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FINAL REPORT

of the

SELECT COMMITTEE ON LAND ACCESS

November 2021

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1. EXECUTIVE SUMMARY

The Select Committee on Land Access was established on 2 March 2021 by resolution of the House of Assembly. Its purpose was to inquire into the laws that apply when an exploration or mining company wishes to carry out activities on land owned by a private landowner. In South Australia, these landowners are frequently farmers running long-established agricultural businesses on the land the company seeks to access. The committee aimed to ensure that South Australia's land access laws fairly balanced the rights of both landowners and the exploration and mining industry.

Land access had been the subject of much review and debate in the years preceding the select committee. A 2016 review of mining legislation led to a range of reforms, including to land access laws, that came into operation on 1 January 2021. While these reforms were an improvement, the select committee was established in recognition that there was still discontent among some stakeholders. The committee sought to hear these voices and make recommendations to ensure South Australia's land access regime was effective, equitable and an example of national best practice.

The committee invited written submissions, heard oral evidence both in Adelaide and in regional locations and conducted two site visits. Evidence presented to the committee offered perspectives from the agricultural industry, the resource industry, state and local government, community organisations and individuals impacted by land access.

At the heart of the matter is the conflict that arises when two different but equally important parties have interest in the same land. On one hand, mineral wealth is a valuable public asset, and mining is of great economic importance to the state. On the other hand, a landowner has a right to enjoy their land and, in the common situation where the landowner is a farmer, to operate their business, and agriculture is also of great economic importance to the state.

Based on the evidence, the committee found that neither mining nor agriculture should be favoured in matters of land access. Instead, where access is sought but the landowner objects, the conflict should be resolved by a process of negotiation in good faith, including fair compensation for loss. The exploration and mining industry, as the instigator of these matters, should be accountable for its actions, respectful of landowner rights and environmentally responsible. Further, agricultural land—a scarce and valuable natural resource—should be subject to more rigorous protections.

To that end, the committee made six recommendations to improve South Australia's land access regime. The recommendations aimed to address several broad areas of concern that were raised with the committee in evidence:

- The Department for Energy and Mining needed to be a strong regulator of the mining industry, overcoming a perceived conflict of interest as both the proponent and regulator of mining.
- Agricultural land was not sufficiently protected from invasive exploration or mining, given its importance to the future prosperity and security of South Australia.
- Compensation and reimbursement of costs for landowners in disputing land access was not always adequate or properly accounted for the impact of exploration or mining upon a landowner's home and business.
- Rehabilitation of land after exploration or mining had concluded was not always performed correctly due to a lack of standards and/or funds.
- The long life of mining leases and the inherent uncertainty of their success had a detrimental impact upon landowners' ability to plan for their land and businesses in the long term.
- Some operators in the resource industry had exhibited poor conduct and were not held to account.

- Landowners could feel overwhelmed by the complexity of the land access laws, on which they were not required to be experts, and could struggle to find time to respond to a request for access while also running their business.
- Neighbouring properties were not always consulted or taken into consideration in a land access arrangement, although they may have been severely impacted by nearby exploration or mining.

By strengthening South Australia's land access regime, the committee hoped to support both the exploration and mining industry and the agricultural industry to thrive alongside each other.

Mr Barry Stringer shows the committee the quarry adjoining his property in Naracoorte, 14 July 2021

2. INTRODUCTION BY THE CHAIR

Mining and agriculture are both billion-dollar primary industries. Their value to South Australia can hardly be overstated. Together they produce critical commodities, generate exports and create wealth and vital employment. They are the passions and livelihoods of many South Australians, and their prosperity benefits us all.

While they may be fundamentally different businesses—one excavates the earth, one cultivates it—what they have in common is that both are reliant upon access to land. South Australia is fortunate to have an abundance of mineral resources waiting to be mined, but much of it lies beneath our best agricultural land.

This land is estimated to amount to as little as 4 per cent of the state's surface area. It is tightly held, often by multigenerational farming families for whom it is not only their workplace but their home. When a resource company comes along seeking to access the land for mining, as they have the right to do, the result can be a conflict that takes too long, costs too much and challenges our sense of what is fair.

South Australia's land access regime has been under review since 2016 when the *Leading Practice Mining Acts Review* examined the state's mining legislation. The subsequent changes to the laws, which came into effect at the beginning of this year, were passed only with a great deal of contentious debate. Balancing the competing interests of mining and agriculture is a difficult task of compromise, and compromise never leaves anyone entirely satisfied. While the work to date has seen good progress, I believe there is still more to do.

The select committee aimed to give a voice to those who felt they had not been heard and who had new ideas to put forward for making South Australia's land access regime truly national best practice. We heard from individuals and associations, landowners and resource companies, community action groups and government bodies. I am grateful to everyone who took the time to provide a submission and speak with us.

I would like to thank the members of the committee—Mr Fraser Ellis, Mr Eddie Hughes, Hon Tom Koutsantonis, Mr Steve Murray and Mr Peter Treloar—who share my interest on this important topic. We have collaborated well to form recommendations that we believe represent constructive steps forward on this complex matter. I would also like to thank the committee staff, Mr Shannon Riggs and Ms Lucy Dangerfield, for their support.

Hon G G Brock MP
Chair

18 November 2021

3. ESTABLISHMENT OF THE COMMITTEE

Appointment of the Committee

On Tuesday 2 March 2021, on the motion of Hon G G Brock MP, the House of Assembly passed a resolution to establish a select committee to inquire into and report upon land access regimes as they relate to mining and mining exploration in South Australia. The focus of the inquiry was on achieving a best practice model for land access that balanced the rights of landowners and those seeking to access land.

