

Mining Acts Review 2016-17

On 27 September 2016, the SA government announced it would undertake the “Leading Practice Mining Acts Review of the *Mines and Works Inspection Act 1920*, the *Mining Act 1971* and the *Opal Mining Act 1995*”.

As mining has numerous potential adverse impacts on the environment, the EDO has been involved in a significant way in the review process. After reading the Discussion Papers released in late 2016, we prepared a major submission to the Review, which was supported by a number of other environmental groups in South Australia. The current Mining Act and Regulations contain significant deficiencies, as we identified in our EDO Submission to the Review. In September 2017, the government released a sum of 22 Recommendations to the public. We were pleased to see the government’s Recommendations and proposed amendments addressed some key points made by the EDO in our submission.

Following the release of the Recommendations, the *Statutes Amendment (Leading Practice in Mining) Bill 2017* was introduced into Parliament on 18 October 2017. The EDO strongly supports amendments contained in this Bill that we believe are likely to create benefits for the environment, compared to the situation under the current Act and Regulations. The provisions/amendments that we support are listed below.

1. Amendments that will result in increased transparency, especially provisions that will ensure a wide range of information will be available to the public, including through the Mining Register.
2. A number of provisions that expand and improve the range of investigation, monitoring, compliance and enforcement mechanisms available to the Regulator under the Act, to make these consistent with other modern environmental and resource legislation. These include: the introduction of civil offences and penalties, continuing offences, expiation fees and enforceable voluntary undertakings; introducing directors’ liability for offences; making all offences summary offences; and expanding evidentiary provisions to remove obstacles to conviction.
3. All provisions which seek to ensure land is properly rehabilitated, and in particular, the establishment of a rehabilitation fund, which will create better environmental outcomes by providing funds for legacy sites to be rehabilitated.
4. A new provision that the Minister must not grant a mining lease, retention lease or miscellaneous purposes licence unless satisfied that “appropriate environmental outcomes will be able to be achieved”.
5. Amendments to ensure the content of Programs for Environment Protection and Rehabilitation (PEPR) is adequate, and that operators are abiding by their PEPR, through the Ministerial power to condition a PEPR and the new Ministerial power to require an independent audit of a PEPR.
6. The transition of private mines to ensure “more consistent regulation of private mines” under the Act.

In our view, these provisions should already be in the Mining Act. In particular, the community should already be empowered to have access to the types of information covered in the Bill and the Regulator should already have the powers of monitoring, investigation, compliance and enforcement that have been available to the Environment Protection Authority for years, as well as to regulators in other jurisdictions. The fact that the current Mining Act and Regulations do not address these matters is a significant deficiency in the legislative and regulatory regime

However, it is our view that the legislative and regulatory regime could be further improved by addressing other matters not included in this Bill, but which we raised in our Submission to the Review. Other matters which we consider to be of importance to better environmental protection, which should be addressed in the Mining Act, include:

- the inclusion of ecologically sustainable development as a specific objective or as an express matter for consideration by the Minister when administering the Act;
- the identification and inclusion of specific principles or criteria to guide Ministerial decision-making in relation to the grant of tenements, in particular exploration licences and mining leases;
- merits review of decisions to approve (and reject) large mining leases, with broad standing provisions;
- expanding the new civil remedies provisions to members of the public; and
- the possibility of a mandated code for undertaking community consultation.

We also believe that the government should pursue the following actions:

- continued efforts to bring Olympic Dam in line with community expectations and to be consistent with other major mines, for example, in relation to application of the Aboriginal Heritage Act 1988 (SA), and rehabilitation and closure requirements; and
- the prohibition of mining in certain protected areas (to be discussed further in conjunction with DEWNR).

At the time of this release, the Bill had been passed in the House of Assembly, but is awaiting debate in the Legislative Council. Through the Environment and Conservation Roundtable, established by the Department of Premier and Cabinet, we are currently involved in ongoing consultation and discussion with the government on the issues of concern to us, with the aim of improving the legislative regime to further strengthen environmental protection. However, if debate on the Bill is deferred to next year, with an election scheduled in early 2018, the future of the Bill and this process is somewhat uncertain. Nonetheless, we will continue to be involved in discussions around this Bill, and/or other Bills, to take the opportunity to improve the legislative regime in relation to mining and protection of the environment.

To access a copy of the Bill:

http://minerals.statedevelopment.sa.gov.au/mining/leading_practice_mining_acts_review

To access the EDO submission:

https://d3n8a8pro7vhm.cloudfront.net/edos/pages/30/attachments/original/1491194734/Mining_Act_Submission_300317.pdf?1491194734