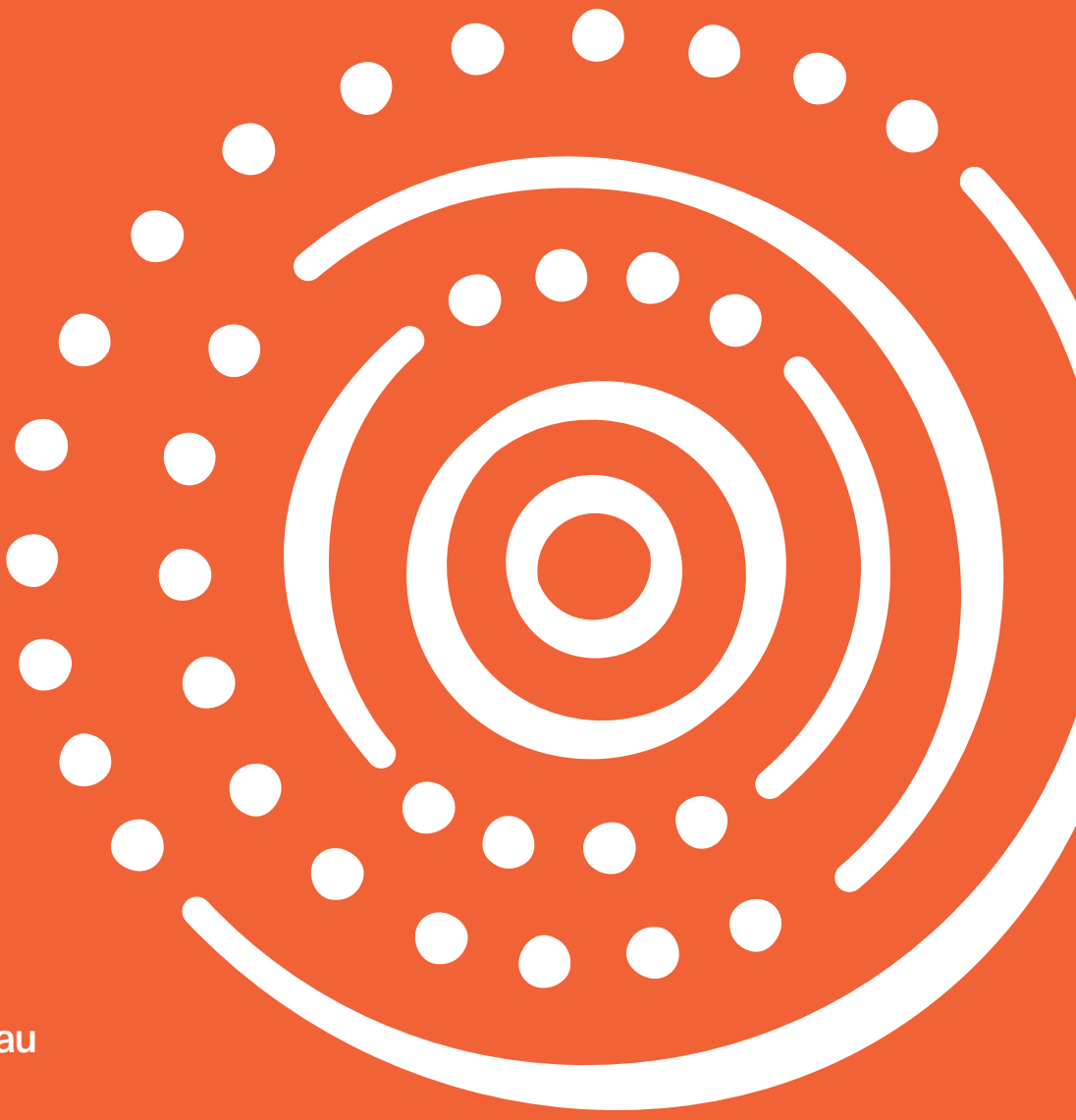
Government of South Australia

Department for Energy and Mining

Mining Act 1971

Issues Paper

Consultation on opportunities for improving the regulatory framework for mining



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Abbreviations

DEM	Department for Energy and Mining
ER Act	*Energy Resources Act 2000*
ERA	Exploration release area
HRE Act	*Hydrogen and Renewable Energy Act 2023*
Mining Act	*Mining Act 1971*
MOP	Mine operations plan
MRF	Mining Rehabilitation Fund
Native Title Act	*Native Title Act 1993 (Cth)*
NNTT	National Native Title Tribunal
PEPR	Program for environment protection and rehabilitation
RTN	Right to negotiate

Date	Comment
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Contents

Introduction

The South Australian government is reviewing the *Mining Act 1971* to ensure our mining laws responsibly unlock the value and opportunities offered by the state's mineral resources for the benefit of all South Australians.

