RPC

Ray Paxton Consulting

[redacted]

2017-02-11 Mining Act Review

As a concerned and proud South Australian with over 20 years' experience in the Mining Industry, followed by 16 years in mining regulation and now with a small business mainly working for the small to medium operators in mining Industry (Extractives Minerals).

I am concerned that once again Government is lacking in the consultation process by not notifying all those who hold Exploration and Mining leases. This seems targeted to community and land holders who are important, but without the miner/investor the community dwindles. It appears that the department has lost focus that they are Public Servants and should be supporting the industry (especially Mining application assessment officers (facilitators)). Many years ago, the focus was on compliant regulation and working with mining operators and the community for good out comes, but this has been one sided and a failure in recent years.

.

The language and miss information in the document does not fill me with confidence this exercise will reduce Red Tape! The doc reads as if it wants to increase regulation and red Tape. The doc dot points should have been numbers which makes commenting easier.

There are numerous small mine operators/farmer where their mining lease's supplement a small to medium business employing local people all over the state. If any of these small mine operators require a small amendment to the Approved Development Program (ADP approved under the Mines and Works Inspection Act) because the current ADP does not comply with the Determinations, they have to submit a new Program for Environmental Protection and Rehabilitation (PEPR) at significant cost. The same is required for an amendment to an approved Mining and Rehabilitation Program (MARP).

The fear industry has in making negative comments about the mining act and it processes is a backlash from the department by holding up applications, and making approvals more difficult.
Complaints are as important as positive feedback to allow the agencies to evolve and grow which goes hand in hand with state prosperity. Many in industry have experienced this!

I make the following comments, and if required can follow up with facts.

Late last year I had discussions with two Multi-National companies operating in this state and was concerned when they said due to the high cost of regulation and getting PEPR's approved future investment was in doubt and would be focused in the other states.

I have also been told (as have other consultants) by small to medium operators the processes are too hard and time consuming to make expansion viable.
They have also said when the existing lease have been mined and rehabilitated they will close their business (Not what the State needs).

For many years now industry have viewed Mining Regulation and Rehabilitation as a hindrance to state prosperity.
This has been brought about by the complexity of even a simple application, or amendment to a plan, the inconsistent assessment process, cost, and time taken to process them.

Deadlines placed on industry to submit information, but no deadlines for processing and responding to applicants.
NSW has deadlines and staff have to justify if they don't meet their deadline.

Discussion paper on the Mining Act 1971 and Regulations (PDF 932 MB) Misleading as the Last review and amendments was approved mid-2011. The language used does not make one confident that this exercise will reduce Red Tape.

Departmental Image.

The most important thing is to not only look at the red tape created by the Mining Act, but the processes put in place by the different branches within the Minerals group. The current processes slow everything down and complicate things beyond what is required. The process should be efficient, and productive. There is an opportunity for the process to make a profit by setting approval deadlines (as New South Wales have), with a win for Government, the applicant and employment.

Departmental Staff.
Staff training is required to enforce the concept they are Public Servants and without the industry or community they are redundant. It is common for industry people to say they feel they are talked down to (not on the same level).

1. Introduction

Mines and Works Inspection Act

- Appointment of Mine manager must be retained to ensure appropriate qualifications and (more importantly experience).

- Existing Approved Development Programs must be recognised and protected under the Mining Act without minor amendments having to go through the process of a new PEPR.
- The lease conditions on existing operation support this (I can supply examples)
- Both State and local Government borrow pits need to be regulated under this act or the Mining Act.
- There are numerous other sections of the Mines and Works Inspection act which should be retained Opals, Olympic Dam, Leigh Creek Coal mine, The Whyalla Steel Works, Penrice.

One could say the Mining Act should have been left to deal with legal right to tenure of the land, and the Mines and Works Inspection Act deal with regulation, Mine Plans and the operations of Leases Private Mines.

The department has breached the Mining Act many times in the past which would jeopardise the legal right to mine for many companies.

