



Issues Paper

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# **Review into the Institutional Arrangements to Manage Regulatory Burden - Extractives Supply Chain**

March 2020

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An appropriate citation for this publication is:

South Australian Productivity Commission 2020, *Review into the Institutional Arrangements to Manage Regulatory Burden – Extractives Supply Chain*, Issues Paper, March 2020

## About the South Australian Productivity Commission

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The Commission provides the South Australian Government with independent advice on facilitating productivity growth, unlocking new economic opportunities, supporting job creation and removing existing regulatory barriers.

The Department of the Premier and Cabinet (DPC) Circular PC046 sets out the objectives and functions of the Commission; how inquiries are referred to the Commission, undertaken and reported on; and how the Commission and public sector agencies work together.

The Commission was established to assist the government to:

- improve the rate of economic growth and the productivity of the South Australian economy in order to achieve higher living standards for South Australians;
- improve the accessibility, efficiency and quality of services delivered or funded by government;
- improve South Australia's competitiveness for private sector investment;
- reduce the cost of regulation;
- facilitate structural economic changes while minimising the social and economic hardship that may result from those changes;
- take into account the interests of industries, employees, consumers and the community;
- increase employment;
- promote regional development; and
- develop South Australia in a way that is ecologically sustainable.

The Commission is supported by the Office of the South Australian Productivity Commission (OSAPC) which is an attached office of the Department of the Premier and Cabinet. The Chair of the Commission also serves as the Chief Executive of the OSAPC.

For more information on the Commission, including DPC Circular PC046, visit the website at [www.sapc.sa.gov.au](http://www.sapc.sa.gov.au).

### Disclosure

The Commissioners have declared to the South Australian Government all personal interests that could have a bearing on current and future work. The Commissioners confirm their belief that they have no personal conflicts in regard to this inquiry.

## Terms of Reference

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### SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION REVIEW INTO INSTITUTIONAL ARRANGEMENTS TO MANAGE REGULATORY BURDEN – EXTRACTIVES SUPPLY CHAIN

I, Steven Marshall, Premier, hereby request that the South Australian Productivity Commission (the Commission) undertake a review into institutional arrangements to manage regulatory burden focussing on the extractives supply chain.

#### Background

The construction sector is a significant employer and economic driver the state. The construction sector employed 74,700 people (or 8.8% of total employment in the state) as at August 2019, and in 2018-19 the construction sector accounted for 7.9% of the state's total industry gross value - the third highest contributor to the state's economy. The South Australian government is investing \$11.9 billion in infrastructure spending over the next four years, which will provide valuable community assets, drive economic growth and provide jobs for South Australians.

The extractives industry is a vital component to the provision of construction and heavy construction materials to infrastructure and building projects across South Australia. The sector includes hard rock, sand and gravel extraction operations and secondary processing.

The ability to develop extractive resources close to infrastructure and construction projects across South Australia in a strategic manner significantly contributes to:

- cost and time efficiencies and improved tender mobilisation for major construction and infrastructure projects
- reducing transport costs
- improving the ability of quarry companies to tender with greater confidence, and to mobilise more effectively to respond to demand.

#### Terms of Reference

The Commission is to evaluate the effectiveness and efficiency of State and local government regulation, policies and practices for the extractives supply chain and identify reform options to improve the efficiency of regulation on the extractives industry – and broader construction industry to enhance output and employment.

The Commission is asked to consider and report on the following matters:

1. The current regulatory framework for quarry and extractive industry development in South Australia, including:
  - a. processes for determining/approving location, and any restrictions that may exist
  - b. timeframes for current processes
  - c. costs for businesses
  - d. closure arrangements and post closure land use.
2. Regulatory, planning and other barriers to strategic development of quarries located near significant infrastructure opportunities.

And make recommendations on:

3. Actions to improve the efficiency and effectiveness of supply of extractives-based inputs into strategic infrastructure and construction projects, and the efficient and effective establishment of related quarries across South Australia.
4. Better regulatory and non-regulatory options for more expedited assessment and approvals for high performing members of the sector thereby creating a more competitive environment.
5. Any other relevant matters.

### **Scope**

The Commission should have regard to relevant local, state and federal legislation and regulation.

### **Process**

The Commission is to consult with stakeholders, including: businesses operating in South Australia; relevant business associations and industry groups (such as Cement, Concrete and Aggregates Australia and the Institute of Quarrying Australia); the Department of Planning, Transport and Infrastructure; the Department of Energy and Mining; the Industry Advocate; Local Government Association; and the State Procurement Board.

The Commission is to issue a draft report outlining recommendations for consultative purposes. A final report is to be provided to me as soon as possible, but not later than six months after receipt of these terms of reference.



Hon Steven Marshall MP

**PREMIER OF SOUTH AUSTRALIA**

3 / 2 / 2020

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## Acronyms

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DEM	Department for Energy and Mining
DEW	Department for Environment and Water
EARF	Extractive Areas Rehabilitation Fund
EML	Extractive Mineral Lease
EPA	Environment Protection Authority South Australia
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
GSP	Gross state product
MC	Mineral Claim
MD	Ministerial Determination
MRD	Mineral Resources Division
MOP	Mine Operations Plan
PEPR	Program for Environment Protection and Rehabilitation
SA	South Australia

# 1. Introduction

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## 1.1 Purpose of review

The South Australian Productivity Commission (the Commission) has been asked to undertake a review into the efficiency and effectiveness of regulation, policies and practices of the extractives industry supply chain. The extractive industry includes hard rock, sand and gravel extraction operations<sup>1</sup>, and is vital to the provision of construction materials used in infrastructure and building projects across South Australia.

The ability to develop extractive resources that provide inputs to infrastructure projects affects their supply, their price and the transport costs of their delivery. These conditions then have an impact on industry confidence in tendering for major construction projects. Relevant to these outcomes are the processes, capabilities and practices among several regulators. All of these matters have a bearing on the financial and time costs of the development of state infrastructure.

## 1.2 Commission's approach

This review will examine the processes and timeframes for approving quarries, costs for business, and closure arrangements and post closure land use. The Commission will make recommendations for improving the supply of extractives-based inputs into state infrastructure and construction projects. Regulatory and non-regulatory options to create competition through expedited assessment processes for organisations that consistently demonstrate best practice approaches will be considered.

The mining and construction industries are subject to many complex and macroeconomic influences. The mining sector in South Australia has been subject to extensive review and reform in the last 5 years. Consistent with its terms of reference, the Commission will have regard to relevant elements of that work.

The Commission conducts its own independent quantitative and qualitative analysis. It also draws on the experience, evidence and views of all inquiry stakeholders. The release of this issues paper supports interested parties to participate in the inquiry by highlighting the key issues and by raising questions to generate feedback.

It is important to emphasise that the Commission has no predetermined views on the matters covered by the inquiry. This issues paper sets out the Commission's initial understanding of the relevant matters. Feedback from stakeholders will assist further analysis and review that will contribute to the development of a draft report.

## 1.3 Inquiry process

### Make a submission

The Commission invites submissions on the issues paper by 9 April 2020. Submissions may address any of the issues covered by the paper and the terms of reference.

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<sup>1</sup> See the *Mining Act 1971 (SA)* s 6 for full definition. (*the Act*)

An electronic submission in Word or PDF format is preferred, along with any supporting documentation containing facts, figures, data or examples:

- through our website facility [www.sapc.sa.gov.au](http://www.sapc.sa.gov.au); or
- via email at [sapc@sa.gov.au](mailto:sapc@sa.gov.au); or
- via post at:  
South Australian Productivity Commission  
GPO Box 2343,  
ADELAIDE SA 5001

If you would like to discuss how best to communicate with the Commission, the Office of the SAPC can be contacted at 08 8226 7828.

A draft report will be published in late May 2020. The draft report will be the start of a further round of consultation with stakeholders, following which the Commission will consider all feedback received, finalise its views, and submit its final report and recommendations to the Premier by 6 August 2020. The Commission is required to publish the report within 90 days of providing it to the Premier.