The Department for Energy and Mining (the department) regulates the prospecting, exploration and mining of South Australian minerals through the *Mining Act 1971* (Mining Act).

In 2021, changes to the Mining Act modernised aspects of the regulatory framework to meet contemporary industry, community and environmental management expectations. The department monitors the Mining Act's effectiveness to ensure the legislation remains fit-for-purpose.

Informed by industry and community feedback, and regulatory approaches and developments in other jurisdictions, the department has identified further possible amendments to enhance the Mining Act's regulatory framework with the intention to:

- strengthen exploration regulation to enhance sector capability, accountability and competitiveness
- drive productive exploration and mining activity to increase the potential for mineral discoveries and investment in the state
- deliver consistency with the regulatory and licencing frameworks recently introduced in the *Hydrogen and Renewable Energy Act 2023* (HRE Act) and the *Energy Resources Act 2000* (ER Act)
- maintain effective and efficient 'one window to government' mining sector regulation
- align mining regulation with contemporary methods and risk management.

This issues paper seeks your feedback on a range of potential opportunities for improving the Mining Act, some of which may be considered as part of a legislative reform process.

Background

Mining is one of South Australia's most important economic sectors. It employs more than 14,000 people in the state and provides annual royalties of over $420 million (2023–24). The sector's value is set to increase significantly in the coming decades as demand for critical and strategic minerals and iron ore underpins a thriving net zero economy.

The global transformation to a decarbonised world cannot happen without a diverse and secure supply of strategic minerals. Minerals like nickel, cobalt, copper and graphite are essential for building modern technologies such as wind turbines, batteries, solar panels and electric vehicles – all of which are critical to the energy transition.

With mineral wealth and established processing sectors, South Australia has a once-in-a-generation opportunity to supply the resources and green products most sought after by our global trading partners. Our state boasts one-third of Australia's mined copper, the world's largest zircon mine and 65% of Australia's confirmed graphite resources. Growth in exploration, mining and production could tap into other prospective resources such as cobalt, rare-earth elements, halloysite and magnesium. South Australia intends to leverage this competitive advantage to become a partner of choice to meet Australia's critical and strategic minerals goals.

Abundant and accessible iron ore deposits will also enable the development of a world-leading domestic green iron and steel industry. Powered by renewable energy and fed by high-quality magnetite ore, South Australian manufacturers will meet an ever-increasing global demand for decarbonised steel and iron in the coming decades.

Greater investment and production will be needed to achieve these ambitions. More than 300 new mines may need to be built globally over the next decade just to meet the demand for electric vehicle and energy storage batteries. The world's total demand for minerals necessary for the development of clean energy technologies is forecast to double or even quadruple by 2040.

Capitalising on this opportunity will require a local regulatory environment that encourages exploration, development and competition – with stability, certainty and prospectivity for capable companies. Regulation must be geared to align the sector with contemporary leading practice and community expectations, supported by strong compliance and environmental management, and respect for landowners and users.

While South Australia's mining regulation is sound, there are opportunities to further enhance the legislative framework. A modern, fit-for-purpose regulatory system supports a growing mining industry that respects our communities and environment, while delivering economic opportunities for the benefit of all South Australians.

Provide your feedback

This document seeks feedback on a range of potential options to improve the Mining Act's regulatory framework. We want your views on the opportunities, and any associated challenges or issues.

How can I give my feedback?

Email your submissions to dem.consultation@sa.gov.au or through the government's YourSAy platform. This issues paper provides a range of questions under each proposal to guide feedback.

What will be done with the feedback?

Responses will be analysed and summarised into a consultation report. The feedback provided will inform if future amendments to the Mining Act are required.

What are the next steps?

If amendments are deemed necessary, the department will seek feedback on a draft Bill through a second round of consultation. Feedback will be used to further refine the draft Bill, before a final Bill is submitted for the government's approval and tabling in Parliament.

