relative to the economic output of the land.

This affords greater protection and certainty to industries which are commonly subject to competing land use disputes.

This protection creates a better balance between landholders and mineral companies seeking access to their land by ensuring that such activities are assessed against their potential impact on areas of 'regional interest'.

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[10] *Strategic Cropping Land Act 2011*(Qld); *Regional Planning Interest Act 2014* (Qld).

Overview of relevant legislation

Regional Planning Interests Act 2014 (‘*RPI Act*’)

The RPI Act imposes an obligation that resource companies apply for a regional impact development approval (RIDA) in order to undertake resource activities in areas of regional interest (ARIs).

This includes Strategic Cropping Land defined by s 10(2) of the RPI Act as “land which is likely to be highly suitable for cropping, because of a combination of the land's soil, climate and landscape features.” Further, Strategic Cropping Area (SCA) pursuant to s 10(1) of the RPI Act consists of areas shown on the SCL trigger map as strategic cropping land.

The potential impact on the area of regional interest and the attributes of that area are assessed against assessment criteria which are contained in the RPI Regulation.

There are three required outcomes for the SCA:

- No impact on SCL in the SCA.
- No material impact on Strategic Cropping Land (SCL).
- No material impact on SCL in an area in the SCA.

Prescribed solutions encourage voluntary agreement with landowners, locating the resource activity on land not used for SCL, minimising the construction and operation footprint of a resource activity, and no permanent impact on more than 2 per cent of the SCL on the property.[11]

Exemptions in the RPI Act that are applicable to SCA include: agreement of the landowner and no significant impact (s 22), activity carried out for less than one year (must include restoration to a pre-activity condition) (s 23), pre-existing resource activity (ss 24 and 24A), and pre-existing regulated activity (s 25).

Queensland’s Mining and Energy Law

The *Mining and Energy Resources (Common Provisions) Act 2014* (Qld) provides several additional steps be satisfied before a landholder will be forced into Court proceedings in instances of dispute.[12] Land access is divided to distinguish advanced activities, which cannot occur without a Conduct and Compensation Agreement (CCA) between the company and landholder.[13]

A CCA is comparatively advanced in its means to compensate landholders, including deprivation of possession of land’s surface, diminution or decrease in land value and land use, severance of any part of the land from other parts, any cost damage or loss arising from the carrying out of activities on the land and the legal preparation of the CCA itself.[14]

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[11] Government of Queensland, ‘RPI Act Statuary Guideline 11/16’ Companion Guide’ < https://dsdmipprd.blob.core.windows.net/general/rpi-guideline-11-16-dilgp-companion-guide.pdf>.

[12] *Mineral and Energy Resources (Common Provisions) Act 2014* (Qld); *Mineral and Energy Resources (Common Provisions) Regulation 2016* (Qld); *Land Access Code 2016* (Qld).

[13] Queensland Government Department of Natural Resources, Mines and Energy, ‘A guide to land access in Queensland’ *Department of Natural Resources, Mines and Energy* (Information brochure, April 2019) 13 < https://www.dnrme.qld.gov.au/__data/assets/pdf_file/0018/1442223/guide-to-land-access-in-queensland-2019.pdf>.

[14] Ibid.

If a CCA is unable to be agreed, then the resources company must seek to enter a Deferral Agreement or Opt-Out Agreement before applying to the Court for a determination.[15] This provides greater negotiating power for landholders by placing more onerous requirements on resources entities, incentivising fair negotiations and securing better outcomes for landholders.

GPSA has previously identified the development of a mandatory code of conduct for tenement holders as a key policy outcome.[16] The Productivity Commission's Report on Resources Sector Regulation identified the Queensland Land Access Code as a leading practice model. According to the Report, that Code provides a combination of mandatory conditions as well as guidelines for land access.[17]

WESTERN AUSTRALIA

Negotiation of compensation

Mineral extraction in Western Australia is regulated under the *Mining Act* 1978 (WA).