Membership

The membership of the select committee appointed by the House of Assembly consisted of the following members:

Hon G G Brock MP	Member for Frome	**Chair**
Mr Fraser Ellis MP	Member for Narungga	
Mr Eddie Hughes MP	Member for Giles	
Hon A Koutsantonis MP	Member for West Torrens	
Mr Steve Murray MP	Member for Davenport	
Mr Peter Treloar MP	Member for Flinders	

Hon G G Brock was elected Chair of the select committee. Parliamentary Officer, Mr Shannon Riggs, was assigned as secretary. Research Officer, Ms Lucy Dangerfield, commenced on 6 April 2021.

Terms of Reference

The select committee's terms of reference, as resolved by the House of Assembly, were:

> That this house establish a select committee to inquire into and report upon—
>
> (a) land access regimes as they relate to mining and mining exploration under the Mining Act 1971, the Opal Mining Act 1995 and the Petroleum and Geothermal Energy Act 2000;
>
> (b) such operations of the Department for Energy and Mining as may relate to, or be affected by, land access regimes;
>
> (c) the practices of interstate and overseas jurisdictions as they relate to balancing the rights of landowners and those seeking to access land in order to explore for or exploit minerals, precious stones or regulated substances;
>
> (d) administrative and legislative options that may help achieve a best practice model in South Australia that balances the rights of landowners and those seeking to access land to explore for or exploit minerals, precious stones or regulated substances;
>
> (e) measures that should be implemented to achieve a best practice model in South Australia that balances the rights of landowners and those seeking to access land to explore for or exploit minerals, precious stones or regulated substances (to the extent that such measures are not being addressed through existing programs or initiatives); and
>
> (f) any other related matter.

The motion called on the select committee to report on 18 November 2021.

Disclosure of Evidence

Pursuant to Standing Order 339, the House of Assembly ordered that the select committee have power to authorise the disclosure or publication, as it saw fit, of any evidence presented to the committee prior to such evidence being reported to the House.

Conduct of Inquiry

The committee met on 19 occasions, of which 11 were to hear oral evidence from witnesses, and undertook two site visits. Committee meetings and the majority of hearings were held in Adelaide at Parliament House, with additional regional hearings in Wudinna, Tumby Bay and Ardrossan.

At its meeting on 15 March 2021, the committee resolved to request that the Department for Energy and Mining (DEM) and the Department for Environment and Water (DEW) provide to the committee all documents relating to land access provided by the departments to the relevant ministers; all documents relating to amendments to the Mining Act; and all documents relating to the implications of harmonising South Australia's land access regime with other Australian jurisdictions. The time frame for the document search was 1 January 2017 to 2 March 2021. On 6 April 2021, DEW provided 118 electronic documents and DEM provided 1,919 electronic documents and a large number of documents in hard copy.

Advertisements were placed in the Saturday 20 March 2021 edition of *The Advertiser*, *The Weekend Australian*, all regional newspapers—including the *Stock Journal*—with all local government councils and on social media to advise of the inquiry and call for written submissions. The committee received 36 written submissions from a variety of organisations and individuals, including landowners, resource companies, industry associations and community action groups. Two were confidential and 34 were public.

Broadly, 17 submissions expressed the view that the existing land access regime disadvantaged landowners; 13 submissions supported the existing land access regime; and six submissions took a neutral view. Five submissions, from individuals associated with Rex Minerals Ltd, were variations of a form letter. The full list of written submissions is attached at Appendix 1.

Oral evidence was heard from 45 witnesses, one of whom, Mr Jared Sampson, appeared twice. Some evidence was heard in camera. A list of people who appeared before the committee to give evidence is attached at Appendix 2.

A list of papers received by the committee—formal presentations, answers to questions from the committee or further information to clarify evidence previously received—is attached at Appendix 3.

The committee made two site visits to locations in the South-East on 14 July 2021, firstly to the property of Mr Barry Stringer at Naracoorte and secondly to the property of Mr Don Searle at Penola, where the committee met with Mr Denis Hann of Gambier Earth Movers Pty Ltd and Mr Paul Whiffen of ePlanningSA Pty Ltd. These visits afforded the committee the opportunity to see firsthand two examples of properties affected by the existing land access regime.

The committee after a regional hearing in Wudinna, 28 June 2021, at the Australian Farmer sculpture.

L-R: Mr Treloar, Hon G G Brock, Mr Hughes, Mr Murray and Mr Ellis.

4. SUMMARY LIST OF RECOMMENDATIONS

Recommendation 1: A mining ombudsman

The committee recommends that a mining ombudsman office be established:

a. to oversee and enforce the regulation of exploration in accordance with the Mining Act 1971; and

b. to develop and administer a code of conduct for exploration; and

c. which incorporates the Landowner Information Service.

Recommendation 2: Protecting agricultural land

The committee recommends that the Department for Environment and Water be tasked with undertaking comprehensive mapping of existing land use and attributes with a view to the development of standalone planning legislation:

a. informed by investigation of the land access regimes of Queensland and New South Wales as elements of those regimes may be appropriate for South Australia; and

b. noting work already undertaken in relation to land use potential by the Department for Environment and Water and the Department of Primary Industries and Regions.

Recommendation 3: Landowner expenses and income

The committee recommends that:

a. the amount available to a landowner to obtain legal assistance in relation to exempt land be increased to $10,000 and expanded to include all professional fees; and

b. consideration be given to providing an ongoing income stream to landowners should a mine be developed.

Recommendation 4: Timing

The committee recommends that:

a. the notice of entry period before a resource company can access land be increased to 90 days; and

b. the code of conduct to be developed by the mining ombudsman require explorers to have regard for the impact of the time of year due to the seasonal work of farms.

Recommendation 5: Documents and a template agreement

The committee recommends that the mining ombudsman be tasked to simplify the documentation associated with the land access regime and increase understanding by:

a. working to rectify the complexity of documents and the difficulty in identifying landowners; and

b. developing a template land access agreement in conjunction with the Department for Energy and Mining.

Recommendation 6: Neighbouring properties

The committee recommends that resource companies undertaking exploration be required to consult with landowners whose properties physically adjoin the land that is the subject of the exploration and keep them informed of their activities.