Discussion

This section discusses issues and opportunities for improving the Mining Act, divided into the following six focus areas:

1. Exploration tenure
2. Part 9B – native title rights and interests
3. Forfeiture
4. Legislative consistency
5. Legacy matters
6. Technical and operational amendments

1. EXPLORATION TENURE

Strong exploration regulation drives competition for land, increases industry capability, encourages productive exploration activity and drives discoveries in the state. There are opportunities to enhance the Mining Act's exploration tenure arrangements to encourage investment and prospectivity, while ensuring exploration is done in a way that meets contemporary standards and community and landowner expectations.

Exploration licence period

The 2021 amendments to the Mining Act introduced an 18-year maximum exploration licence period with the intention of driving exploration activity and encouraging productive ground turnover. However, the amendments provide no discretion to extend this period, regardless of the circumstances. The sector has raised concerns that this lack of flexibility and security of discovery is driving a reduction in exploration investment.

The first mandatory exploration licence expiry will come into force in 2027.

A limited exploration licence extension may be justifiable in certain situations – for example, where work already carried out is at an advanced stage and justifies further exploration, or where work could not be completed because of difficulties or delays outside of a company's control.

OPPORTUNITY

Allow for discreet exploration licence period extensions past 18 years, subject to rigorous eligibility and compliance criteria, to promote late-stage exploration.

To improve existing tenure arrangements and ensure South Australia remains competitive in attracting exploration investment, amendments to the Mining Act could introduce ministerial discretion to allow discrete extensions beyond the 18-year maximum licence period for compliant tenements.

Extensions could be subject to eligibility criteria to justify an extension beyond the licence term. Possible criteria could include:

- demonstrated progress or performance in advancing exploration towards discovery, including details of the exploration type, extent and results
- strong compliance history, including compliance with work and expenditure programs, and environmental and consultative requirements

- operational and financial capability to undertake the proposed additional work
- evidence of extenuating circumstances that led to difficulties or delays in exploration work, for example administrative, climatic, environmental or heritage reasons.

Extensions could be limited to two-year terms (in line with current reporting requirements) and subject to work programs to ensure ground is explored and deposits can be progressed to projects and development.

Ministerial discretion could impose additional licence conditions on extensions, such as required drilling operations, expenditure commitments, or the ability to reduce the size of a licence area to the land targeted by the extension.

Western Australia takes a similar approach, where an exploration licence holder can apply to the responsible Minister to extend licence term beyond its initial term if specific grounds are satisfied.

OPPORTUNITY

Expand eligibility for retention leases to support additional advanced exploration activities.

Retention leases provide security of tenure for mineral tenement holders following the expiry of an exploration licence or mineral claim and prior to the grant of a mining lease. Ministerial approval of a retention lease application is required and, subject to approval, is granted for an initial five-year term with two potential subsequent five-year renewals.

Currently, eligibility for a retention lease is limited to circumstances where an applicant has been either:

- unable to secure a mining lease because of a ministerial decision, or
- the Minister considers it is premature to apply for a mining lease due to economic or other factors, or there has been insufficient investigations to support the application.

CONSULTATION QUESTIONS

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- Do you think ministerial discretion to extend the maximum exploration licence period is appropriate?
- If yes, how long do you think licence extensions should apply for and what eligibility criteria and conditions could be imposed?
- Do you think expanding the eligibility criteria for retention leases to include the conduct of additional advanced exploration is appropriate?
- If yes, what terms and conditions could be imposed on these activities as part of the retention lease?
- What alternate schemes could be considered appropriate to encourage exploration investment, ground turnover and security to deliver new discoveries and mining projects?

Expanding eligibility for retention leases to allow additional advanced exploration activities could complement a ministerial discretion to extend the 18-year term for exploration licenses, as proposed above.

It could also offer flexibility for prospective late-stage exploration projects seeking to enhance the economic feasibility of their primary resource target through investments in additional 'satellite' or 'halo' deposits – zones around the deposit that show potential for further mineral discovery.

Retention leases are subject to terms and conditions that may be either prescribed in regulations or applied through ministerial discretion. Relevant terms and conditions to accompany a possible expansion of retention lease eligibility could include, for example, timebound drilling operations and expenditure commitments.

Exploration licence area

One of the drivers of exploration investment and activity is the size of exploration licences. The maximum allowable size of an exploration licence in South Australia is 1,000 square kilometres (km^2), except for some old licences that have remained greater than 1,000 km^2.