Mining act requirements

1. Free land holders right to mine Extractive Minerals for own use needs to be clarified in the review.
   Applicant should not have to contact EL, PEL, or GEL, holder's unless it is the same commodity sort after. Most time's you don't get a response to correspondence with them. They don't notify tenement, or land holders when they take out their licence over the land (no right to Object)..

2. Special approval should be available to keep an operation working while they expand the lease, (This could and was in the past tied in to a rehabilitation security bond).

3. Approved Development Programs (ADP's) and Mining and Rehabilitation Programs (MARP's) should be recognised under the review of the act and its determinations.
   It is unreasonable and expensive to do new Programs for Environmental Protection and Rehabilitation (PEPR), for small operations when they may not have an improved outcome because the existing approved plan is adequate.
   Major Development Applications do not restrict business growing like the current Mining Act, its associated processes and are a once off for each application

4. The mining lease proposal should be approved for small to medium leases and not being required to submit a separate PEPR Doc, which increase cost and time.

5. Determinations need to be reviewed as these have complicated and become cumbersome applications for small to medium leases.

6. Labour / work conditions need to ensure leases where production may be campaign based (anything from weeks apart to years apart) be protected because if they aren't then this encourages illegal mining.

7. Multiple sites owned/operated by the same operator used to have in the past the right to "Exemption's and "amalgamations" – no longer, but Part 12, sec 79 ss (1) and (2) still provide for the provision.

8. Why the discrepancy with Mineral claim registration, 63C (1) (b) states that the claim must be lodged with the Registrar within 14 days of pegging, but 63C (2) gives no time for the Registrar to register the claim. The requirement should be 30 days from pegging, and the second point's need to be clarified. Firm time lines need to be put in place for the Mineral Claim to be registered and granted.
   Or better still eliminate the Mineral Claim and just have the Lease application.

9. **Part 10A REPR's**

   70B (2) (e) and (d) set out such other information as may be add the word "reasonable"

Some Councils are now required to pay the 55c royalties. If the Mining Act is to replace the Mines and Works Inspection Act (M&WIA) the it requires measures to control mining and rehabilitation of the land to ensure constant rehabilitation standards as the Extractive Mining industry. M&WIA is the only tool to regulate and ensure rehabilitation of borrow pits is completed to an industry standard for Local Gov, DIPTE SA Water. (The Borrow pit terminology need change because you can't borrow the minerals use and not return).

10. The Mining Lease Application should be separated from the Mining Lease Proposal (MLP). This would ensure the rights to the land aren't lost whilst lease applicant prepares a MLP. In some cases, MLP may take some time to develop.

Page 14;
Exempt Land
More work needs to be done to assess the long term productive value of the land and Whether there are areas which should be exempt from exploration.
For example, Hillside On Yorke Peninsula, If the land can't be returned to pre mining production and the mine life is say 15 years, then food production should prevail as food production will be for hundreds of years.

Page 48;
Discussion
Agree with the first 3 dot points 4th dot point is more red tape and should only be used if the land is returned to community use, however requires safe guards to ensure a balanced outcome.

Page 49;
Discussion
If the first dot point is to be implemented the protection against Gov abuse must be included. There is no history of this being a problem in the past. Discussions with lease holders/ operators have general always achieved compliance.
This is an area where caution is required to ensure overregulation does not get out of Hand

Page 52;

2.3 Enforcement Leading practice Mine closure planning.

The mine closure in this State is so inconsistent the Medium operator will not be Back as they have made no profit.

Small operators (Extractives must return land back to pre-mining land use).

Approved mine plans required multi bench hard rock quarries to return the land to grazing (i.e. PM 11 and 12) absolutely absurd and can't be achieved.

Page 55; For Extractive minerals operations only

(a.) The Extractives Rehabilitation Fund (EARF) commence in 1972, and the biggest mismanagement has been the millions of dollars in the fund has not earned one cent in interest Balance currently $21.5 million (lot of rehab money lost).

(b.) Royalty component payed to the fund should have kept pace with CPI, industry would have supported this.