Compensation requirements in respect of mining activities are outlined in Part VII of the *Mining Act 1978* (WA). Compensation is payable to an owner or occupier that are found, on various grounds, to be entitled to such recompense for mining occurring on private land. Specifically, s123 of the Act entitles the landowner to compensation for loss and damage suffered or likely to be suffered as a result of the mining activities.[18]

For reference, this includes;

- being deprived of the possession or use, or any particular use, of the natural surface of the land or any part of the land; and
- damage to the land or any part of the land; and
- severance of the land or any part of the land from other land of, or used by, that person; and
- and any loss or restriction of a right of way or other easement or right; and the loss of, or damage to, improvements; and
- social disruption; and
- in the case of private land that is land under cultivation, any substantial loss of earnings, delay, loss of time, reasonable legal or other costs of negotiation, disruption to agricultural activities, disturbance of the balance of the agricultural holding, the failure on the part of a person concerned in the mining to observe the same laws or requirements in relation to that land as regards the spread of weeds, pests, disease, fire or erosion, or as to soil conservation practices, as are observed by the owner or occupier of that land; and
- any reasonable expense properly arising from the need to reduce or control the damage resulting or arising from the mining.[19]

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[15] Ibid.
[16] Grain Producers SA, Proposed Legislative Amendments to the Mining Act 1971 (2019) <http://grainproducerssa.com.au/uploads/media/190724_GPSA_proposed_legislative_amendments_(No2).pdf>.
[17] Productivity Commission's Report (n 4) 37-38, 130.
[18] *Mining Act 1978* (WA) s123(4)
[19] Ibid.

The amount of such compensation is determined by agreement of the parties. However, if an agreement cannot be reached, then the Warden's Court shall determine the amount of compensation to be paid by the titleholder,[20] taking into account the matters outlined in section 124.[21]

GPSA notes that the *Mining Act 1978* (WA) is substantially more prescriptive than the *Mining Act 1971* (SA) in regard to relevant compensatory factors for landholders and/or occupiers. The legislative recognition of such factors sets a stronger basis for compensation negotiations between mineral entities and landowners, and hence works to counteract the substantial imbalance between landholders and mineral entities in such negotiations. GPSA supports that this may be considered a leading-practice model. However, it is suggested that any compensation provision include the addition of 'any other relevant matters,' as is currently recognised in the *Mining Act 1971* (SA). [22]

GPSA refers the Select Committee to the work of Prof. Tina Soliman Hunter for further analysis and comparison on the WA component of this submission.[23]

RECOMMENDATION:

5. **The Select Committee investigate the Queensland and Western Australia systems which may provide examples for best practice land access rights.**

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[20] *Mining Act 1978* (WA), s123(3).

[21] Ibid s124.

[22] *Mining Act 1971* (SA) s61(2)(c).

[23] GPSA acknowledges the work of Professor Tina Soliman Hunter of Macquarie University in her 2017 review of *Existing provisions in Australian States/Territories and Selected Overseas Jurisdictions* as an important source document for the WA component of this submission.

(D) ADMINISTRATIVE AND LEGISLATIVE OPTIONS THAT MAY HELP ACHIEVE A BEST PRACTICE MODEL IN SOUTH AUSTRALIA THAT BALANCES THE RIGHTS OF LANDOWNERS AND THOSE SEEKING TO ACCESS LAND TO EXPLORE FOR OR EXPLOIT MINERALS, PRECIOUS STONES OR REGULATED SUBSTANCES;

LEGISLATIVE OPTIONS

As set out Section 4, the Policy Principles or 'lens' through which this issue needs to be considered is ensuring as follows:

1. Resources activity on primary production land is only undertaken by fit and proper operators, having regard to the technical, operational, financial, and resourcing capacity, and history of compliance and practices of the operator.
2. The rights and responsibilities of resource entities and landowners are clearly understood and provide assurance of permissible activity.
3. Information provided by Government and resource entities is timely, clear, accessible, in plain English, and relevant to actual or proposed operations on cultivated cropping land.
4. Landowners have priority access to information as to actual or proposed operations on their land, subject to market disclosure requirements.
5. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted before land access occurs.
6. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted on the proposed operations on their land, how the land will be used, when the operations will commence and cease, when the land will be rehabilitated, and the standard of rehabilitation.
7. The Department regularly, strongly, actively, and transparently monitors and reports against compliance to strengthen confidence of stakeholders, including by providing notice to landowners in any such failure to comply.
8. Consideration be given to all the outcomes that are expected to occur in connection with proposed operations, including the impact on businesses, families, neighbours, and communities, local infrastructure (including roads), and local government.
9. The Department has the power to vary, impose, or revoke conditions relating to operations on cultivated cropping land where circumstances change during the time-based period of authorised operations.