South Australia has generous maximum size and expenditure rates compared to other states – for example, an authority to explore for resources in Queensland cannot exceed 1,000 'sub-blocks', which equates to about 300 km^2.

OPPORTUNITY

Reduce the maximum exploration licence area to drive productivity and ground turnover.

Of the ~880 active exploration licences in the state, ~33% are currently greater than 500 km^2. Section 30AA(1) of the Mining Act could be amended to reduce the maximum allowable area of new exploration tenures – for example, from 1,000 km^2 to 500 km^2 – while keeping existing tenures at their current size levels.

Smaller licence areas could deliver benefits such as increased on-ground activity, reduced land banking, quicker ground turnover, increased exploration opportunity, and greater consistency with other jurisdictions.

The benefits must be considered against the potential for additional compliance costs, including additional fees for companies that choose to apply for multiple licences, or the administrative costs to government of processing and overseeing a greater number of licences.

CONSULTATION QUESTIONS

Q

- Do you think a reduction of the maximum exploration area in South Australia is appropriate?
- If yes, what size should the maximum exploration licence area be?

Exploration ground release

A fit-for-purpose process to access ground for exploration is important to encourage new entrants and investment to the state, enable productive ground turnover and improve the chance of mineral discovery.

An exploration licence is the primary mineral tenement issued for exploration. It authorises the holder, subject to the Mining Act, regulations and licence terms and conditions, to explore for minerals, opal or both.

Exploration licences in South Australia are applied for over 'open' or available ground and granted on a first-come, first-served basis. Ground that has recently been relinquished by another party is allocated through a competitive exploration release area (ERA) tendering process.

The ERA process seeks to drive competition and require information covering various technical, operational, past performance and location-specific aspects, in addition to that required for a standard exploration licence application. This information enables the department to perform a rigorous, merit-based assessment of competing exploration proposals to evaluate and rank them based on criteria, and select the best option for the state.

If ground offered through the ERA process fails to attract an applicant, it reverts to open ground. Partial surrenders, which are small parcels of land that are voluntarily surrendered or given up as part of expenditure non-compliance, also revert to open ground. Enabling these parcels of land to be included in an ERA process will drive investment in their exploration.

OPPORTUNITY

Introduce new mechanisms to provide more flexibility in the exploration release area process.

The Mining Act currently provides that land will become open ground or relinquished ground (ERA process) only in the specific circumstances set out in section 28(1). Introducing a discretion for the Minister to decide what land can be released through the ERA process would allow for greater control of exploration ground release. This would give explorers that have proved their competence in the competitive release area process further access to exploration areas, encouraging investment and productivity.

The chance of mineral exploration projects finding a significant deposit is below 1%. The number of deposits that are developed into operating mines is even less.

Exploration ground release reform could introduce mechanisms that:

- ensure that land currently not captured by the relinquished ground provisions can be managed through the ERA process
- provide flexibility to return ground to relinquished status instead of open ground if it fails to attract a bid through the ERA process
- change the extent and shape of open and relinquished ground through the ERA process, including the ability to combine land for larger tenement releases.

CONSULTATION QUESTIONS

Q

- Do you think the mechanisms for improving exploration ground release in South Australia are appropriate?
- Are there any other ways we could encourage more competitive and fit-for-purpose release of ground for exploration?

2. PART 9B OF THE *MINING ACT 1971*

Native title rights and interests

Certain exploration and mining rights that affect native title land can only be granted where the 'right to negotiate' (RTN) process in the Commonwealth *Native Title Act 1993 (Cth)* (Native Title Act) is followed. This means exploration and mining rights can only be granted by the government where there is an agreement between the government party, the applicant (the exploration or mining company) and the native title party (registered native title claimants or native title holders), or where the National Native Title Tribunal (NNTT) has determined that the grant may be made.

In 1996, the Mining Act established an alternative scheme under Part 9B and section 58 that is recognised by the Commonwealth as having effect instead of the RTN scheme in the Native Title Act. South Australia is the only state or territory with an alternative RTN scheme of this nature.

Application of Part 9B

Part 9B sets out the native title requirements for mineral exploration and the grant of production tenements on native title land in South Australia.

Part 9B largely replicates the RTN scheme under the Native Title Act, and provides equivalent native title rights and protections, but does have some key differences. These differences are set out in Table 1 below.