(c.) The EARF was the envy of the other states, with WA implementing a version to reduce bond making capitol available to improve rehabilitation and mining practices with the interest earned used to rehabilitate old sites.

EARF Review 202-2004.

(d.) Prior to the EARF review in 2002 to 2004 some of the bureaucrats decided without understanding what the fund did and its outstanding role in rehabilitation (and keeping cost down to the community) that it should be made redundant of as no other state had one. South Australia has lead the other stated in many fields why not this?

(e.) The view was that the fund did not have sufficient funds to cover the outstanding rehabilitation liability of $80 Million? However, they did not take into account the $80 million was only a risk if the whole industry closed up at the same time (which could not happen) without undertaking final rehabilitation.

(f.) The evolution of the approve ADP/MARP/MOP and PEPR reduced the liability on the fund by the simple clause the final land form will be formed as part of mining (lease Condition on Many). This reduction depending on operation could have been 90% or more.

(g.) There was a lot of misinformation at the time of the review, the industry would have supported an increase to the EARF of $1 per tonne (imagine how much would be in the fund to day at this level including interest).

(h.) The Bureaucrats made the decision on what they though should be done' not what industry wanted or was in the best interest of the state.

(i.) When the new version of the fund commenced in 2004 Extractives were eligible for funding from the EARF for past rehabilitation liabilities if there were in sufficient resource left to cover the outstanding rehabilitation cost. It was suggested at this time that an audit of all extractive operations be undertaken to determine which operation fitted this category (this was ignored).

(j.) It is imperative that and alterations to the fund based on the above does not pot operations at financial risk. I personally Know of major operations which should have outstanding rehabilitation funded because in 2004 there was insufficient resource remaining to cover those cost.

(k.) The department should be looking at what can be done to make the EARF a national leader in supporting the industry while covering rehabilitation liabilities.

Page 56;

Last paragraph first column to fabrication the minerals will be mined when the economy can support the development.

Page 57;
Private Mines

First Dot point;
The draft and approved MOP document should be available to stake holders to ensure transparency.

Second dot point;
Most of the extractive minerals leases with in Private Mines are road reserves, others that are an expansion to the resource has not compromised the ability to regulate.
There many Private Mines where the approved operational plans are Mine Operation Plan (MOP) and Program for Environmental Protection and Rehabilitation (PEPR) and have been successfully regulated for many years, however one doc would be better for all stakeholders.

Dot point 3;
Clear provisions need to be included to prevent operations implementing changes which may impact the community.

Dot point 4;
Transparent compliance reporting needs to be included for all PM holder/operators.

Dot point 5;
While the aspects of the environment are narrower than under the Mining Act they have proven adequate and maybe the Mining Act has gone too far.

Dot point 6;
To my knowledge there has been no issues restricting enforcement on Private Mines.
Need to be careful to not over regulate as this has been identified as an issue which will Increase costs.
The increased cost of regulation has been highlighted as a problem over most industry sectors Australia wide. It was also an issue in the recent WA state election.

Dot point7;
The administration of Private Mines needs to be rectified to cover land sales and the transfer of owners.
Legal advice should be established the determine if a Private mine is attached to the land and cannot be sold separately.

Dot point 8;
Implement a process to revoke unused private mines must be fair, open, transparent and ensure future resources are protected.

Dot point 9;
Bonds should apply to Private Mines as is with other Mining tenure.

Page;59
Discussion

First dot point.
Don’t destroy the fund let it grow to become industry leader, expanded uses including Research into developing information to assist community understanding of operational and environmental targets and their benefits.
for improved environmental outcomes.
“Last resort” new term
The EARF has been on down Hill slide since 2004 with Government taking for funds for Assessment of Extractive Minerals Lease applications. A small mineral Lease applicant has one fee, Extractive has the same fee but also pays the wages of assessment staff (double dipping).
In 2004 industry agreed to fund more compliance staff (4 positions 3 in the field and one as a technical support in the office), this was never implemented negatively affecting the credibility of the department.