5. BACKGROUND TO THE INQUIRY

Land access: a difficult balance

The select committee was established to inquire into land access regimes for mineral exploration and mining, which had been a subject of much interest in previous years.

South Australia possesses abundant mineral resources, described by Dr Paul Heithersay, Chief Executive of the Department for Energy and Mining, as 'some of the best mineral assets in the world and some of the most prospective ground for new discoveries'.[1] The mining industry has been an unquestionably significant player in South Australia's economic prosperity for over 180 years and remains a vital sector today.

As in all Australian jurisdictions, mineral resources in South Australia are owned by the state. The exploitation of any minerals is for the benefit of all South Australians. It is self-evident that the success of mining depends on access to these minerals, which must be removed from the earth by processes such as quarrying.

Minerals lie under land that is invariably owned by someone other than the resource company seeking to explore or mine. To gain access to land, a company must engage with the landowner to negotiate conditions of entry, terms of compensation and other matters. If the parties cannot reach an agreement, the negotiation can become prolonged, expensive and stressful.

In particular, it is common in South Australia for desirable minerals to lie beneath land used for farming or pastoral purposes. In many cases, the land has been farmed successfully by multiple generations of the same family. The agriculture industry in South Australia is as much a giant of the state's economy as the resource industry, with the two noted by Hon A Koutsantonis as 'the twin "engine rooms" of the South Australian economy moving forward'.[2]

A land access conflict between a resource company with a right to access minerals and a landowner operating an existing farm on the same land is a clash between two major industries whose ongoing prosperity is vital for the future of South Australia. Therefore, the focus of the select committee's inquiry was how to achieve a best practice model for land access that balanced the rights of landowners with the rights of those seeking to access minerals, ensuring a fair outcome and continued success for both.

The *Leading Practice Mining Acts Review*

In September 2016, the then Minister for Mineral Resources and Energy, Hon A Koutsantonis, commenced the *Leading Practice Mining Acts Review* of South Australia's mining laws.

The review aimed to modernise the Mining Act 1971, the Mines and Works Inspection Act 1920 and the Opal Mining Act 1995. The Mining Act, in particular, had not been holistically reviewed since it commenced in 1971. Since that time there had been significant changes in technology, industry practice and community expectations, prompting the review process with a view to updating the laws governing the mining industry.

[1] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 243.

[2] *Hansard*, House of Assembly, Parliament of South Australia, 18 October 2017, p. 11,444.

The review was led by the Mineral Resources Division of the former Department of State Development. It included a consultation process with industries and individuals. More than 130 public submissions were received by 31 March 2017 across engagement with more than 1,800 stakeholders.[3]

The Statutes Amendment (Leading Practice in Mining) Bill 2017

The *Leading Practice Mining Acts Review* resulted in 82 recommendations that informed a package of legislative amendments, the Statutes Amendment (Leading Practice in Mining) Bill, introduced in the House of Assembly by Hon A Koutsantonis on 18 October 2017. As summarised by Hon Dan van Holst Pellekaan, then the shadow minister for mining, during the debate:

> Mining and agriculture have both been operating in Australia for a very long time and both have had great success. It is true to say that there has been friction between them for all that time. Today, we are trying to resolve some of that friction…
>
> What we are here to talk about in this bill is that both industries need access to land and both have a significant impact on the land that they use, so how can we make that work?[4]

The bill passed the House of Assembly with unanimous support on the evening of 1 November 2017. Summing up the debate, Hon A Koutsantonis stated:

> This legislation will hold the parliament in high regard for mining companies and landowners. I think we have the balance right.[5]

The bill was introduced in the Legislative Council, however it was not debated prior to parliament being prorogued ahead of the election of 17 March 2018. The election resulted in a change of government. As part of machinery of government changes announced by the new government, the Department for Energy and Mining was established on 1 July 2018 as a standalone agency for these industries.[6]

The Statutes Amendment (Mineral Resources) Bill

On 2 August 2018, Hon Dan van Holst Pellekaan, now the Minister for Energy and Mining, introduced the Statutes Amendment (Mineral Resources) Bill 2018. The bill was presented as a reintroduction of the former Statutes Amendment (Leading Practice in Mining) Bill 2017, containing largely the same amendments to mining legislation. The minister's second reading explanation clarified:

> …agriculture and mining are critical foundations of South Australia's success, fuelling the prosperity and well-being of communities across this state…Neither mining without agriculture nor agriculture without mining can contribute to our state's communities and prosperity as well as the two operating successfully and responsibly together…
>
> I acknowledge the research, analysis and consultation undertaken by the previous government and the spirit of bipartisan cooperation that supported the development of this Bill…
>
> The broad intention of the Bill, as introduced in late 2017, remains a responsible compromise between [stakeholder] interests, balancing a very wide spectrum of social, environmental and economic matters…this bill is the first in a series of steps toward improving mining regulation and especially with regard to landholder

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[3] *Leading Practice Mining Acts Review of South Australia's Mining Laws*, archived at yourSAy website, https://yoursay.sa.gov.au/leading-practice-mining-acts-review-of-south-australia-s-mining-laws (accessed 26 July 2021).

[4] *Hansard*, House of Assembly, Parliament of South Australia, 1 November 2017, pp. 11,788 and 11,790.

[5] *Hansard*, House of Assembly, Parliament of South Australia, 1 November 2017, p. 11,885.

[6] *Department for Energy and Mining Annual Report 2018-19*, p. 3.