Table 1 Key differences between the right to negotiate scheme under Part 9B and the Commonwealth Native Title Act

	Part 9B	Commonwealth RTN
Grant of a tenement	The grant of an exploration license permitting low impact exploration activities can be made before the Part 9B process is followed but it does not confer any right to carry out mining operations that affect native title.	The right to negotiate process must be followed before any tenement may be granted.
Notification requirements	The mining proponent must notify native title parties (claimants or holders) of the proposed mining or exploration activity. The notice must include sufficient detail about the activity to allow for informed participation.	The government or proponent must issue a formal notice of the proposed future act to all registered native title parties. Notices under the Native Title Act are standardised and follow specific national requirements.
Negotiation process and role of government	The government is not involved in the negotiation process and is not a party to the native title agreement.	Government has an active role in negotiations and certain functions, including the task of issuing relevant notices for negotiating agreements and making applications to the National Native Title Tribunal (NNTT). The government is a party to the negotiated agreement.

	Part 9B	Commonwealth RTN
Expedited procedure An expedited procedure enables authorisation (without triggering the right to negotiate) of exploration or mining activities that are determined to have minimal impact on native title rights and interests.	A proponent may apply to the Environment, Resource and Development Court for a determination authorising mining operations (including exploration activities) on native title land that will not interfere with the following rights of the relevant holders of native title: ▪ community life ▪ areas or sites of particular significance, in accordance with their traditions ▪ major disturbances of land. The government and/or the relevant native title party has four months to make a written objection to an exploration or mining company's reliance on the expedited procedure. The objection is considered by the Environment, Resource and Development Court.	The grant of a tenement to conduct mining or exploration activities may be fast-tracked if the responsible government agency considers that it will have minimal impact on native title rights and interests. If a native title party wishes to object, they can lodge an application with the National Native Title Tribunal (NNTT). Once the Tribunal receives an objection from a native title party, it must conduct an inquiry into the proposed grant and determine whether the expedited procedure should apply. If the Tribunal determines that the expedited procedure applies, the tenement can proceed to grant. If the Tribunal determines that the expedited procedure does not apply, the parties must go through the right to negotiate process. (It is noted that the application of the expedited procedure under the Commonwealth Native Title Act varies across a number of Australian jurisdictions.)
Jurisdiction	If the negotiation parties do not reach an agreement within six months of the notification day in the notice, any party may apply for the matter to be referred to the Environment, Resources and Development Court for a determination.	If the negotiation parties do not reach an agreement within six months of the notification day in a notice, any party may apply to the NNTT for a determination.
Good faith negotiation requirements	No equivalent provision.	Limits the requirement to negotiate in good faith to matters related to the effect of the Native Title Act on 'registered native title rights and interests'.
Negotiation – matters to be taken into account	No equivalent provision.	Provides that negotiations may take into account existing non-native title rights and interests, existing use of the land waters and the practical effect of that use on the exercise of native title rights and interests.

	Part 9B	Commonwealth RTN
Conjunctive and umbrella agreements Conjunctive or umbrella agreements cover the full cycle of mining activities including exploration, development and production.	Limits the circumstances in which the Environment, Resources and Development Court can make conjunctive or umbrella authorisations.	No limitations on conjunctive agreements.
Determination – matters to be taken into account	No equivalent provision.	In making its determination, the arbitral body must take into account the nature and extent of existing non-native title rights and interests and existing use of the land and waters.
Limitations	No equivalent provision.	The arbitral body can limit the matters under consideration by excluding those subject to agreement between the parties.

OPPORTUNITY

Review Part 9B of the Mining Act and consider the potential benefits of adopting the right to negotiate scheme under the Commonwealth Native Title Act.

In recent years, the department has heard about the practical challenges faced by both native title groups and minerals industries when working within the South Australian native title system for mining and exploration activities. This includes, engaging early and respectfully, determining when activities affect native title, providing certainty about timeliness and costs, and valuing and preserving Aboriginal heritage and culture.

There are differing views about the nature of the scheme's challenges and how to address them. The department is therefore seeking feedback on the merits of repealing Part 9B. If this happened, the Commonwealth Native Title Act's RTN scheme would apply to exploration and mining activities carried out on South Australian native title land. This would bring South Australia in line with other states and jurisdictions. This would also create consistency with RTN processes often used for licensing of activities under the ER Act.