### Confidentiality

Transparency is an important part of the Commission’s independent process for gathering evidence and other elements of the inquiry process. It provides confidence to stakeholders that their views have been heard and accurately shows to the wider public the breadth of views and information that have been put to the Commission in reaching its independent conclusions and recommendations. To that end the Commission will publish the submissions that it receives on its website unless the author clearly indicates that the submission is confidential or the Commission considers the material to be offensive, potentially defamatory, beyond the scope of the inquiry’s terms of reference, or an abuse of process.

If you wish to submit material in confidence, please advise us why your submission should remain confidential and we will contact you to discuss. We reserve the right to decline your submission if we do not agree with the rationale provided for it to be confidential. Material accepted as confidential will be read only by our Commissioners and staff and will not be referred to in our reports. Later, if we consider the confidential information to be important for conclusions drawn by the Commission, we will seek your permission to refer to it in a form that is acceptable to you.

Confidential submissions may be subject to the *Freedom of Information Act 1991* that provides applicants the right, subject to some restrictions, to access documents created and held by the government. Avoid the use of personal or identifying information in submissions, e.g. contact details or names of people referred to in submissions. The Commission will ensure all personal contact details are removed from submissions before they are published on our website.

### Key dates

**6 February 2020**

Notice of inquiry

**March 2020**

Issues Paper

**March – April 2020**

Initial public consultation

**9 April 2020**

Submissions to issues paper due

**May 2020**

Draft report

**May – June 2020**

Draft report public consultation

**26 June 2020**

Submissions due on draft report

**6 August 2020**

Final report presented to the Premier

**6 November 2020**

Due date to be available to the public

## 2. The extractive mineral industry

### 2.1 What are extractive minerals?

'Extractive minerals' are defined as sand, gravel, stone, shell, shale or clay when used generally for construction purposes<sup>2</sup>, but excluding those materials if they are used for industrial, agricultural and ornamental (dimension stone) purposes. Some types of clay (fireclay, bentonite or kaolin) are also excluded from the definition of extractive minerals.<sup>3</sup>

A full list of extractive mineral commodities that may be mined in South Australia (SA) is provided on the Department for Energy and Mining (DEM) website.<sup>4</sup> Key construction materials found in SA include sandstone, sand, quartzite, limestone, dolomite, metasediments and calcrete.<sup>5</sup>

#### Box 2.1: Extractive mineral definition

For the purposes of the review, the Commission will use the definition of extractive minerals in the *Mining Act 1971 (the Act)*. The Commission's use of the term 'extractives' and 'construction materials' is a reference to extractive minerals as defined.

The Commission acknowledges there are other definitions of extractive minerals used for related purposes, for example under the *Environment Protection Act 1993*, and that there are other definitions and terms used in the extractive mineral industry in other jurisdictions.

The Commission invites feedback from stakeholders about the Commission's choice of definition, especially if it has implications for issues of importance for the review.

### 2.2 What is a quarry?

A quarry is a cutting or pit where construction materials are extracted. Quarrying is the process of removing rock, sand, gravel and other minerals from the ground through mechanical means to produce products used in the construction industry.

For the purposes of the review, the Commission will use the term 'quarry' to mean any mine site from which extractive minerals for construction purposes are removed.

### 2.3 Industry size, composition and economic contribution

DEM collects data and information from mineral tenements and provides published statistics based on that data. The most recently published data<sup>6</sup> indicate:

- At 31 December 2017, there were 2,215 mineral tenements and 224 private mines in SA.
- Five to seven per cent of mining lease annual rent and administrative fee invoices raised over the past four years to 31 December 2017 have been for Extractive Mineral Leases (EML).

<sup>2</sup> *the Act* (n 1) pt 1, s 6(1).

<sup>3</sup> *Mining Regulations 2011*, pt 1, s 3(3). (*the Regulations*)

<sup>4</sup> Department of Energy and Mining (DEM), Extractive mineral commodities (web page, 13 February 2020) <<https://www.energymining.sa.gov.au/minerals/mining/extractive-minerals/extractive-mineral-commodities>>

<sup>5</sup> Department of State Development (DSD), *Identification of strategic mineral resource areas in SA*, September 2015, 6.

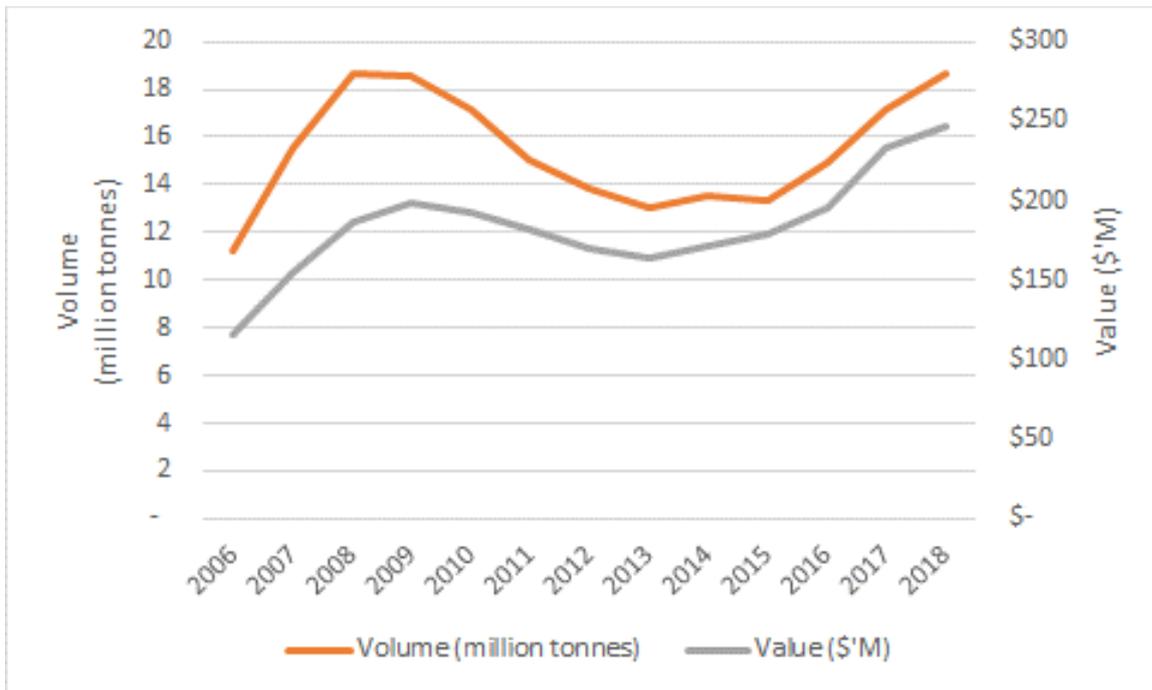
<sup>6</sup> DEM, *South Australia Mineral Resources Regulation Report*, 2017, 13-17 and 45.

- Of the 1,451 mining leases held at 31 December 2017, 41% were EML (noting a mining operation may consist of multiple leases).
- In 2017, total mineral production in SA was reported by 305 mineral producers contributing \$148.2 million of mining royalty revenue.

The Commission will obtain more recent data and conduct deeper analysis, including reconciling the apparent disparity between the number of EML's and their comparatively low rent and other administrative revenue.

In 2018 over 18 million tonnes of extractives were mined with a value of \$247 million.<sup>7</sup> Figure 2.1 below indicates the cyclical nature of quarrying over time by showing volume and value (tonnes) quarried since 2006.