> engagement and fair treatment as exploration and mining companies seek to access resources below agricultural land…
>
> …I was strongly advised by leaders of both the mining and agriculture sectors that it would be far better to accept the compromise position already achieved than to start the process again.[7]

The debate was adjourned for further consultation with affected communities. The bill ultimately passed the House of Assembly on 3 July 2019 with the support of the opposition, though not without dissent. Four members of the government crossed the floor, joining the three Independent members to vote against the bill's third reading. Three of these members—Hon G G Brock, Mr Fraser Ellis and Mr Steve Murray—would later be members of the select committee. As an example of the opposition to the bill, Mr Murray said in his third reading contribution:

> There is little doubt that the existing Mining Act leaves farmers at a substantial disadvantage, and this bill, if enacted, will exacerbate that situation…
>
> Jackie Harrop is part of a fifth-generation farming family on Yorke Peninsula…she has fought against exploration on her farm for the last four years. At the same time, Jackie has battled against cancer. She has very publicly stated that she rates dealing with the mining exploration and the associated courts processes as being worse than cancer.[8]

Nevertheless, the bill passed the House of Assembly by a strong majority vote. It subsequently passed the Legislative Council, and these changes to the mining laws came into operation on 1 January 2021.

Further bills and the establishment of the select committee

Shortly after the passage of the Statutes Amendment (Mineral Resources) Bill, on 31 July 2019, Hon G G Brock introduced the Commission of Inquiry (Land Access in the Mining Industry) Bill 2019, which proposed to establish an independent commission into land access and approvals for resource companies to access agricultural land. This proposal acknowledged that the previous bills had not satisfied all parties and suggested that an independent inquiry was a way forward. However, debate on this bill was adjourned.

On 25 March 2020, Hon G G Brock introduced another bill, the Commission of Inquiry (Land Access in the Mining and Petroleum Industries) Bill 2020, with the same purpose of establishing an independent inquiry into land access. This bill was defeated at its second reading.

On 2 March 2021, Hon G G Brock moved to establish the select committee. He explained to the parliament:

> …I have had grave concerns from people across both the agricultural and mining sectors asking for an independent review…
>
> This motion is not to relate to the bill that the minister put through some time ago but to make certain going forward that this state has untold potential for agricultural growth in South Australia and untold potential for resource and mineral opportunities…
>
> All I am asking is for the select committee to be able to go out there, get all the facts and figures and then report back to the parliament at a later date.[9]

The motion was carried, with the select committee to report on 18 November 2021.

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[7] *Hansard*, House of Assembly, Parliament of South Australia, 2 August 2018, p. 2,085.

[8] *Hansard*, House of Assembly, Parliament of South Australia, 3 July 2019, pp. 6,684 and 6,685.

[9] *Hansard*, House of Assembly, 2 March 2021, p. 4,308.

What not to do: Crown sovereignty, right of veto, and unnecessary review

Over the course of its inquiry, the select committee heard primarily from the resource industry that there were certain actions the industry did not want the committee to recommend.

Crown sovereignty

Across all Australian jurisdictions, the common law 'doctrine of tenure' provides that the Crown has sovereignty over mineral wealth. This means that each state or territory effectively owns any minerals on or under its land. Any wealth to be derived from these minerals therefore benefits everyone in the state as a collective, rather than the individuals who own the land.

In contrast to the appealing notion that finding minerals makes the landowner rich, the reality is that finding minerals under freehold land is precisely what leads to disputes over land access. From the landowner's perspective, as they own their land they feel they should have the final say on what happens to it, including whether or not it is mined. From the state's perspective, the minerals are a public asset, and an individual landowner should not have the power to decide whether or not the state benefits from them.

This principle of Crown sovereignty was raised many times during the select committee's inquiry in the context of imploring the committee not to change it. Evidence was heard in submissions from resource companies (Rex Minerals Ltd, Hillgrove Resources Ltd and Terramin Australia Ltd) and mining industry associations (the Association of Mining and Exploration Companies, Cement Concrete Aggregates Australia, the Minerals and Energy Advisory Council and the South Australian Chamber of Mines and Energy) that mining must benefit all South Australians, not just a small number of individuals, as a fundamental requirement for the success of the industry and the prosperity of the state.

The committee agreed with this assessment and had no desire to propose any change to the principle of Crown ownership of minerals. Furthermore, no witness or submission to the inquiry suggested that there should be any change.

Right of veto

In opposition to the principle of Crown sovereignty is what is usually referred to as the 'right of veto'. This is a view of some landowners that, by virtue of owning their land freehold, they have a right to refuse any exploration or mining activity on their land for any reason. The sentiment is summed up by the phrase 'lock the gate', coined by the Lock the Gate Alliance, which arose in the eastern states in 2010 to rally farmers to 'lock their gates to these rapacious industries'.[10]

The argument for a right of veto relies upon ideas of private property that are not supported in law. Professor Tina Hunter, writing in 2017 for the Western Australian Land Access Working Group, summarised:

> …as a result of the Doctrine of Tenure, the fee simple landowner does not enjoy absolute ownership. Rather, he has the right to exclude all others except those whose interest in the land has been granted by the Crown. Under the Doctrine of Tenure, the Crown reserves rights over the land, entitling it to claim ownership in the minerals and petroleum that lie on and under freehold land…The land law system in Australia, particularly the concept of Crown reservation, allows separate interests to be held over a single property. This concept, known as fragmentation of property rights, means that the land can be owned privately by one person (freehold) and also have a mineral/petroleum title granted over it, allowing the titleholder to explore for and produce minerals and petroleum.[11]

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[10] *Lock the Gate Alliance: About Lock the Gate*, https://www.lockthegate.org.au/about_us (accessed 26 July 2021).

[11] Hunter, Tina, February 2017, *Land Access on Private Land for Mineral and Petroleum Activities: A review of existing provisions in Australian States/Territories and Selected Overseas Jurisdictions*, p. 9.

Although not supported by land law, the notion that a landowner should be able to refuse unwanted activity on their property is sympathetic. The fact the Lock the Gate movement describes the resource industry with emotive words such as 'rapacious' and 'threat' and describes its own mission as one of 'defence' speaks to the real experience of people whose lives have been negatively impacted by exploration or mining.