Planning, Development and Infrastructure Act 2016

Part 12 of the *Planning, Development and Infrastructure Act 2016* notes *Mining—special provisions (*ss 160-161). These sections of the Act fail to recognise the importance of the zoning of cultivated cropping land in relation to future urban planning and the continued use of land for the purposes of primary production.

We believe that ss 160-161 do not provide adequate compliance or information to primary producers. GPSA strongly suggests that Committee ensure that the *Planning, Development and Infrastructure Act 2016* be integrated into to the scope of the Committee's inquiries.

RECOMMENDATION:

6. **The Select Committee ensure the relevant provisions of the *Planning, Development and Infrastructure Act 2016* be assessed as part of the Committee's inquiry.**

Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018

GPSA notes the dispute resolution service established by way of the Fair Trading (Mining and Resources Industry Land Access Dispute Resolution Code) Regulations 2018 ('the Code'), under the stewardship of the Small Business Commissioner. It is noted that this establishes an alternate process for resolving disputes. Whilst this is to be commended, it does not obviate the need for the other matters dealt with herein to be addressed, particularly given matters such as the Notice of Objection to land access still require proceedings to be instituted within a certain timeframe.

ADMINISTRATIVE OPTIONS

GPSA's policy principles set out our belief that landowners have a right to receive information and be aware of the resource interests and activities on their land. Like any business, primary production businesses require certainty to carry out their operations and utilise the equity in their assets for further reinvestment.

Landowner Information Service

GPSA's joint Mining Act Review Taskforce developed an industry-led proposal to establish a Mining Industry Advisory Service to help farmers access information on their rights when faced with a resources entity wanting access to land. We proposed this would be run as a pilot program run by the non-profit organisation, Rural Business Support (RBS), and operated independently from DEM.

The Landowner Information Service (LIS) was subsequently launched as an initiative of the Government of South Australia in July 2020, delivered by Rural Business Support and supported by the primary production and resources sectors. It has been granted project funding for twelve months, subject to review. GPSA understands that negotiations are currently taking place to extend the LISA beyond the pilot, however no details are available at the time of writing.

This also followed a budget commitment made by the Government in 2018-19 to *'establish a free advisory service for landholders to access information regarding rights and responsibilities when engaging with resource companies'*.

RBS provides Rural Financial Counselling Services in South Australia and has extensive networks across regional South Australia, and an established track record in the successful delivery of government programs. Rural financial counselling offers a model of free, confidential and independent support to farming families, which has now served as a template for designing the LIS.

The LIS is designed to provide information to help landowners make informed decisions. It takes technical information about the often complex technical and legal processes involved and makes it easy to understand for landowners who are new to the process. Services are provided free of charge to landowners.

As explained by Jared Sampson, GPSA Director and grain producer from Warramboo:

> *"Many landowners feel lost when they receive notice of exploration or mining interest in their property and do not know who to turn to for information. There can be complex technical and legal processes involved which can feel foreign and intimidating for farmers. The Landowner Information Service represents a great opportunity for people to seek free and impartial information to help them understand the process.*
>
> *Landowners are not experts in exploration and mining and this is a service which will assist them to make informed decisions. I would encourage any landowner who needs guidance to contact the service – it can be an uncertain time and getting the right information is important."*[24]

GPSA strongly supports the ongoing need for an advisory service for landowners. We believe an effective and trusted service will help reduce the likelihood of disputes and may alleviate the stress obvious for many farmers faced with exploration or mining land access issues.

RECOMMENDATION:

7. **The Select Committee note the establishment of the Landholder Information Service (LIS) in 2020 and recommend ongoing funding for this service beyond the current pilot program.**

Professional advice – Mining Act

It is important to note the LIS does not have the authority to provide legal, commercial, compensatory or financial advice and is not an advocacy service.