CONSULTATION QUESTIONS

Q

- Do you think we should repeal Part 9B of the Mining Act?
- If yes, what are the benefits associated with repealing Part 9B? If no, what are the benefits of retaining Part 9B?
- What feedback can you provide on the operation of right to negotiate schemes used in other jurisdictions?

3. FORFEITURE

The Mining Act includes tenement forfeiture and transfer provisions to promote industry competition, compliance and efficiency.

Section 70 provides a process for and circumstances in which an interested person can apply to the Warden's Court for a mining tenement to be forfeited and transferred to that person for its remaining term.

The application must be based on an alleged breach, failure or non-compliance that is significant enough to justify the serious consequence of the mineral tenement's forfeiture. This could include, for example, breaches of environmental or operational conditions, failure to meet expenditure requirements or minimum work commitments, failure to effectively operate a mine, non-payment of fees or royalties, or failure to submit required reports.

Tenement transfer may only occur if the Warden's Court is satisfied the tenement should be forfeited and recommends the forfeiture. If forfeiture is recommended, tenement transfer may only occur if the applicant applies for the transfer within 14 days of the Warden's Court's recommendation, and the Minister consents.

OPPORTUNITY

Expand existing provisions so that the Crown can transfer a forfeited lease to any person approved by the Minister.

To encourage greater industry compliance, competition and operating standards, the forfeiture process could be adapted to enable the Crown to transfer a forfeited lease to any person approved by the Minister.

This option would be at the Minister's discretion and only in cases where the state is entitled to terminate or suspend a mining tenement under the Mining Act.

This option could include provisions to ensure that the new lessee would have the benefit of the outgoing lessee's existing approvals and any right to enter land under the Mining Act. The outgoing lessee could be required to facilitate the transfer, including provision of access to infrastructure.

CONSULTATION QUESTIONS

Q

- Do you think that the existing Mining Act forfeiture provisions should be expanded to enable the Crown to transfer a forfeited lease to any person approved by the Minister?
- What do you consider would be the benefits or disadvantages of this potential approach?
- Are there other options to improve the forfeiture provisions under the Mining Act that we could consider?

4. LEGISLATIVE CONSISTENCY

There are opportunities to update parts of the Mining Act to align them with the HRE Act and the ER Act, which regulate hydrogen, renewable energy, petroleum and geothermal energy activities. Better alignment of energy and mining legislation would improve 'one window to government' regulatory consistency in the state.

Disputes resolution for land access

The Mining Act does not contain a formal alternate dispute resolutions process for entry to land or any other matters. Currently, disputes are resolved either through court action, which can be costly and time-consuming, or the Office of the Small Business Commissioner's Land Access Code, which provides a voluntary mediation service upon request by either a landowner or mineral tenement holder.

In contrast, the HRE and ER Acts include ministerially directed mediation provisions for land access disputes as an alternative to court processes.

OPPORTUNITY

Introduce an alternative disputes resolution process for land access disputes in the Mining Act.

The inclusion of mediation provisions within the Mining Act – in alignment with equivalent provisions in the HRE and ER Acts – could provide ministerial discretion to compel mediation in land access disputes between a mineral tenement holder and a landowner. Mediation could be triggered as a necessary pre-condition to any court action, or as a regulatory response to delays in the commencement of exploration or mining activities following a regulatory approval.

CONSULTATION QUESTIONS

Q

- Do you think the addition of a ministerially directed disputes resolution process in the Mining Act is appropriate?
- If yes, should mediation be triggered as a pre-condition to any court action, or as a regulatory response to specific issues?

Tenement transfer and controlling interest changes

The HRE Act and ER Act include requirements for ministerial approval of changes to the controlling interest of corporate entities that hold ownership of licences regulated under those Acts. While the Mining Act requires ministerial consent to the transfer of a mineral tenement, there is no equivalent controlling interest provision for mining.

The Mining Act does not allow for Ministerial consideration when exploration rights, prospects and deposits are traded. Commercial dealings that alter project economics could prevent timely project development as a result of embedded private royalty deals on state resources.

OPPORTUNITY

Require ministerial approvals for tenement holder acquisitions under the Mining Act and commercial tenements dealings.

Commercial dealings, such as private royalties, on tenement transfers can risk the economics of mining development projects, counter to the objective of the Mining Act. Providing a decision for the Minister on the commercial dealings for a tenement transfer will protect the commerciality of the future recovery of the state's resources.