Across Australia, there is only one notable instance of something like a right of veto existing, which relates to coal seam gas exploration in New South Wales. In 2014, AGL and Santos signed the *Agreed Principles of Land Access* with the NSW Farmers' Association, stating that they would respect a landowner's right to refuse gas exploration operations on their land. This example is the exception, and according to evidence from the National Farmers' Federation[12] it was not as successful at halting exploration as its proponents had hoped because, given a choice to say no to exploration, not all landowners did.

In its submission, the Minerals and Energy Advisory Council (MEAC) wrote:

> MEAC is aware that in recent years…there has been a call from some communities for a right for farmers to 'veto' or otherwise refuse access to land for the purposes of resources exploration and production.
>
> A 'veto' of this nature has never been a feature of South Australian resources law.
>
> This 'veto' is fundamentally inconsistent with the concept of State sovereignty over resources and the independent determination and allocation of access to resources for the benefit of the people of the State.[13]

Multiple submissions drew attention to the Australian Productivity Commission's 2016 report *Regulation of Australian Agriculture*, which found:

> A right of veto would shift the power to make land access (and hence land use) decisions from the Crown to the landholder…Individual landholders are unlikely to be better placed than government to make land use decisions in the interests of society as a whole…
>
> A right of veto is also inconsistent with the tenet that land title does not grant absolute ownership and the Crown's general power to compulsorily acquire property. In particular, there is no reason why an exception should exist for agricultural land vis-à-vis resource exploration and extraction.[14]

Consistent with the Productivity Commission's comments, resource companies and mining industry associations expressed to the committee that a right to veto is inconsistent with the principle of Crown sovereignty and should not be supported. Their favoured approach was a negotiated process for land access that included fair compensation for the landowner.

Interestingly, while much of the evidence given to the committee was in opposition to a right of veto, little was in support of it. Ms Fiona Simson, President of the National Farmers' Federation, when asked directly if she supported a right of veto, replied:

> I support landholders being able to make choices and decisions about what happens on their land, fully informed, fully transparent…the right of veto that we negotiated [with AGL and Santos in New South Wales] was not as popular as it might sound, because people realised that it was not going to stop development, and I am not about stopping development.[15]

Farmers who gave oral evidence to the committee also acknowledged the problematic nature of a right of veto. Ms Joy Wundersitz of the Yorke Peninsula Land Owners' Group commented:

> ...it is not an argument about community interests of mining versus individual landowners, because that is so easy to undermine; 'Why should landowners have more rights, even though they own the surface of the

[12] *Select Committee on Land Access: Transcript of Evidence*, 7 June 2021, p. 24.

[13] Minerals and Energy Advisory Council, Submission 3, p. 3.

[14] Australian Productivity Commission, 15 November 2016, *Regulation of Australian Agriculture*, p. 103.

[15] *Select Committee on Land Access: Transcript of Evidence*, 7 June 2021, p. 24.

> land, than other citizens?' So, no, we can't go down that path. I think we would argue categorically that that is not an option—the right of veto—or focusing on individual landowners.[16]

Based on this evidence, the committee agreed that creating a right of veto for landowners was a fundamentally flawed idea, opposed to the established principle of Crown ownership of minerals.

Unnecessary inquiry

Resource companies and mining industry representatives often put to the committee that the inquiry was happening too soon after the commencement of the amended mining legislation on 1 January 2021. They noted that the *Leading Practice Mining Acts Review* had been lengthy and involved extensive stakeholder consultation, suggesting that the select committee was only repeating an already thoroughly completed exercise. A key concern was that further changes to land access frameworks would discourage investment in mining, as noted by Rex Minerals Ltd:

> The Company supports the ongoing evolution of mining regulation to ensure it maintains the balance of stakeholder interests in project development. But further changes, at this time so soon after recent amendments have come into effect, is unnecessary and duplicative, and has the potential to create legislative [uncertainty] that risks both landowner confidence and investment appetite in the State.[17]

MEAC agreed that the select committee's inquiry was potentially duplicating work and revisiting concerns already addressed:

> MEAC hopes that this inquiry results in useful recommendations to further improve arrangements for land access in this State and is not used by groups within the community as a forum merely to reventilate concerns that were considered and addressed via the Leading Practice Mining Acts Review.[18]

In particular, the committee's term of reference (c), relating to considering the practices of interstate and overseas jurisdictions, was considered by some to be work already undertaken and that South Australia's existing land access frameworks were already national best practice. As the South Australian Chamber of Mines and Energy (SACOME) remarked:

> The Select Committee Inquiry appears to proceed upon the assumption that the Leading Practice Mining [Acts] Review and the associated land access framework resulting from it was undertaken without regard to practices in other jurisdictions; and has not resulted in a best-practice framework…
>
> SACOME supports the pursuit of best practice and hopes that a key outcome of the Select Committee Inquiry will be confirmation that South Australia has land access frameworks that are consistent with leading practice in other jurisdictions.[19]

While these submissions were cautious about making further changes to the mining legislation too soon, all supported the pursuit of best practice and were not opposed to further improvements in due time.

The committee considered that its inquiry was not an exercise in repeating the work of the *Leading Practice Mining Acts Review* but was instead driven by feedback from landowners, and especially farmers, that the review had resulted in some positive changes but not enough. Not all parties felt that their perspective had been heard and taken into account. For this reason, the committee saw the value of its inquiry to be the continued pursuit of best practice.

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[16] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 125.

[17] Rex Minerals Ltd, Submission 18, p. 7.

[18] Minerals and Energy Advisory Council, Submission 3, pp. 5 and 6.

[19] South Australian Chamber of Mines and Energy, Submission 24, p. 6.

6. RECOMMENDATIONS AND RATIONALE

The select committee made six recommendations aimed at achieving a fair balance between the rights of all parties involved with land access as it relates to exploration and mining. A discussion of the rationale behind these recommendations follows.