That is why landowners should also be explicitly encouraged to seek professional assistance with land access arrangements, compensation and the drafting or negotiation of documents relating to land access. We believe that this will provide all parties with clarity on the processes, terms of access, the type and likely value of any compensation entitlements and will promote greater understanding and cooperation between landowners and resources entities.

GPSA notes the complexity that comes with a notice seeking a waiver of exemption to a premise that serves as a home, business, and source of equity for reinvestment, and the inherent requirement that legal, accounting, valuation and other professional costs be reasonably incurred.

This further applies to any potential issues with land access broadly where legal issues, financial issues and valuation issues, at a minimum, must be considered. The amount afforded by the Act and Regulations equates to in the order of 5-6 hours of professional time, in a situation where there are often complex issues involved and hundreds of pages of documents involved. There should be a greater requirement for the resources entity to meet these costs.

In respect of land access more specifically, there is a risk that the landowner will not recover its costs (and potentially be liable) if the landowner issues proceedings to assert that there is substantial hardship or there would be substantial damage to the land as a result of the operations. Given the lack of guidance (legislatively and judicially) as to what constitutes substantial hardship or substantial damage, allowances

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[24] Source: https://www.ruralbusinesssupport.org.au/wp-content/uploads/2020/07/200713-Rural-Business-Support-Flyer_FA_online.pdf

should be made for a landowner to undertake the Notice of Objection process and be able to recover their costs from the resources entity other than where the Notice of Objection process has been undertaken unreasonably.

We further note that s9AA (14) of the Act provides for the Regulations to prescribe a maximum amount of compensation that a landowner is able to claim from a resources entity for the reasonable costs of obtaining legal assistance in relation to a notice of entry. In the absence of any prescription, that amount is set at $2,500.

There are two issues with this provision.

- The first is the limitation to legal assistance. There are often complex business structures in place for the farming operations and it is essential for a farmer to obtain accounting advice as to the consequences of any compensation. Similarly, there is often a need to obtain a land valuation, which is undertaken by a licenced valuer.
- The second issue is the quantum provided. Based on standard rates for lawyers and accountants, the $2,500 allowed for equates to in the order of 5-6 hours of professional time. Given the complexities involved and the volume of material typically provided by a resources company, this does not equate to much at all. It is a similar story in respect of valuations- in our experience these usually start at around $3,000 and typically more than $5,000.

We believe that it is entirely reasonable for the amount available to be set by regulation at $10,000 and expanding it to cover all professional fees rather than just legal fees.

Under the *Land Acquisition Act 1969* and corresponding regulations there is an entitlement to up to $10,000 for professional costs.

Given the *Mining Act* process is not dissimilar in many instances, the approach adopted in the *Land Acquisition Act 1969* is instructive.

In this regard we also note that the *Land Acquisition Act 1969* now makes provision for a solatium where a person's principle place of residence is acquired, which can be an amount of up to $50,000 or as prescribed by the regulations, and for transfer/relocation costs. Consideration should be given to incorporating a similar provision into the *Mining Act*.

RECOMMENDATIONS:

8. **The Select Committee consider a requirement for DEM to explicitly encourage landowners to seek legal advice on the terms of access and compensation offered by a resources entity.**
9. **The Select Committee consider the amendment of the *Mining Act 1971* and corresponding regulations to establish an entitlement of up to $10,000 compensation to a landowner for obtaining professional assistance in relation to a notice of entry and related matters.**
10. **The Select Committee consider the recent amendments to *Land Acquisition Act 1969* and its corresponding regulations in the context of the *Mining Act 1971*.**

Mining Register

Section 15AA of the Act establishes the Mining Register and significantly expands its scope. This reflects the welcome focus on transparency and compliance within the Act. The regulations prescribe, in Regulation 14 and Regulation Schedule 1, a significant range of items which must be registered on the Register.

GPSA welcomed the establishment of the Mining Register and scope of the matters listed in Schedule 2. The Register provides landowners with a clear and accessible resource which will aid their understanding and enhance their ability to make business decisions, including those relating to land access and agreement making between landowners and resource entities.