Figure 2.1: Volume and value of construction materials extracted in SA over time (tonnes, \$s)



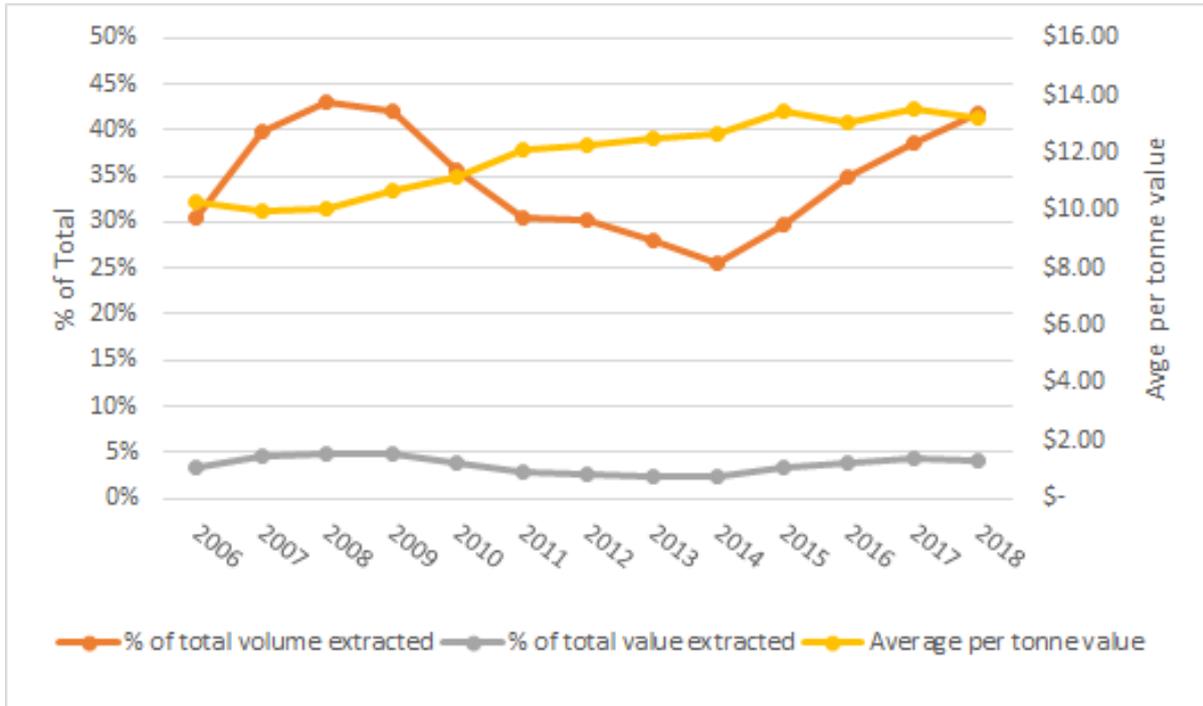
Data sourced from 'Resource production statistics' from 2006 to 2018, (web page, 18 February 2020) <[https://energymining.sa.gov.au/minerals/resource\\_production\\_statistics](https://energymining.sa.gov.au/minerals/resource_production_statistics)>

The volume of construction materials mined in SA as a proportion of total minerals is considerably more than the relative value of those materials. The 'high volume/low value' characteristics of extractive minerals are an important consideration when examining the sector's economic contribution.

Figure 2.2 shows the value and volume of construction materials as a per cent of total minerals mined over time. It also shows the construction material average value per tonne over time. The per unit (tonne) value for construction materials is less cyclical than the total value or quantity of all minerals over time. It is important to note that the per unit value will be influenced by several factors including the different value associated with different types of extractive minerals that are in the 'construction materials' category.

<sup>7</sup> DEM, Resource Production Statistics (web page, 1 February 2020) <[http://www.energymining.sa.gov.au/minerals/mining/resource\\_production\\_statistics](http://www.energymining.sa.gov.au/minerals/mining/resource_production_statistics)>

Figure 2.2: Value and volume of construction materials mined in SA as a percentage of total value and volume of minerals mined in SA and average value per tonne over time



Data sourced from 'Resource production statistics' from 2006 to 2018, (web page, 18 February 2020) <[https://energymining.sa.gov.au/minerals/resource\\_production\\_statistics](https://energymining.sa.gov.au/minerals/resource_production_statistics)>

Across Australia, the extractive mineral industry is largely made up of small operators with few employing over 200 employees as at June 2016.<sup>8</sup> Organisations within the industry range from those that specialise in mineral extraction only, those with strategic partnerships with other businesses in the supply chain (e.g. construction businesses), through to large vertically integrated organisations that incorporate the whole extractive supply chain from exploration and extraction through to infrastructure construction.

The Australian Industry and Skills Committee has indicated that the value of the extractive industry to the Australian economy increased by 14 per cent between 2007 and 2016. The industry is projected to continue to grow until 2023 driven by increased activity in the civil infrastructure and residential construction sectors.<sup>9</sup>

Cement, Concrete and Aggregates Australia (CCAA) estimates that 10,000 jobs are created directly and another 80,000 supported indirectly through the quarrying industry nationally.<sup>10</sup> Adelaide Brighton Ltd's submission to the Leading Practice Mining Acts Review considered that for each job directly employed in SA by the business, an additional 6.6 indirect jobs are created, worth a total contribution to SA gross state product (GSP) of around \$400 million per annum.<sup>11</sup>

<sup>8</sup> Australian Industry and Skills Committee, 'Extractive Industries Quarrying' (web page, viewed 7 February 2020) <<http://nationalindustryinsights.aisc.net.au/industries/mining-drilling-and-civil-infrastructure/extractive-industries-quarrying>>

<sup>9</sup> Ibid.

<sup>10</sup> Concrete, Cement and Aggregates Australia (CCAA), *The economics of quarrying*, (web page, viewed 20 February 2020) <[https://www.ccaa.com.au/iMIS\\_Prod/CCAA/Public\\_Content/INDUSTRY/Quarry/The\\_Economics\\_of\\_Quarrying.aspx](https://www.ccaa.com.au/iMIS_Prod/CCAA/Public_Content/INDUSTRY/Quarry/The_Economics_of_Quarrying.aspx)>

<sup>11</sup> Adelaide Brighton Ltd, *Submission in response to Department of State Development December 2016 Mining Act 1971 and Mining Regulations 2011 discussion paper*, dated 3 March 2017, 3.

### Information request 3.1 – Extractive industry data and information

The Commission has found that economic data and information on the mining sector is generally aggregated at the ‘whole of sector’ level, or specific data focuses on minerals other than extractive minerals.

The Commission invites interested parties to provide statistics or data specific to the extractives mineral sector in support of submissions to this issues paper.

## 2.4 Transformation and value

There is a series of steps or a ‘chain’ involved in the discovery and delivery of extractives. Value is created in the transformation of the raw material to a delivered product. The cost of creating that value however is affected by both natural conditions and regulatory process. It is useful to consider the value adding process, rather than just the physical supply of the materials (or the ‘supply chain’).

This chain extends from exploration to production to rehabilitation and closure, and includes key activities, commercial investment decisions, and regulatory approval gateways where reform can increase the value of extractives and maximise productivity. Innovations, regulatory reform, risk drivers and strategic framing are essential elements at these points in the value chain that contribute to competitiveness, sustainability, and assist in meeting the community’s expectations of this industry.<sup>12</sup>

For example, the Commission’s preliminary investigations indicate there is a strong correlation between the proximity of quarries to infrastructure and processing sites, and the cost of extractive materials used in infrastructure construction. Given the relatively low value per tonne compared to other minerals (see Figures 2.1 and 2.2), the costs of transporting extractives are central to the total cost of construction materials.

Access to appropriate transportation routes and distance from the market for extractive minerals used in construction are therefore important factors in creating value. When considered as inputs into state infrastructure, that impact may also translate directly to a positive or negative impact on the state budget and the wider economy.