Introduction of a controlling interest provision in the Mining Act – in alignment with equivalent provisions in the HRE and ER Acts – would require ministerial approval of acquisitions where a transaction constitutes a minimum change in interest of at least 20% of the tenement holder entity. This approval could be made subject to explicit conditions and enforceable undertakings.

This amendment would provide greater oversight and response to scenarios where prospective counterparties may not have the financial, technical, and operational capabilities to meet the various requirements imposed by the Mining Act.

CONSULTATION QUESTIONS

Q

- Do you think the addition of a controlling interest provision in the Mining Act is appropriate?
- Is a minimum change in interest of a least 20% of the tenement holder entity (in alignment with the HRE and ER Acts) an appropriate threshold for ministerial approval?
- Are there particular conditions or requirements that you think should be imposed on tenement holder entity changes?
- Are private royalties preventing development of state mineral deposits?
- Are there scenarios where private dealings, including but not limited to future royalties, are good for exploration and project development?

5. LEGACY MATTERS

Financial assurance

The South Australian government is responsible for ensuring that the financial cost of rehabilitating mines does not become the state's responsibility.

The Mining Act's financial assurance framework requires a mineral tenement holder to lodge a bond as security for rehabilitating land disturbed by mining operations. However, this approach has limitations as it may not always capture and manage rehabilitation liability throughout the life of a mine. This could lead to situations where the costs of rehabilitation fall on government.

OPPORTUNITY

Introduce additional flexibility to improve the state's financial assurance framework for mining.

Revenue for the management and rehabilitation of legacy mines across the state is provided through the Mining Rehabilitation Fund (MRF), which is currently limited to fines and penalties paid under the Mining Act.

A potential option could be to provide some tenement holders – assessed as 'low financial risk' – with the option of paying an annual levy as a funding source for the MRF instead of, or as a partial substitute for, a rehabilitation bond. Funds from an expanded MRF could then be used towards costs borne by the state in managing rehabilitation across any tenement, as well as legacy mines.

This policy option would not replace the current model for financial assurance, but provide government and industry with additional flexibility to apply financial assurance measures appropriate to the circumstances. Similar levies are applied in Western Australia and Queensland.

CONSULTATION QUESTIONS

- What are your views on the suggested option to allow some 'low financial risk' tenement holders to pay an annual levy as a replacement or partial substitute for a bond?
- Are there other ways in which the state could improve its financial assurance for mining operations?

Private mines

When the Mining Act commenced in 1971, ownership of South Australia's minerals was transferred to the state to be managed on behalf of South Australians. In recognition of this significant change, the Mining Act introduced a process for people who had lost their mineral rights – mostly owners of quarried minerals used for building, infrastructure and development – to apply to retain their rights under certain conditions. If approved, the Governor proclaimed the area to be a private mine. The historic nature of private mines has necessitated that they are regulated under a separate part of the Mining Act (Part 11B).

It is important that the regulation of private mines is consistent with other mines so that all mines in South Australia continue to meet contemporary environmental standards and community expectations.

There are around
316
private mines in South Australia.

Amendments to the Mining Act in 2021 reformed the regulation of private mines to align their requirements more closely with other mines, while retaining their separate legal status – for example:

- Private mine operating approvals were legislated to transition from mine operations plan (MOPs) to programs for environment protection and rehabilitation (PEPRs) on 1 January 2036.
- A streamlined process was introduced to revoke private mines that are not currently being operated and/or which have no likelihood of being operated in the future.
- A more modern definition of environment and updated and expanded compliance tools for private mines were introduced.

Despite these changes, differences remain between the regulation of private mines and other mineral tenements. Private mines are exempt from the broader definitions of 'environment' that relate to other mines, and they are not required to consult with their local community unless applying for a new operation. A list of other key differences is outlined in Table 2.

Table 2 Key differences between the regulation of private mines and other mines under the Mining Act.