GPSA note that, given the information gap that exists between landowners and mining law, the Landholder Information Service will play a key role in assisting landowners with the use of the Mining Register and understanding any technical jargon.

GPSA propose that the Mining Register may be expanded to include registration of offset obligations if imposed and the projects developed to fulfil them, in order to provide valuable transparency about the application of offset policies.

The Productivity Commission's Report identified leading practice in regard to public registers with offset obligations as including registration of size of payment into rehabilitation funds.

> "Public registers of activities with offset obligations and the projects developed to fulfil them provide valuable transparency about the application of offsets policies. Information on offset projects should include their biodiversity values, location, date of approval, completion status and follow-up evaluations of benefits. Where companies fulfil their offset obligations by paying into a fund, the register should include the size of the payment. Western Australia's offsets register includes some, but not all, of these elements."[25]

RECOMMENDATION:

11. **The Select Committee consider the expansion of the current Mining Register to include registration of offset activities and/or rehabilitation funds paid.**

[25] Productivity Commission's Report (n 4) 211 (See 'Leading Practice 7.4').

Standard terms and template agreements

The Productivity Commission's Report identified incorporating standard templates for land access agreements as leading practice, with aim to ensure both resources companies and landholders have reasonable expectations for the relationship between parties and for the terms of agreements they negotiate.

> *"A standard template for land access agreements can reduce information asymmetry, help to set expectations for landholders and resources companies, and improve confidence in the regulatory system. The Queensland Land Access Code, providing a combination of mandatory conditions as well as guidelines, provides a leading-practice model."*[26]

Given the needs of landowners who typically have substantial unfamiliarity with mining law and practice, if a standard template agreement were to be agreed upon by the resources industry and any relevant landowner industries, this would ensure there is a minimum level of protection and would potentially speed up the process. It would also assist in minimising the professional costs involved as it would ensure there is a baseline or minimum standard which is afforded to all landowners and from which further negotiations could commence.

RECOMMENDATIONS:

12. **The Select Committee consider DEM, in conjunction with relevant representative bodies, developing standard template land access and compensation agreements, including the need to incorporate terms relating to biosecurity.**
13. **The Select Committee consider the Queensland Land Access Code to provide a leading-practice model, including template land access and compensation agreements, a combination of mandatory conditions and guidelines.**

[26] Ibid 131 (See 'Leading Practice 5.3').

(E) MEASURES THAT SHOULD BE IMPLEMENTED TO ACHIEVE A BEST PRACTICE MODEL IN SOUTH AUSTRALIA THAT BALANCES THE RIGHTS OF LANDOWNERS AND THOSE SEEKING TO ACCESS LAND TO EXPLORE FOR OR EXPLOIT MINERALS, PRECIOUS STONES OR REGULATED SUBSTANCES (TO THE EXTENT THAT SUCH MEASURES ARE NOT BEING ADDRESSED THROUGH EXISTING PROGRAMS OR INITIATIVES);

GPSA notes the following principle published by DEM in relation to a best practice model in South Australia:

- *Exploration and mining companies may need to achieve a social licence to operate from the community as part of establishing effective long term working relationships with all stakeholders. In this case, community confidence in the industry's overall performance and a demonstrated commitment by companies to best practice environmental management is paramount. The Government of South Australia recognises that community confidence will only be gained where industry and the community work together cooperatively and openly in good faith to develop and achieve mutually acceptable outcomes.*

Application for Licence

As set out Section 4, the Policy Principles or 'lens' through which GPSA believes this issue needs to be considered is as follows:

1. Resources activity on primary production land is only undertaken by fit and proper operators, having regard to the technical, operational, financial, and resourcing capacity, and history of compliance and practices of the operator.
2. The Department strongly enforces compliance, including by declining to grant licenses and leases where there is a history of non-compliance or where the resources entity does not possess the capability or capacity to ensure compliance.