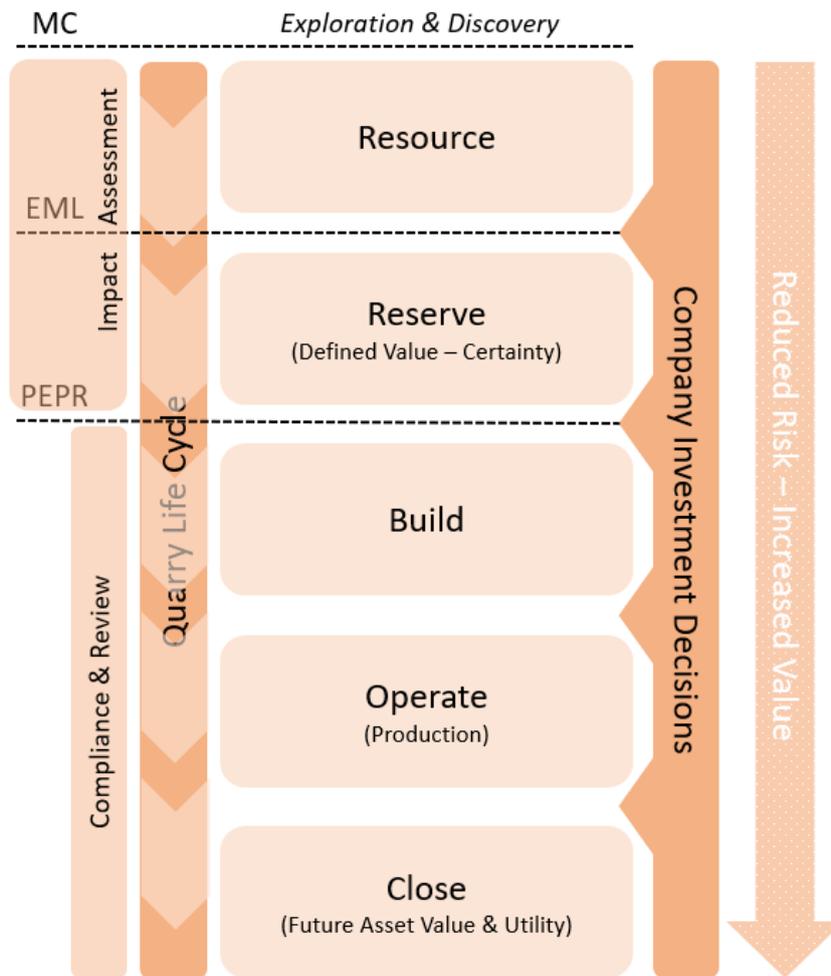
The Commission intends to examine the value transformation at each progressive stage of the extractives supply chain from pegging a claim, to extraction and processing of raw material through to distribution to the market, (including as an input into state infrastructure projects).

Figure 2.3 is a diagrammatical representation of the Commission’s current understanding of the relationship between operational aspects of the quarry life cycle, commercial investment decision points, and corresponding regulation and approval gateways. As discussed at 4.1 and illustrated at *Appendix A* some of this regulation goes beyond mining specific regulation and/or applies to value transformation beyond the quarry (e.g. making cement). Interested parties are invited to comment on and improve this representation; and to share their experience including through case studies.

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<sup>12</sup> Concepts drawn from University of Tasmania, *Transforming the mining value chain*, (web page, viewed 27 Feb 2020) <<https://utas.edu.au/tmvc/research>>

Figure 2.3: Transformation of value in the extractive mineral sector



Source: South Australian Productivity Commission.

## 2.5 Social License

The ‘social license to operate’ is defined as an ongoing acceptance of a project by the community and other important stakeholders.<sup>13</sup> Social license underpins regulation to the extent that the approvals granted by a regulator to explore for, establish, operate and close a quarry are intended to meet community expectations and preserve other (non-mining) public interests.<sup>14</sup> These relate to other forms of land-use (for example agriculture or housing development) and the environmental consequences of the production of extractives, which are discussed further below.

Almost half of global mining companies surveyed for Ernst and Young’s *Top 10 Business Risks and Opportunities 2020 report* ranked ‘licence to operate’ as their top business risk

<sup>13</sup> Standing Committee on Industry, Innovation, Science and Resources (Cth), ‘Inquiry into how the mining sector can support businesses in regional economies’, ch 6 [6.2].

<sup>14</sup> See for example the requirement for a tenement holder to prepare a program for environment protection and rehabilitation (PEPR) pursuant to s70B of *the Act*.

reflecting increased expectations by all mining stakeholders including investors and consumers.<sup>15</sup>

Emerging research suggests that simply meeting the licensing obligations required by the state to establish and operate a mine is insufficient to meet contemporary expectations by some stakeholders for social license.<sup>16</sup> The Commission intends to consider the extent to which existing regulation applicable to the extractives industry meets community expectations and leads to an efficient choice among alternative uses of resources.

The Commission understands there are several views and practices among quarry businesses in relation to community expectations. It seeks information and guidance on those views and practices and their efficiency and effectiveness including in obtaining the necessary regulatory approvals to operate. The Commission also seeks to better understand the practical public interests that sit behind the concept of the social licence to operate.

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<sup>15</sup> Ernst and Young, *Top 10 business risks and opportunities – 2020*, (web page, 27 February 2020)

<[https://www.ey.com/en\\_gl/mining-metals/10-business-risks-facing-mining-and-metals](https://www.ey.com/en_gl/mining-metals/10-business-risks-facing-mining-and-metals)<https://ey.com/en>>

<sup>16</sup> See for example Kieren Moffat and Airong Zhang, 'The paths to social licence to operate: An integrative model explaining community acceptance of mining' (2014) 39 *Resources Policy* 61 – 70; and Nick Toscano, 'Miners face higher bar to maintain 'social licence', report warns', *Sydney Morning Herald*, 2 September 2019 (web page, 27 February 2020) <<https://www.smh.com.au/business/companies/miners-face-higher-bar-to-maintain-social-licence-report-warns-20190901-p52mu2.html>>

## 3. The significance of the extractive minerals industry

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### 3.1 A key input into state infrastructure

The state's infrastructure is vital to enabling economic opportunity, improving productivity and maintaining liveability. The South Australian (SA) Government committed to a four year \$11.9b infrastructure program in the 2019-20 state budget, including investments across roads, water and sewerage infrastructure, health and schools, and public transport.<sup>17</sup> The efficient and effective supply of extractive minerals for construction is an important input to delivering these outcomes.

The South Australian element of national long-term infrastructure planning<sup>18</sup> is embodied in the proposed *20-Year State Infrastructure Strategy*, which is currently being developed by Infrastructure SA. Consultation in relation to the *20-Year State Infrastructure Strategy Discussion Paper* concluded in November 2019.<sup>19</sup> Once developed, the strategy will inform the development of the state's five-year rolling plan of priority projects – the Capital Intentions Statement.<sup>20</sup> Collectively, these arrangements are intended to improve infrastructure planning and prioritisation, supporting government's decision-making to achieve the right initiatives at the right time and place to meet the state's infrastructure requirements.<sup>21</sup>

The *30-Year Plan for Greater Adelaide* provides commitments to protect existing and undeveloped strategic mineral resources. Strategies to reserve existing operations include preserving separation distances between mining and incompatible development, ensuring buffers within quarries and mine sites, and maintaining access to freight networks.<sup>22</sup> These planning system commitments are also identified in strategic mineral resource planning.<sup>23</sup>

The construction materials industry has singled out several factors that influence the supply of extractive minerals, and in turn the extent to which the state can achieve efficient, effective and value for money infrastructure. Those factors include access to, and preservation of, extractive mineral quarries, a risk-based and balanced regulatory framework, and transparent infrastructure planning to support investment, among other factors.<sup>24</sup>

The Commission will consider issues raised by the extractive mineral industry in the context of existing government policy and regulation. Opportunities to improve the responsiveness and efficiency of the supply of extractive mineral inputs into state infrastructure and

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<sup>17</sup> SA Government, *State Budget 2019-20 – Budget Overview* (Budget Paper 1, 18 June 2019) 6.

<sup>18</sup> Infrastructure Australia, *Australian Infrastructure Plan – Priorities and reforms for our nation's future*, Recommendation 9.1 (Report, February 2016) 153.

<sup>19</sup> Infrastructure SA, *Get Involved* (web page, 4 February 2020) <<https://www.infrastructure.sa.gov.au/get-involved>>

<sup>20</sup> Infrastructure SA, *Capital Intentions Statement* (web page, 4 February 2020) SA Government's growth agenda, Growth State, has a vision to achieve <<https://www.infrastructure.sa.gov.au/our-work/capital-intentions>>

<sup>21</sup> Infrastructure SA, *20-Year State Infrastructure Strategy Discussion Paper June 2019*, (Discussion Paper, June 2019) 22. (Infrastructure Discussion Paper)

<sup>22</sup> Department of Planning, Transport and Infrastructure (DPTI), *The 30-Year Plan for Greater Adelaide (2017 Update)* (Policy, 2017) 77.