	Private mine tenement	Other mining tenement
Operating approvals	Subject to mine operations plan (MOP): ▪ Approved by Director of Mines. ▪ Guided by objectives and criteria. ▪ Cannot specify operating conditions. ▪ Voluntary surrender by proprietor, or revocation process, for inactive mines.	Subject to program for environment protection and rehabilitation (PEPR): ▪ Approved by Minister for Energy and Mining. ▪ Focused on outcomes and criteria. ▪ Subject to specific operating conditions. ▪ Surrender, cancellation, forfeiture, permanent cessation or expiry.
Tenure	Granted through proclamation: ▪ Perpetual tenure. ▪ No obligation to actively conduct mining operations. ▪ Not subject to specific terms or conditions as part of their tenure.	Issued as leases or licences: ▪ Subject to expiry, requiring periodic renewal. ▪ Typically require active exploration or extraction. ▪ Subject to specific terms and conditions.
Compliance and enforcement	▪ Limited compliance and enforcement options for DEM. ▪ Cannot be cancelled, suspended or forfeited. ▪ Continuing offences (issuing new penalties for every day an offence continues) and landowner compliance orders do not apply.	▪ Can be cancelled, suspended or forfeited. ▪ DEM has powers to regulate conditions, PEPRs and general environmental protection.
Transparency and disclosure	▪ MOPS approved post 2021 are published online. ▪ No discretionary powers regarding release and publication of information.	▪ All approved PEPRs must be published online. ▪ Discretionary powers regarding information that must be compiled, created, kept, produced, released and published.

OPPORTUNITY

Further align the regulation of private mines with other mining activities.

There are a range of potential options to further align the regulation of private mines with other mining activities under the Mining Act, one or more of which could be considered by the government:

OPTION 1

Bring forward the transition of private mine operating approvals from MOPs to PEPRs prior to 2036

- Would elevate the environmental standards of MOPs in line with the regulatory standards of PEPRs.
- Could be achieved by either deeming all MOPs as PEPRs at commencement of the reformed Mining Act, or prescribing that all MOPs must be submitted, assessed and approved as PEPRs within a specified period.

OPTION 2

Apply the definition of 'environment' in the Mining Act to private mines

- Ensures that aspects such as existing or permissible land use and geological, heritage, aesthetic or cultural values are considered within the scope of private mines.
- A legislatively straightforward way to align environmental elements across all tenements.

OPTION 3

Private mines convert to a mineral tenement upon transfer by, or death of, a proprietor

- Would be an incremental way to align regulation of private mines with other tenements.
- A relevant consideration would include the interactions between the proprietor and the operator.

OPTION 4

Transition private mines to an existing form of claim, lease or licence under the Mining Act

- Would achieve consistent regulation, compliance and governance across all tenement types.
- Would be the most complex reform option involving a number of policy and legal considerations.

CONSULTATION QUESTIONS

- Do you think we should further align the regulation of private mines with other mines, and, if so, which of the options presented would work best?
- If private mine operating approvals were transitioned from MOPs to PEPRs prior to 2036 (option 1), what would a reasonable transition period be?
- What other options are there to improve the regulation of private mines?

6. TECHNICAL AND OPERATIONAL AMENDMENTS

A review of the Mining Act, since its reform in 2021, has identified a range of possible miscellaneous and technical amendments to ensure the Mining Act can be administered and operate as intended. These include amendments to address any unintended consequences of previous changes to the Mining Act, and minor drafting improvements to ensure efficient operation of the Mining Act.

The following are examples of some technical and operational amendments that could be considered:

- Clarify land access matters, such as the period of validity for a notice of entry and the requirements of miscellaneous purposes licences to authorise ancillary operations.
- Rectify provisions relating to dealings with tenements, such as the transfer of liability and the withdrawal of a dealing.
- Prescribe scoping in the Mining Act and clarify the use of retention leases for scoping.
- Clarify surrender and partial revocation processes under the Mining Act so that they are applied consistently throughout the Mining Act.
- Provide for robust closure, rehabilitation and compliance direction provisions.
- Reinstate penalties for a person who encourages or procures the commission of illegal mining.
- Clarify the forfeiture provisions so that a tenement holder cannot avoid plainting by transferring a tenement into a subsidiary or related company.

CONSULTATION QUESTIONS

- Do you have concerns with any of the examples of technical and operational amendments listed, and if so, what are the issues?
- Can you suggest any other miscellaneous amendments to improve administration and operation of the Mining Act?

ACKNOWLEDGEMENT OF COUNTRY

As guests here on Kaurna land, the Department for Energy and Mining (DEM) acknowledges everything this department does impacts on Aboriginal country, the sea, the sky, its people, and the spiritual and cultural connections which have existed since the first sunrise. Our responsibility is to share our collective knowledge, recognise a difficult history, respect the relationships made over time, and create a stronger future. We are ready to walk, learn and work together.

FURTHER INFORMATION

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