Section 29A(1) of the Act establishes the manner and form of an application for an exploration licence. The Act allows the regulations to prescribe information that must be submitted as part of an application for an exploration licence. Regulation 23(1) establishes that this information includes amongst other things:

1. the exploration work that is intended to be carried out within the first two years or a period determined by the Minister and the estimated expenditure for these operation;
2. a statement as to the technical, operational, and financial capabilities of the resources entity; and
3. a statement as to the extra-judicial non-compliance history of the resources entity.

The process of resources exploration and the issuing of exploration licenses are of critical interest to GPSA and its members. While exploration licenses are largely found in land that is outside the broadacre cropping area, a substantial number of licenses cover cultivated cropping land. Figure 1 displays South Australia's crop districts, while Figure 2 shows areas of South Australia subject to a mineral and opal exploration license.[27]

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[27] "Location SA Viewer", SA Government (Webpage, 2020) <https://location.sa.gov.au/viewer/>.

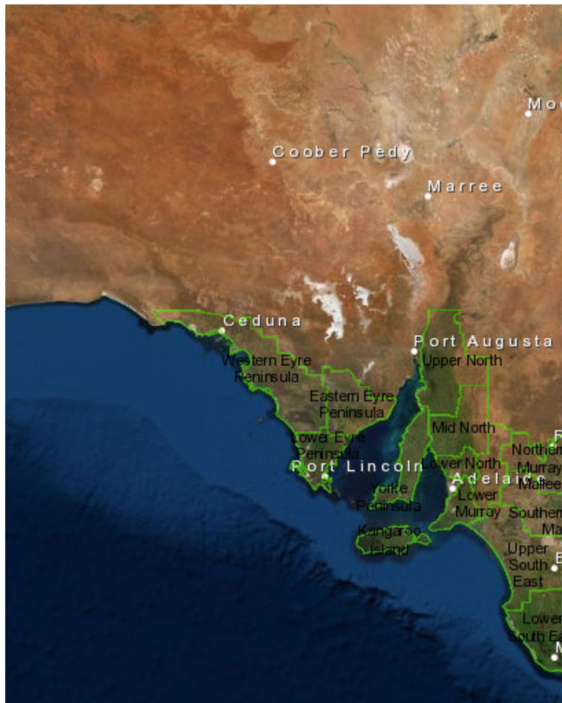

Figure 2: SA crop districts

Figure 2: Mineral and Opal Exploration Licenses

By their very nature, cultivated cropping landowners are more likely to encounter explorers than they are to any other aspect of the resources sector. However, we note that Livestock SA has previously raised concerns in relation to resources activity in pastoral areas.

As outlined in GPSA's policy principles (principle 1.1), we consider it essential that resources activity is only carried out by operators that are assessed as being fit and proper. This includes exploration.

GPSA members have previously reported a range of unsatisfactory engagements with explorers, including explorers failing to comply with their obligation to compensate landholders for drilling, and failing to remediate drill holes despite forming part of their land access conditions. This has contributed to both disputes and high levels of stress for many producers faced with these issues.

We also note that no code of conduct (including a voluntary code) covers exploratory operations in South Australia. This is a serious shortcoming which, in our opinion, represents an abject failure of the resources sector's social license.

GPSA is keen to ensure that South Australia is seen as an attractive place for *responsible* resources entities to invest.

GPSA strongly supports greater focus on an applicant's capabilities and their history of non-compliance. The Productivity Commission's Report identifies a thorough assessment of potential license holders as potential leading practice.[28] The Report notes that no jurisdiction fully follows leading practice in this area.[29]

GPSA would also welcome further public guidance and/or assurance from the Department as to the internal assessments undertaken and thresholds when an application for an exploration license is received.

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[28] Productivity Commission's Report (n 4) 36 (See 'Leading Practice 4.2').
[29] Ibid 35 (See 'Finding 4.2').

GPSA raised this issue with personnel from the Department during the consultation process, but further detail as to when the threshold of past non-compliance or lack of capabilities would be met such that an application for an exploration licence would be denied was not available.

RECOMMENDATIONS:

14. **The Select Committee consider requirements for DEM to publicly provide further guidance and/or assurance as to the internal assessments undertaken and thresholds when an application for an exploration license is received.**
15. **The Select Committee consider the need for DEM to establish a risk-based audit and investigation framework.**

Notification of Grant of Licence

As set out Section 4, the Policy Principles or 'lens' through which GPSA believes this issue needs to be considered is ensuring as follows:

1. Landowners have priority access to information as to actual or proposed operations on their land, subject to market disclosure requirements.