<sup>23</sup> See for example DSD, *Identification of strategic mineral resource areas in South Australia - Greater Adelaide region and major regional centres* (Report, September 2015); and Government of South Australia, *South Australian Multiple Land Use Framework* (Policy, 2016). (Multiple Land Use Framework)

<sup>24</sup> See for example CCAA, *Building Tomorrow's South Australia - CCAA Policy Priorities 2018* (Policy Paper, January 2018)

construction projects while meeting the social license to operate will be considered. In so doing the Commission is inclined to adopt the broad definition of state infrastructure promoted by Infrastructure SA, which includes ‘...road, rail and ports, health, cultural, sports, tourism and education facilities, and energy, water and waste utilities’.<sup>25</sup> This approach enables consideration of process, supply chain and other broader considerations contemplated in the review’s terms of reference.

### 3.2 Meeting the needs from faster economic growth

The SA Government’s growth agenda aims to grow the state’s economy by 3 per cent annually.<sup>26</sup> Nine priority industry sectors have been identified to support this agenda, including ‘energy and mining’. The sector plan for energy and mining is in the process of being developed, with a consultation paper inviting feedback on growth opportunities, challenges and specific priorities to inform the proposed Energy and Mining Strategy.<sup>27</sup> A summary of feedback was published on 19 December 2019.<sup>28</sup>

The consultation paper acknowledged the extractive minerals industry in terms of its importance to state infrastructure, the requirement to meet construction demand and potential domestic and international trade opportunities.<sup>29</sup> The extractives industry provided feedback advocating for an extractive strategy to complement existing copper, magnetite and hydrogen strategies. Export opportunities were also noted in feedback as opportunities to consider in designing the Energy and Mining Strategy.<sup>30</sup>

The Commission intends to draw on feedback to the consultation paper and continue the discussion with those stakeholders, within the scope of this review. The Commission will have regard to the inter-relationship between the *20-Year State Infrastructure Strategy*, the *30-Year Plan for Greater Adelaide* and current planning reforms, and the Energy and Mining Strategy.

### 3.3 Regulatory design and performance

Regulation is designed to influence and change the behaviour of individuals and/or organisations in order to achieve public policy objectives. Leading practice regulation is designed to limit or minimise adverse or undesirable outcomes that may arise from the application of regulatory rules.

Regulatory design for the extractive industry integrates environmental, economic and social elements throughout the lifecycle of a quarry. Leading practice regulation in this context is designed to be sufficiently flexible and innovative to enable solutions to be developed and applied that match site-specific requirements.<sup>31</sup>

Regulatory performance can be evaluated in terms of how regulators and business apply and respond to the ‘rules’, and whether the framework achieves its intended objectives.

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<sup>25</sup> Infrastructure Discussion Paper (n 24) 4.

<sup>26</sup> SA Government, ‘Growth State, Vision’ (web page, 7 February 2020) <<https://www.growthstate.sa.gov.au/vision>>

<sup>27</sup> SA Government, *Sustainably Growing Energy and Mining in South Australia* (Consultation Paper, 9 October 2019). (Growth State Consultation Paper)

<sup>28</sup> SA Government, *Sustainably Growing Energy and Mining in South Australia – What We Heard* (Summary Report, 19 December 2019). (Growth State Feedback Report)

<sup>29</sup> Growth State Consultation Paper (n 30) 7, 10 and 34.

<sup>30</sup> Growth State Feedback Report (n 31) 5 and 15.

<sup>31</sup> Australian Government, *A guide to leading practice sustainable development in mining*, July 2011, 17.

The Commission’s initial research and consultation has identified some important considerations regarding extractive mineral regulation in South Australia, including:

- different regulatory arrangements apply to extractives based on their use (e.g. ‘prescribed purpose’), and the nature of tenement (e.g. private mine or extractive mining lease);
- there is a potential for duplication, inconsistencies and tensions among different jurisdictions (local, state and Commonwealth), regulators (e.g. Mineral Resources Division (MRD) of DEM, Environment Protection Authority South Australia (EPA) and others), and sectors (e.g. mining, construction and agriculture);
- the extent to which risk assessment has been embodied in the design and application of the regulatory framework and the impact this has on productivity and investment;
- proportionality and the design and application of rules that across the sector; and
- the capability of regulators and businesses subject to the regulatory framework.

The Commission will investigate how current regulatory design and performance affect the extractive mineral industry with a view to identifying efficiency improvements and promoting value in the extractive supply chain.

**Information request 3.2 – Design and performance of the extractive mineral regulatory framework**

What are the key regulatory design elements and/or regulation performance activities that significantly impact value creation in the extractive mineral supply chain?

What proposed strategies or approaches could mitigate or remedy concerns regarding the regulatory framework?

To what extent does the yet to be proclaimed *Statutes Amendment (Mineral Resources) Act 2019* address concerns with the design or performance of the regulatory framework for extractive minerals for construction?

Please provide supporting relevant examples or case studies where available.

As part of those investigations the Commission will consider performance indicators in the extractives industry, and the extent to which they enable regulators and interested stakeholders to:

- tailor regulatory activities based on the performance of the sector (including individual elements); and
- benchmark and/or measure the performance of the regulations in achieving policy objectives.

MRD publishes data on the time taken (days lapsed) to complete certain approval processes. The Commission will consider these indicators and other data relevant to performance.

**Information request 3.3 – Regulatory performance indicators and benchmarking**

How well do existing performance indicators measure performance in achieving regulatory objectives?

What type of indicators or information could be used to provide evidence of performance in the extractives supply chain?

Please provide supporting relevant examples or case studies where available.

**3.4 A strategic approach to the extractive supply chain**

Any potential improvements to the extractives supply chain may require improvements in the interaction between mining and other regulation and policy, particularly when considering extractives as inputs into strategic infrastructure. For example, the Commission has been told there is a relationship between commitments to a forward pipeline of strategic infrastructure and industry’s interest in reducing risk in order to support investment necessary for establishing or enhancing quarries in SA.

The Commission intends to consider how and what information on the pipeline of infrastructure projects would assist to optimise the price and availability of inputs from the extractive sector. The impact of the effective intersection of funding, regulation, policy and practice throughout the extractives supply chain more broadly will also be considered. This area of investigation will have regard to existing work aimed at improving regulatory frameworks in support of public infrastructure.<sup>32</sup>

**Information request 3.4 – A strategic approach to public infrastructure**

Improvements in the extractive supply chain are not confined to potential reforms in mining regulation.

What areas of information and regulation are important to improving the agility of the sector to ensure the state can build affordable infrastructure?

Please provide supporting relevant examples or case studies where available.

<sup>32</sup> See for example CCAA, Submission No 17 to Australian Government Productivity Commission, *Public Infrastructure Inquiry* (23 December 2013). (CCAA submission 2013)

## 4. How is the extractives supply chain regulated?

### 4.1 Regulatory overview

In South Australia (SA), the *Mining Act 1971 (the Act)* and the *Mining Regulations 2011 (the Regulations)* regulate all mining activity from initial exploration through to quarry rehabilitation, and from small extractive operations through to major industrial mineral and uranium mines.

The Mineral Resources Division (MRD) is the primary agency that administers, manages and regulates SA's mineral resources industry. MRD works with referral authorities, including the Environment Protection Authority SA (EPA), SafeWork SA and the Department for Environment and Water (DEW) to co-regulate the mining sector. The several regulatory frameworks understood by the Commission as being applicable to quarrying activity and the wider extractive industry supply chain are summarised at *Appendix A*.