Recommendation 1: A mining ombudsman

The committee recommends that a mining ombudsman office be established:

a. to oversee and enforce the regulation of exploration in accordance with the Mining Act 1971; and

b. to develop and administer a code of conduct for exploration; and

c. which incorporates the Landowner Information Service.

This recommendation addresses a variety of concerns about the enforcement of the provisions of the Mining Act relating to exploration. It seeks to strengthen regulation so that explorers are held accountable for their conduct.

A pattern that emerged in evidence was that unscrupulous explorers were the predominant cause of complaints by landowners in matters of land access. Mining or mining proposals sometimes resulted in similar conflicts but were the less prevalent activity. The committee therefore focused its recommendation on exploration, understanding that improving the standard of exploration activities would only have positive flow-on effects to the broader mining industry.

The evidence to the committee did not always delineate clearly between exploration and mining. For brevity, the discussion below uses the term 'mining' in the broadest sense to capture all activities in the industry, from the earliest exploration to the final rehabilitation of land, and the term 'resource company' to mean any company with any interest in this industry.

A conflict of interest

A repeated complaint in much of the evidence presented to the select committee was that the Department for Energy and Mining (DEM) has a fundamental conflict of interest in that it is both the promoter and regulator of mining in South Australia.

DEM was established on 1 July 2018 and describes itself as follows:

> We responsibly unlock the state's mineral resources by sharing geological data and insights, accelerating discoveries, attracting sustainable investment and overseeing a leading regulatory framework, that contributes to the transformation economy.[20]

Land access is considered first and foremost to be a mining matter. The laws concerning land access fall entirely within mining legislation in South Australia and are administered by DEM, a department with a clear mandate to maximise the benefits of mining to South Australia. However, while land access is certainly a mining matter, it is equally a landowner matter.

Witnesses who appeared before the select committee frequently said that the laws concerning land access are weighted in favour of mining, as evidenced by the fact these laws are within legislation

[20] *Department for Energy and Mining: About us*, https://energymining.sa.gov.au/footer_links/about_us (accessed 24 September 2021).

specifically designed for the mining industry. It was felt that the department, in trying to balance its dual roles of promoting and regulating mining, was often biased against landowners and ineffective in its regulation.

In its submission, the Yorke Peninsula Land Owners' Group explained that DEM's focus is to enable mining, rarely rejecting any mining or exploration proposal:

> DEM's role as promoter of mining seems to be its primary objective. As evidence of this, DEM has publicly stated it has rejected only one mining application over recent decades, which we understand was a sand mine. Its acknowledged strategy is to work with a company on its [Mining Lease Proposal] and [Program for Environment Protection and Rehabilitation] for however long it takes to ensure that, at the end of the day, it meets all requirements needed to gain approval. This is not the approach of a department committed to independent, unbiased assessment based on merit and competence.[21]

As explained to the committee, the result is that many landowners feel that DEM cannot be a neutral judge of land access disputes because it is always allied with mining interests. Further, DEM is seen as unwilling to enforce the law or apply penalties. Eyre Peninsula farmer Mr Leon Veitch stated:

> We believe there is no balance in the department. It is all about getting projects approved regardless of their viability, the environmental outcomes and the community concerns. Regulation has no priority for them, as we have found.[22]

These thoughts were echoed in submissions by both individuals [23] and organisations. [24] The overwhelming message was that DEM's inherent favouring of the mining industry made it an ineffective regulator of that industry, unwilling to monitor or enforce legislative compliance.

Dr Paul Heithersay, Chief Executive of DEM, responded to this evidence:

> I note in evidence to the committee that there remains a concern that the department has the dual role of promoter and regulator of the state's resources. I put it to this committee that this is really an issue of perception rather than reality. The Department for Energy and Mining is deeply committed to leading practice regulation and continuous improvement.
>
> The Australian Productivity Commission noted in its report last year that, on resources sector regulation, there is considerable evidence available that the concept that regulators should be independent has tended to be inconsistent with a far more important requirement that regulators should be accountable and transparent. Exercising this accountability is an incredibly serious undertaking. Our process for making regulatory decisions is clearly defined by legislation carried out in a timely and transparent manner and subject to appropriate checks and balances, such as judicial review. [25]

According to Dr Heithersay, the Productivity Commission had found that the department's 'one window' approach, allowing companies to deal with only a single department for resource regulation, resulted in timely processing, reduced uncertainty and minimised overlaps and inconsistency. He informed the committee of the department's work to attract explorers and emphasised that this work 'does not and will not compromise our role as a regulator',[26] adding that the department's annual compliance reports tabled in parliament are a testament to the rigour of its regulator function.

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[21] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 5.

[22] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 52.

[23] For example: Mr Brenton and Ms Sue Davey, Mr Neil and Ms Jackie Harrop, Mr Brian March and Mr Jared Sampson

[24] For example: Grain Producers SA, the Inverbrackie Creek Catchment Group, the National Farmers' Federation, Stop Invasive Mining Group Incorporated and Livestock SA

[25] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, pp. 245 and 246.

[26] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 246.

'Cowboy miners'

The committee heard much evidence of resource companies operating in South Australia that had demonstrated an indifference to the law, ranging from neglect of responsibilities to deliberate contraventions. These companies were sometimes termed 'cowboy miners', perceived typically as small operators that were not members of mining associations and had little accountability. The following comment from Mr Bronte Gregurke, Chairperson of Stop Invasive Mining Group Incorporated, illustrates a common experience:

> We found here that the employees on the drilling rigs and everything else didn't really care about the land, it was just a job. They went from one drill hole to the next. They didn't care where they drove on properties, what they did, what rubbish they left.[27]

Among many complaints, resource companies were accused of bullying, intimidation, threats, littering, poorly rehabilitating land, destroying land by driving on it and creating unreasonable noise and light pollution. In a particularly repulsive example, Eyre Peninsula farmer Mrs Sally Richardson told the committee that officers conducting drilling were not provided with toilets and so went to a neighbouring property's paddocks and 'used rags', leaving the human waste for the neighbours to clean up.[28]

Other extreme examples were given to the committee during their site visit to Naracoorte to visit Mr Barry Stringer on his property, which neighbours a limestone quarry. Mr Stringer showed the committee some cracks and other damage in his home caused by vibrations from the quarry, which were felt particularly strongly because there are many natural underground caves in the area.