Section 29B of the Act provides for the granting of an exploration licence, including the commencement and notification of an exploration licence. Regulation 24 establishes that the Minister must give notice of the granting of an exploration licence by proper service under Regulation 88.

GPSA believes that Regulation 24 provides scope for increasing transparency in the regulatory system and ensuring that landowners are better able to participate in discussions with resources entities through greater awareness and understanding of legal rights.

We note that the Act requires an exploration licence to be registered on the Mining Register, however GPSA strongly encourages the Department to either:

1. directly notify landowners covered by the exploration licence that an exploration licence has been granted and the terms on which it has been granted; or
2. require the holder of an exploration licence to notify landowners covered by the exploration licence that an exploration licence has been granted and the terms on which it has been granted.

As stated in GPSA's policy principles (principle 2.2), we believe that landowners should have priority access to information on operations on their land. This includes informing landowners of all relevant mineral interests in their land such as the granting of an exploration licence or a mining lease.

Notifying landowners would not present a particularly onerous cost to the resource entity and would promote transparency.

In addition, notification would alert landowners that there may be a potential mineral interest in their land which would ensure that a notice under section 58A of the Act would not come as a surprise. GPSA also suggests that the Department prepare an information sheet on exploration licenses to accompany the notification.

RECOMMENDATIONS:

16. **The Select Committee consider the extent of notifications for landowners whose land is impacted by the granting of an exploration licence.**
17. **The Select Committee consider the manner in which landowners are informed of their rights and the licence approval process and whether there are steps that should be taken by DEM to be more proactive to ensure landowners are informed of their rights and understand the licence approval process.**
18. **The Select Committee investigate DEM expanding the scope of the information sheets to include matters such as exploration licenses.**

Biosecurity

As set out Section 4, the Policy Principles or 'lens' through which this issue needs to be considered is ensuring as follows:

1. The rights and responsibilities of resource entities and landowners are clearly understood and provide assurance of permissible activity.
2. Consideration be given to all the outcomes that are expected to occur in connection with proposed operations, including the impact on businesses, families, neighbours, and communities, local infrastructure (including roads), and local government.

As an export orientated industry, biosecurity is vitally important for SA's grain industry. It is critical to the future of our industry that we proactively manage and maintain Australia's plant health status. A biosecurity incursion, caused by insects, plant pathogens, weeds and other crop-damaging organisms, can have a major impact on grain production if not managed efficiently and effectively. Biosecurity is a shared responsibility between government and industry and all participants in the grain supply chain have a role to play.

Key export destinations have recently imposed restrictions on Australian exports due to perceived presence of pests. The primary industries sector has a complex framework in place for the prevention and management of pests, reflecting obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, export destination requirements, end user requirements, as well as Commonwealth and state law.

GPSA members have previously raised concerns that resources entities have failed to follow agreed biosecurity protocols leading to the introduction of weed species as a result of land access.

We note that SA's biosecurity framework is undergoing review and consolidation into a singular Biosecurity Act. At this time, it is proposed that a general biosecurity duty be introduced as part of that Act, which will have severe implications for any resource entity that fails in its duty of care.

Consideration should be given to including provisions into the Mining Act and its associated Regulations to ensure compliance with the Biosecurity Act and provide protections for landowners. Resources companies need to be aware of, and comply with, the existing biosecurity measures on any land that they access.

In the absence of any specific statutory obligations in the Mining Act, we strongly encourage the Department to develop an Information Sheet specifically dealing with Biosecurity, rather than having an

information sheet which deals with it as part of a statement of environmental objectives and guidelines. It is an issue of critical importance for landowners and the industry, and there is a need to raise awareness of the duty of care that will fall to resource entities.

Furthermore, in developing any standard template agreements, these should incorporate terms to ensure compliance by resources entities with biosecurity measures and provide protection to landowners in respect of biosecurity.