Ministerial Determinations specify the information requirements for mining lease applications and operational approvals. Ministerial Determinations 2 and 3 are specific to extractive minerals.<sup>33</sup> Compliance with Ministerial Determinations is mandatory and enforceable under *the Regulations*.<sup>34</sup>

In SA the property in all minerals is vested in the Crown.<sup>35</sup> Prior to the commencement of *the Act*, the landowner owned the minerals on their land. With the commencement of *the Act*, the property of all minerals in the state were vested in the Crown.<sup>36</sup> For a short period following the commencement of *the Act*, landowners who had commenced, or intended to commence mining operations on their land, could apply to retain the rights to those minerals where certain conditions were met. If the application met the requisite terms the Governor of SA proclaimed the land to be a private mine. Where such a proclamation has been made, the private mine is subject to the provisions of Part 11B and exempt from the rest of *the Act*.<sup>37</sup> Each proclaimed private mine has no expiry date, but no new private mines can be proclaimed.

### 4.2 Regulatory process and practice

A core function of MRD, in collaboration with referral agencies, is to assess and approve new mineral claims, leases and programs. In SA the three primary approvals required to explore for, establish and commence quarry operations are:

- Mineral Claim (MC): allows the holder to prospect or explore for minerals in the area of the claim for 12 months, and the right to apply for a lease over the area;
- Extractive Mineral Lease (EML): gives the holder the exclusive right to mine for extractive minerals as given on the South Australian Mineral Commodity list; and
- Program for Environment, Protection and Rehabilitation (PEPR): EML holders must hold an approved PEPR before conducting mining operations.

<sup>33</sup> DEM, MD002: *Minimum information required to be provided in a program for environment protection and rehabilitation* & MD003: *minimum information required to be provided in a mining proposal or management plan for an extractive minerals lease (EML) and any associated miscellaneous purposes licence (MPL)*.

<sup>34</sup> *Mining Regulations 2011 (SA)*, s 30(3) and s 65(7).

<sup>35</sup> *the Act* (n 1) s 16.

<sup>36</sup> *Ibid*.

<sup>37</sup> *the Act* (n 1) pt 11B.

A stylised overview of the key steps to obtain each of these approvals is at *Appendix B*.

There are differences in the regulatory obligations, and therefore processes and practices, that apply to private mines and other (non-private) quarries. For example, private mines are regulated through a 'mine operation plan' or MOP instead of a PEPR. The Commission notes that there may be situations where a quarry operator is required to comply with different regulatory regimes at the one location i.e. a private mine and an EML. The Commission seeks further information on where these situations arise, regulatory implications and potential impacts on productivity.

#### **Information request 4.1 – Extractive mineral regulatory approvals**

The Commission invites stakeholders to provide feedback on its overview of the approvals process for extractive minerals, including in relation to:

- the specific steps/approvals that are considered to have a disproportionate effect on the efficiency and effectiveness of the extractive mineral industry and supply chain in SA;
- how these processes compare to interstate arrangements; and
- if there are any additional or different approval processes that cause unnecessary regulatory burden.

Please provide examples and/or case studies.

### **4.3 Recent reviews**

The mining industry in SA has been subject to substantial regulatory review and reform, including in relation to extractives. As the Commission considers the feedback from these reviews it will note the distinction between the boundaries of the regulator's mandate, determined by legislation and regulation, and how that mandate is implemented.

#### **4.3.1 Leading Practice Mining Acts Review**

Commencing in 2016 this expansive examination of the state's mining legislative framework included substantial industry and community engagement. The reforms arising from that review focused on supporting competitiveness, investment and improving landowner rights. The changes were captured in the *Statutes Amendment (Mineral Resources) Act 2019* which amended the *Mining Act 1971*, the *Mines and Works Inspection Act 1920* and the *Opal Mining Act 1995*. The *Statutes Amendment (Mineral Resources) Act 2019* was assented to on 24 October 2019 but is yet to be proclaimed at the time of writing.

The Commission will be taking the *Statutes Amendment (Mineral Resources) Act 2019* as given but is interested in further opportunities to improve regulatory roles.

#### **4.3.2 Resource management, planning and land use**

There has been a significant amount of work in the last five years to improve the interaction between urban development, planning and mining regulation to better manage the interface issues between quarrying activity and land-uses that are sensitive to the impact of these activities. Examples include the *Resource Area Management and Planning (RAMP)*

project,<sup>38</sup> and the *Identification of strategic mineral resource areas in South Australia* (SRA) report. The SRA report followed as a response to the RAMP project to support access to the construction materials that underpin SA’s construction industry by identifying strategic extractive mining opportunities and minimising conflicts from incompatible land uses that can impact on future supply and pricing.<sup>39</sup>

Other complementary work includes the *South Australian Multiple Land Use Framework* intended to provide clear direction for regulators, decision makers and individuals on the importance of considering multiple land uses at the early stage of a project. *State Planning Policy #10 – Mineral and Energy Resources* expressly identifies the necessary complementarity of planning and mining frameworks by acknowledging the need to ‘...define and protect mineral resources operations, associated infrastructure and undeveloped mineral resources from encroachment by incompatible land uses.’<sup>40</sup>

### 4.3.3 Extractive mineral approval processes

In 2015 DEM released a mining proposal and PEPR template to assist prospective small-scale quarry operators that met a set of eligibility criteria.<sup>41</sup> Proposed quarry activities that meet the criteria have been determined to have defined impacts that are consistent with industry practice and well understood. This administrative reform was intended to make the application process fit for purpose, reduce costs for industry and provide streamlined assessment of lease applications and PEPRs.

In 2016 DEM also updated the Ministerial Determinations (MDs) for EML applications and PEPRs.<sup>42</sup> These reforms, developed in collaboration with industry, updated the risk assessment approach and removed the requirement for information no longer deemed necessary to inform the assessment process.

#### Information request 4.2 – Impact of recent reforms

The Commission would like to understand the impact of recent regulatory reforms on the extractives industry in SA:

- How successful were they in delivering the intended outcomes?
- To what extent, if any, have they given rise to unintended consequences?
- What reforms were proposed but have not yet been implemented?
- What other policy changes have been important to the extractive industry?

Please provide examples and/or case studies.

<sup>38</sup> DEM, *A collaborative, strategic approach for decisions on land use*, ‘Resource Management and Planning project’ (web page, 10 February 2020)

<[http://www.energymining.sa.gov.au/minerals/land\\_access/planning\\_and\\_development](http://www.energymining.sa.gov.au/minerals/land_access/planning_and_development)>

<sup>39</sup> DSD, *Identification of strategic mineral resource areas in South Australia* (Report, September 2015) 6.

<sup>40</sup> DPTI, *State Planning Policy #10 – Mineral and Energy Resources*, Policy 10.1, 57.

<sup>41</sup> DEM, *Extractive minerals eEvaluation tool* (web page, 10 February 2020)

<[http://www.energymining.sa.gov.au/minerals/mining/extractive\\_minerals/evaluation\\_tool](http://www.energymining.sa.gov.au/minerals/mining/extractive_minerals/evaluation_tool)>

<sup>42</sup> Ministerial Determination 002: *Minimum information required to be provided in a program for environment protection and rehabilitation (PEPR) for an extractive minerals lease (EML) and any associated miscellaneous purposes licence (MPL)*; and Ministerial Determination 003: *Minimum information required to be provided in a mining proposal or management plan for an extractive minerals lease (EML) and any associated miscellaneous purposes licence (MPL) applications*.

#### 4.3.4 Other reforms

South Australia is, or is likely to be, involved in several national reform processes relevant to the extractives industry, and potentially to this review. SA has already made a submission<sup>43</sup> to the Australian Government Productivity Commission's inquiry into resources sector regulation.<sup>44</sup> An independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) commenced in October 2019 and will be relevant to South Australia's bilateral agreement with the Australian Government regarding environmental assessment,<sup>45</sup> and the draft bilateral agreement regarding environmental approvals.<sup>46</sup>

#### 4.4 Royalties

*The Act* requires that royalty is payable to the Crown on all minerals that are recovered from mineral land and are intended to be for sale or sold or used for commercial or industrial purposes<sup>47</sup>. Councils are no longer required to pay royalty on minerals recovered from borrow pits<sup>48</sup> for their own purposes.<sup>49</sup>

Under *the Act*, the applicable royalty varies depending on the mineral category. Extractive mineral royalties are payable on a per tonne basis as assessed at the mine gate. Royalties are payable on extractive minerals recovered from private mines.<sup>50</sup> A portion of the extractive mineral royalty collected is allocated to the Extractive Areas Rehabilitation Fund (EARF) for certain rehabilitation projects and to provide financial assurance for extractive mineral quarries. For other minerals the royalty is based on a percentage of the value.