When blasting occurred at the site in previous years, flying debris had struck and damaged surrounding homes, including the home of Mr Stringer's neighbours on the other side of the quarry, brothers Vincent and Leo Munro. Tragically, the Munros believed that their father would still be alive had it not been for the stress he experienced living next to the quarry. Asked whether DEM had been at all receptive to complaints, Mr Stringer asserted that the department did not care.

Mr Jim Franklin-McEvoy, Chair of the Inverbrackie Creek Catchment Group, had a particular concern for the environmental consequences of resource companies that showed little respect for the land. In one example, poor understanding of on-farm biosecurity led to officers from a resource company not washing their footwear between sites, resulting in the spread of scabby mouth amongst livestock.[29] In another example, an Adelaide Hills property was purchased by a resource company that then allowed the land to become overgrown and made no effort to defend it when threatened by the bushfires of January 2020. It was subsequently consumed by the fire.[30]

Grain Producers SA (GPSA) likewise raised concerns about resource companies that had poor awareness of biosecurity protocols or failed to follow agreed procedures. The consequences could be severe, such as the introduction of insects or weed species that could damage a crop. In its submission, GPSA suggested that the Mining Act be amended to better reflect the importance of biosecurity as an element of land access that can be disastrous if mismanaged.[31]

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[27] *Select Committee on Land Access: Transcript of Evidence*, 29 June 2021, pp. 85 and 86.

[28] *Select Committee on Land Access: Transcript of Evidence*, 29 June 2021, p. 100.

[29] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 217.

[30] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 218.

[31] Grain Producers SA, Submission 34, pp. 29 and 30.

A strong regulator

The need for proactive, consistent enforcement of the law by a strong regulator was a recurrent theme of evidence to the inquiry. The performance of DEM as the regulator of the mining industry was frequently criticised. The Yorke Peninsula Land Owners' Group stated in its submission:

> …many farmers now believe they cannot trust the Department. Yet it is this Department that they are forced to rely on to ensure inappropriate developments are not approved, and those which are approved are rigorously regulated in accordance with the conditions imposed.
>
> This situation has to change.[32]

DEM's alleged inability to consistently and effectively administer the mining law, and especially to intervene when a resource company breaches the law, was said by landowners to be a source of stress for them and an enabler for 'cowboy miners'. Mr Brian March wrote in his submission:

> If the regulator knew what was actually going on in the community, was effective in applying its legislated responsibility as a regulator of legislation, then…the 'cowboy miners' that have continued to ride roughshod over established businesses and sustainable employment would be controlled.[33]

Mr March later appeared before the committee with Mr Glenn Fowler, who alleged that the department's ineffectiveness as a regulator went as far as disregarding the judgements of the Warden's Court in relation to land access[34] and being unable to enforce a Program for Environment Protection and Rehabilitation (PEPR) if it were 'usurped' by private agreement between the landowner and resource company.[35]

Eyre Peninsula farmer Mr Alan Richardson commented that a strong regulatory performance from DEM could have made a substantial positive difference to his experience of land access:

> If the rules had been complied with, I don't think we would have had a drama. If somebody had been shaking a big stick at them—this cowboy mob—when they first got there, I think things would have been fine.[36]

Mr Brenton and Ms Sue Davey had a similar experience, writing in their submission that their repeated complaints to DEM about a resource company drilling too close to their private property seemed to result in only verbal warnings and no change in behaviour by the company:

> All the resources companies get is a slap on the wrist, despite committing subsequent breaches of the Act. No fines have ever been issued from our experience.
>
> You could have the toughest of penalties or the highest fine amount for a breach of the Act. However, the Act means nothing if the Regulator does not enforce it. This also reflects DEM's conflict of interest.
>
> They are promoting mining.[37]

Grain Producers SA outlined its view of what would comprise strong enforcement in four areas, suggesting that DEM should:

- decline to grant exploration and mining licences to entities with a poor history of compliance or little capability to ensure compliance in future;
- 'regularly, strongly, actively and transparently' monitor and report on compliance;

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[32] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 6.

[33] Mr Brian March, Submission 7, p. 1.

[34] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 200.

[35] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 198.

[36] *Select Committee on Land Access: Transcript of Evidence*, 29 June 2021, p. 101.

[37] Mr Brenton and Ms Sue Davey, Submission 29, p. 3.

- periodically undertake risk-based audits and investigations; and
- have the power to vary conditions on an exploration or mining licence should circumstances change over time.[38]

This led the committee to consider that the problem at the heart of the matter may not have been the regulation but the regulator. Rather than recommending further changes to a suite of legislation that had only recently been amended, the committee considered whether it should recommend changes to DEM that would ensure the existing legislation was applied correctly and consistently.

Further criticism of the department

Other evidence went beyond DEM's regulatory function and suggested that the department was in need of improvement in other ways. Mr Denis Hann of Gambier Earth Movers Pty Ltd met with the committee at a site in Penola owned by Mr Don Searle. Mr Searle had asked the company to mine limestone and sand on his property, but as Mr Hann said, 'Whatever you do, DEM puts up a barrier.'

The mining proposal stalled and incurred high costs as Gambier Earth Movers and others attempted to meet DEM's requirements. This included investigations into flora and fauna at the site, which neighbours a conservation park. As an example, costly assessments were required to prove that a particular species of protected bird would not be impacted, although it had not been found at the site nor ever been seen by the resident of about 50 years. The combined costs of completing DEM's assessments were so high that the value of any mining was negated, and Mr Searle ultimately chose to abandon the proposal.