RECOMMENDATION

19. The Select Committee investigate current biosecurity measures and consider the implementation of:

  - **a. Amendments to the Act to better reflect the important of biosecurity;**
  - **b. An Information Sheet on Biosecurity to explicitly stress the critical importance of biosecurity to South Australia's primary industries sector and include relevant examples of biosecurity threats; and**
  - **c. The development of standard template agreements which incorporate terms relating to biosecurity.**

6. SUMMARY OF RECOMMENDATIONS

GPSA's position can be summarised by the recommendations to the Select Committee as set out below.

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1. The Select Committee investigate those matters set out in the GPSA's 2019 Bill comments document, including:
   1.1. consideration being given to the use of structures and the need for adequate buffer zones;
   1.2. strengthening and clarifying the rights of landowners to compensation;
   1.3. expanding compensation for nearby properties affected by authorised operations;
   1.4. the imposition of mandatory bond on all tenement holders conducting any form of authorised operation under the Act;
   1.5. the imposition of a mandatory rehabilitation fund; and
   1.6. the provision of an uplift in respect of compensation payable for land acquisition.

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2. The Select Committee investigate an independent regulatory body for the mining sector to ensure the upkeep of the Mining Register as well as ensuring an independent assessment of mining or mining exploration applications.

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3. The Select Committee review the adequacy of the information supplied to landowners by DEM, and recommend that:
   - Communication material (such as Information Sheets) explicitly encourage landowners to seek legal advice on the terms of access and compensation offered by a resources entity.
   - Landowners be clearly advised by DEM to seek professional assistance with the drafting or negotiation of a land access agreement.
   - A standard template agreement between landowners and resources entities be developed.
4. The Select Committee investigate the adequacy of the landowner's entitlement to costs.

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5. The Select Committee investigate the Queensland and Western Australia systems which may provide examples for best practice land access rights.

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6. The Select Committee ensure the relevant provisions of the Planning, Development and Infrastructure Act 2016 be assessed as part of the Committee's inquiry.

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7. The Select Committee note the establishment of the Landholder Information Service (LIS) in 2020 and recommend ongoing funding for this service beyond the current pilot program.

Page 23

8. The Select Committee consider a requirement for DEM to explicitly encourage landowners to seek legal advice on the terms of access and compensation offered by a resources entity.
9. The Select Committee consider the amendment of the *Mining Act 1971* and corresponding regulations to establish an entitlement of up to $10,000 compensation to a landowner for obtaining professional assistance in relation to a notice of entry and related matters.
10. The Select Committee consider the recent amendments to *Land Acquisition Act 1969* and its corresponding regulations in the context of the *Mining Act 1971*.

Page 24

11. The Select Committee consider the expansion of the current Mining Register to include registration of offset activities and/or rehabilitation funds paid.

Page 25

12. The Select Committee consider DEM, in conjunction with relevant representative bodies, developing standard template land access and compensation agreements, including the need to incorporate terms relating to biosecurity.
13. The Select Committee consider the Queensland Land Access Code to provide a leading-practice model, including template land access and compensation agreements, a combination of mandatory conditions and guidelines.

Page 28

14. The Select Committee consider requirements for DEM to publicly provide further guidance and/or assurance as to the internal assessments undertaken and thresholds when an application for an exploration license is received.

Page 29

15. The Select Committee consider the need for DEM to establish a risk-based audit and investigation framework.
16. The Select Committee consider the extent of notifications for landowners whose land is impacted by the granting of an exploration licence.
17. The Select Committee consider the manner in which landowners are informed of their rights and the licence approval process and whether there are steps that should be taken by DEM to be more proactive to ensure landowners are informed of their rights and understand the licence approval process.
18. The Select Committee investigate DEM expanding the scope of the information sheets to include matters such as exploration licenses.

Page 30

19. The Select Committee investigate current biosecurity measures and consider the implementation of:
    a. Amendments to the Act to better reflect the important of biosecurity;

b. An Information Sheet on Biosecurity to explicitly stress the critical importance of biosecurity to South Australia's primary industries sector and include relevant examples of biosecurity threats; and

c. The development of standard template agreements which incorporate terms relating to biosecurity.

ENDS.