#### 4.5 Compliance

*The Act* contains various tools to require and enforce compliance ranging from punitive measures (licensing, lease cancellation, penalties), to compulsive tools (compliance directions), and preventative or persuasive measures (education and training). *The Act* has approximately 80 separate types of potential contraventions that cover public harms, including environmental protection and illegal mining activities.<sup>51</sup> Some of the compliance and enforcement roles and responsibilities undertaken by MRD include royalty audits, inspections to monitor compliance, and industry education.<sup>52</sup>

The Commission is interested in further exploring relevant regulatory obligations that impact on the efficient and effective operation of the extractives supply chain. Proportionality of information requirements and compliance measures, and the flow-on impacts on the state's infrastructure plans are of particular interest.

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<sup>43</sup> Government of South Australia, Submission No 25 to Australian Government Productivity Commission, *Resources Sector Regulation* (5 November 2019). (SA Government resources regulation submission)

<sup>44</sup> Australian Government Productivity Commission, *Current Inquiries - Resources Sector Regulation* (web page, 10 February 2020) <<https://www.pc.gov.au/inquiries/current/resources#draft>>

<sup>45</sup> Department of Agriculture, Water and the Environment (Cth), *South Australia Bilateral Agreement Information* (web page, 10 February 2020) <<https://www.environment.gov.au/protection/environment-assessments/bilateral-agreements/sa>>

<sup>46</sup> Department of Agriculture, Water and the Environment (Cth), *South Australia Bilateral Agreement Information* (web page, 10 February 2020) <<https://www.environment.gov.au/protection/environment-assessments/bilateral-agreements/sa>>

<sup>47</sup> *the Act* (n 1) pt 3, s 17(1).

<sup>48</sup> *Local Government Act 1999*, s 294.

<sup>49</sup> *South Australian Budget 2018-19*.

<sup>50</sup> *the Act* (n 1) pt 11B, s 73E.

<sup>51</sup> DEM, *Mining Act compliance and enforcement policy*, 2016, 14.

<sup>52</sup> DEM, *South Australian mineral resources regulation report*, 2017.

### Information request 4.3 – Extractives supply chain regulations

The Commission has provided a broad summary of the regulatory framework relevant to the extractives supply chain in SA and invites stakeholder feedback in relation to:

- the additional or different specific regulatory requirements not outlined in this issues paper that are relevant to the scope of the review, and why they should be considered; and
- the specific areas or sections of regulation (local, state and Commonwealth) that impact on the efficiency and effectiveness of the extractives supply chain in South Australia.

Please provide examples and/or case studies.

## 4.6 Protection and access

In SA, land is used for many purposes including agricultural, conservation, housing, infrastructure and mining. Access to and use of the land, the protection and management of the interests underlying the purpose of use, and the way in which those interests interact with other potential uses are captured in legislation and regulatory frameworks applicable to all three tiers of government.<sup>53</sup>

Geology determines the location of extractive resources. There may be competing interests for the land where the resources are found, or that may be subject to the downstream effects of quarrying. Whilst the location of mineral deposits cannot be changed, the extent to which that material can be accessed for quarrying purposes is subject to potentially several competing interests. The design and performance of applicable regulation to manage these competing interests is material to an efficient and effective extractives industry.

For example, planning regulation in the form of zoning and the way that specific residential developments are approved can preclude access to extractive mineral deposits or effectively sterilise parts of a deposit, potentially in perpetuity. Where a proposed land use other than establishing a quarry prevails, this can affect the proximity of low-cost quarry sites to construction sites or processing locations.

The distance from a quarry to the location of its minerals' intended use may have several consequential impacts, including early closure leading to higher costs of construction materials. Extractives are a high volume, low cost business that operate on limited margins. Transport costs are important. In Australia the industry has said '*...the efficiency of the supply chain for heavy construction materials is largely determined by location, as transportation equates to approximately 20 to 25 per cent of the total cost of materials.*'<sup>54</sup>

In SA, the Commission understands that the quarries with highest production rates are generally located within 60 kilometres of the Adelaide central business district.

The Commission is interested in how competing interests over land use and resources are reconciled and how that impacts on the availability and costs of construction materials. Any flow on to state infrastructure costs could impact on the state budget, and on the wider economy.

<sup>53</sup> Multiple Land Use Framework (n 26) 9.

<sup>54</sup> CCAA submission 2013 (n 35) 4.

## 4.7 Quarrying operations, externalities and performance requirements

Quarry operations inherently involve noise, dust, and water use, among other potentially negative externalities. These issues are considered as part of the approvals process and compliance activity, and are addressed and mitigated through mining regulation, policy and industry practice. Taken together the approval and compliance processes determine whether a proposed quarry can be established in a specific location, the methods and mining processes able to be used in that location, when those processes may be used, and other operational conditions and limitations.

Internalisation of these externalities to meet conditional approvals has a cost that is generally borne by a quarry owner/operator. The Commission is interested in the efficiency and other impacts of conditional approvals, the extent to which they effectively represent other public interests and the costs to industry.

## 4.8 Delivery and application

Whilst there are potentially several supply chains that dovetail into the extractive industry, from mineral exploration to end use (e.g. construction), the Commission is particularly interested in the logistical aspects of the construction material supply chain. This is because transport costs are usually a high proportion of the total cost of construction materials. This is a key issue when considering the proximity of quarries to infrastructure.

In this context the Commission intends to explore transport-related consequences and barriers in the extractive supply chain. These limitations may take the form of road regulation impacting on the movement of extractive minerals on the road network, including the times of day specific types of transport may operate, and restrictions on the types of roads able to be accessed. In addition to impacting on construction material costs, the limitations associated with the movement of extractives may impact on infrastructure-related productivity and create secondary costs to mitigate impacts on the road network that may be borne by either the state or industry, including road accident risk, road noise in urban areas, congestion, and road wear. While the Commission understands such matters may relate more to the non-metropolitan parts of SA, it seeks advice covering all parts of the state.

The Commission will consider existing work aimed at regulatory reform to increase the productivity of state infrastructure projects.<sup>55</sup>

### Information request 4.4 – Land use and competing interests

What are the impacts of the current regulatory framework in resolving competing interests and meeting operational performance standards having regard to:

- competing uses;
- operational performance standards;
- transport access for delivery; and
- financial impacts of constrained development and operational standards.

What problems arise as a consequence of the progressive approvals approach?

Please provide examples and/or case studies.

<sup>55</sup> See for example Australian Government Productivity Commission, *Major Project Development Assessment Process* (Research Report, November 2013).

## 5. Summary of information requests

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### Information request 3.1 – Extractive industry data and information

The Commission has found that economic data and information on the mining sector is generally aggregated at the ‘whole of sector’ level, or specific data focuses on minerals other than extractive minerals.

The Commission invites interested parties to provide statistics or data specific to the extractives mineral sector in support of submissions to this issues paper.

### Information request 3.2 – Design and performance of the extractive mineral regulatory framework

What are the key regulatory design elements and/or regulation performance activities that significantly impact value creation in the extractive mineral supply chain?

What proposed strategies or approaches could mitigate or remedy concerns regarding the regulatory framework?

To what extent does the yet to be proclaimed *Statutes Amendment (Mineral Resources) Act 2019* address concerns with the design or performance of the regulatory framework for extractive minerals for construction?

Please provide supporting relevant examples or case studies where available.

### Information request 3.3 – Regulatory performance indicators and benchmarking

How well do existing performance indicators measure performance in achieving regulatory objectives?

What type of indicators or information could be used to provide evidence of performance in the extractives supply chain?

Please provide supporting relevant examples or case studies where available

### Information request 3.4 – A strategic approach to public infrastructure

Improvements in the extractive supply chain are not confined to potential reforms in mining regulation.

What areas of information and regulation are important to improving the agility of the sector to ensure the state can build affordable infrastructure?

Please provide supporting relevant examples or case studies where available.

### Information request 4.1 – Extractive mineral regulatory approvals

The Commission invites stakeholders to provide feedback on its overview of the approvals process for extractive minerals, including in relation to:

- the specific steps/approvals that are considered to have a disproportionate effect on the efficiency and effectiveness of the extractive mineral industry and supply chain in SA;
- how these processes compare to interstate arrangements; and
- if there are any additional or different approval processes that cause unnecessary regulatory burden.

Please provide examples and/or case studies.

#### **Information request 4.2 – Impact of recent reforms**

The Commission would like to understand the impact of recent regulatory reforms on the extractives industry in SA:

- How successful were they in delivering the intended outcomes?
- To what extent, if any, have they given rise to unintended consequences?
- What reforms were proposed but have not yet been implemented?
- What other policy changes have been important to the extractive industry?

Please provide examples and/or case studies.

#### **Information request 4.3 – Extractives supply chain regulations**

The Commission has provided a broad summary of the regulatory framework relevant to the extractives supply chain in SA and invites stakeholder feedback in relation to:

- the additional or different specific regulatory requirements not outlined in this issues paper that are relevant to the scope of the review, and why they should be considered; and
- the specific areas or sections of regulation (local, state and Commonwealth) that impact on the efficiency and effectiveness of the extractives supply chain in South Australia.

Please provide examples and/or case studies.

#### **Information request 4.4 – Land use and competing interests**

What are the impacts of the current regulatory framework in resolving competing interests and meeting operational performance standards having regard to:

- competing uses;
- operational performance standards;
- transport access for delivery; and
- financial impacts of constrained development and operational standards.

What problems arise as a consequence of the progressive approvals approach?

Please provide examples and/or case studies.

## 6. Appendices

### Appendix 1: Regulatory frameworks applicable to the extractives supply chain

Legislation	Administration/Regulator	Applicability
<i>Environment Protection Act 1993 (EP Act)</i>	EPA MOU between MRD and EPA to manage regulatory overlap and interactions	Applies to 'extractive industry sector' as defined in EP Act and operations in Schedule 1 <sup>56</sup> Relevant operators are licensed under tiered system based on risk and capability. As at November 2008, 91% of licensed premises were deemed of low risk (tier 3) <sup>57</sup>
<i>Native Vegetation Act 1991</i>	Native Vegetation Council Approval of management plan delegated to DEM	Exempts mining operations from requirement to seek approval from the Native Vegetation Council to clear native vegetation. Subject to approval of a management plan incorporating 'significant environment benefits' (SEB) - incorporated into the PEPR
<i>National Parks &amp; Wildlife Act 1972</i>	DEW	Permits required where mining access and activities disturb protected species.
<i>Natural Resources Management Act 2004</i> <sup>58</sup>	DEW	Permits required for mining that impacts on specified watercourses Water licencing requirements for mining activities that take water in a prescribed water resource area
<i>Aboriginal Heritage Act 1988 (AH Act)</i>	DPC – Aboriginal Affairs and Reconciliation	Protect sites of scientific and heritage significance
<i>Work, Health and Safety Act 2012 (WHS Act)</i>	Safework SA on behalf of the Treasurer, Mining and Quarrying Occupational Health and Safety Committee established under part 2 of WHS Act	WHS requirements for mining are regulated through chapter 10 of the WHS Regulations. Mining operations where extraction is incidental to the activity (e.g. some road works) are excluded
<i>Mines and Works Inspection Act 1920 (MWI Act)</i>	DEM on behalf of Minister for Energy and Mines	MWI Act has very limited application following the Leading Practice Mining Acts Review. Most remaining relevant obligations transferred to other Acts
<i>Development Act 1993 &amp; Development Regulations 2008</i>	Department for Planning, Transport and Infrastructure (DPTI) and local councils (regarding development approvals)	Larger mining projects require assessment and approval under the Act Regulations specify requirements for mining production tenements in certain areas and local government consultation. Building code rules apply to structures.

<sup>56</sup> *Environment Protection Act 1993*, s 7(7)

<sup>57</sup> SA Government, Environment Protection Authority, *EPA Industry Compliance Audit Report for the Extractive Industries* (Report, November 2008) 4.

<sup>58</sup> *Natural Resources Management Act 2004* has been repealed and will be replaced by the *Landscape South Australia Act 2019*.

Legislation	Administration/Regulator	Applicability
<i>Fair Trading (Mining &amp; Resources Industry Land Access Dispute Resolution Code) Regulations 2018</i>	SA Small Business Commissioner	Prescribed as a code of conduct under the <i>SA Fair Trading Act 1987</i>  Provides for stakeholders to access an enforceable mandatory dispute resolution framework <sup>59</sup>
<i>Explosives Act 1936</i>	SafeWork SA on behalf of the Treasurer	Regulates the transport and storage of explosives for blasting (licensing, storage facilities, transportation, purchase).
<i>Heavy Vehicle Access Framework (HVAF)</i>	DPTI and Australian Government	Requirements regarding road access and use for heavy vehicles transporting raw materials (including restricted access & permits).
<i>Local Government Act 1999 (LG Act)</i>	DPTI and local councils	Interactions between LG Act and Mining Act given roles of local government as mine operators (e.g. borrow pits) and as land and road owner / manager
<i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)</i>	Australian Government Accreditation is provided to states and territories and assessment bilateral agreement with SA Government	Mining that will impact on ‘matters of national environmental significance’ (MNES) as defined in the EPBC Act must be identified and managed through approved actions.

Source: South Australian Productivity Commission.

<sup>59</sup> SA Government resources regulation submission (n 46) 11.

## Appendix 2: Summary of extractive mining approvals in South Australia

Extractive Mineral Approvals		
Step		Comment
<b>1</b>	<b>Pegging a Mineral Claim (MC):</b>	
1(a)	Confirm no restrictions in area of interest	Identify if the area is in a restricted area or contains exempt land
1(b)	Identify all interested parties in area	Including land owners and if private quarry, if existing tenements in the area
1(c)	Obtain consent of the freehold owner of land for 'extractive minerals'	Only required for extractive minerals as defined in the Act (i.e. not for other minerals)
1(d)	Serve relevant 'notice of entry' documents	For land owners and native title
1(e)	Confirm no other parties from which consent, authorisation or agreement is required	Includes councils or other authorities responsible for infrastructure in and around the area
1(f)	Peg and apply to register a mineral claim with MRD	Include relevant documentation and fee
<b>2</b>	<b>Extractive Mineral Lease (EML):</b>	
2(a)	Draft and lodge mining proposal	DEM provides a Ministerial Determination 003 on minimum information required for EML.
2(b)	DEM undertakes statutory consultation inviting public comment on the mining proposal.	The invitation is open to the public with specific invitations for comment sent to landowners, other interested parties and government authorities (local, state, Cth)
2(c)	If submissions received, provide a response document addressing matters raised.	DEM consolidates submissions from other government departments and provides all public submissions not marked confidential to the applicant with a request for response to the matters raised
2(d)	Mining lease application may be granted with conditions or refused	Conditions separated into: tenement holder specific rights (Terms); specific restrictions (Conditions); and environmental outcomes to be achieved during the life of the quarry
<b>3</b>	<b>Program for Environment, Protection and Rehabilitation (PEPR)</b>	
3(a)	PEPR prepared and assessed by DEM	DEM provides a Ministerial Determination 002 on minimum information required for PEPR. Includes more detailed operational plans, outcomes identified in the lease, strategies to achieve the outcomes and criteria to measure achievement of outcomes
3(b)	Approval of PEPR – mining can commence	Approval granted on behalf of Minister. Ongoing assessment, audits, inspections and reporting to ensure compliance. PEPR may require review at the Ministers discretion

Source: stylised from DEM, Claims, leases, licences, private mines (web page, 10 February 2020)  
 <[http://www.energymining.sa.gov.au/minerals/mining/claims,\\_leases,\\_licences,\\_private\\_mines#mineral\\_claim](http://www.energymining.sa.gov.au/minerals/mining/claims,_leases,_licences,_private_mines#mineral_claim)>

## For more information

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