Mr Hann also noted that DEM seemed to send a different person each time an assessment or consultation was required. He said that there did not appear to be any common policy or guidelines that these officers followed for consistency, therefore the outcome would be based on an individual's personal ideas.

At the same site visit, Mr Paul Whiffen of ePlanningSA Pty Ltd, an independent environmental consultant undertaking work largely for mining companies, offered further examples that he felt demonstrated a lack of common sense in the department. He reiterated these concerns at a later hearing of the committee. In one example, he described the Antro Feldspar Mine by Barossa Quarries, an old mine site that is very isolated. It is accessible only by a rough 40-kilometre approach road, and the nearest town, Olary, has a population of only four people. DEM requested that an abandonment bund be installed at the top of the mine's high face for safety. Mr Whiffen argued that given the very low risk, due to both the mine's extreme isolation and the presence of an existing pastoral fence and mound, installing signage and maintaining the fence would suffice. This idea was rejected by DEM, which Mr Whiffen described as unreasonable.

In another example, a landowner near Cummins on Eyre Peninsula wished to mine gypsum on his own property. The proposal was for a small excavation of three to four metres. It was approved by DEM only after a long period of assessment that went to a level of detail Mr Whiffen described as 'way beyond the pale of what is fair and reasonable for a relatively small, simple quarrying operation'.[39] He was concerned that small mining operators, unable to afford membership of a mining industry association, had no voice or effective interface with DEM yet were subject to complex regulation that was designed for, and far better suited to, large mining operations.

Mr Hann and Mr Whiffen's experiences provided a different perspective on land access. The majority of evidence to the committee related to landowners disputing requests for access from resource

[38] Grain Producers SA, Submission 34, p. 12.

[39] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, p. 189.

companies, but in these examples landowners were seeking to enable access to their land yet were being frustrated by the department. Mr Whiffen felt that DEM was not proactive or helpful to the mining industry, saying that it had 'lost its way' as the proponent of mining as it focused on other concerns such as environmental protection.[40]

These comments, added to those suggesting DEM is an ineffectual regulator, gave the committee a picture of DEM as a flawed department. Any improvement in DEM's performance would necessarily be an improvement to South Australia's land access regimes.

However, not all submissions and witnesses were critical of DEM. Mr Matthew Carey, an Eyre Peninsula farmer, was not happy with the land access arrangement on his property but acknowledged that the department's staff had been good to work with:

> We've dealt with the department of mines. They have been pretty good to deal with. They have given us their phone numbers, three or four of them. We can ring them whenever we feel like, and one of their reps is our contact for this project…
>
> They have been pretty helpful, the department, but that's not to say we're going to get any outcome that we're that happy with.[41]

Mr Warren Pearce, Chief Executive Officer of AMEC, suggested that there was no conflict between DEM's dual roles as promoter and regulator of mining:

> That's a challenge that exists in every jurisdiction. The reality is that the regulator is also required to try and support industry to grow and develop. However, that regulatory role is not unfamiliar to the department, it is not unfamiliar to the industry and I don't believe there is any reason why they cannot conduct both roles effectively.[42]

The department had the opportunity to respond to criticisms when it appeared before the committee. The Chief Executive, Dr Paul Heithersay, said that DEM had been 'refreshed' considerably in recent years and that the environmental, technical and regulatory team was far stronger than the department had ever had before.[43] He acknowledged the importance of getting the balance right between attracting investment and demanding high standards of resource companies, adding that the department can achieve this now that it has 'a full range of [regulatory] tools in our toolkit to make sure compliance and confidence ensues in the sector'.[44]

Poor rehabilitation of land

A particular regulatory issue raised with the committee concerned the rehabilitation of land after an exploration or mining operation has finished. Planning for the end of an operation is undertaken long before it begins. For a resource company proposing new activity, it is an important consideration in completing the Program for Environment Protection and Rehabilitation (PEPR), an approval that must be obtained from DEM before any work can be conducted. PEPRs are established in Part 10A of the Mining Act. Section 70A outlines the purpose of a PEPR, part of which is to 'ensure that land adversely affected by authorised operations is properly rehabilitated'.

The end result of rehabilitation can be to restore the land to its original use or repurpose it for something new. Ms Rebecca Knol, Chief Executive Officer of the South Australian Chamber of Mines and Energy,

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[40] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, p. 186.

[41] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, pp. 70 and 71.

[42] *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, p. 155.

[43] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 251.

[44] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 248.

mentioned aquaculture in a former open-pit mine or agriculture on a tailings dam as examples of new land uses after mining.[45] Despite the existence of PEPRs to enforce planning for the end of a project, landowners gave evidence to the committee of rehabilitation work that had been unsatisfactory. According to the Yorke Peninsula Land Owners' Group, problems can include open pits not being backfilled, waste rock dumps being left on site and tailings dams being inadequately contained.[46]

Yorke Peninsula farmers Mr Neil and Mrs Jackie Harrop recounted that an exploration company refused to undertake rehabilitation on their land once the operation was complete. According to the Harrops, DEM issued the company a rehabilitation direction that had a fine for non-compliance of $250,000. The company neither performed the rehabilitation nor paid the fine. In time, DEM carried out the rehabilitation work itself, funding it with the company's bond held over the tenement, and did not pursue the company further.[47]

Eyre Peninsula farmer Mr Leon Veitch gave another example of unsatisfactory rehabilitation work, describing 'rehabilitation' as 'one of those words that everyone has their own interpretation of but has no meaning' and elaborating:

> An example of that is that they were knocking down trees to do test pits around the roads. They would have knocked down areas of trees nearly as big as this room, and when it was rehabilitated, all they did was scatter some sticks over it and that was the job done…There are still bare patches now. We were told that was the universally accepted standard, which I disagree with.[48]

Regardless of the quality of rehabilitation practices, not all land that has been mined can be fully restored to its previous purpose. Restoration to a former state does not need to be the goal of rehabilitation, but even in examples where that had been the intended outcome, the committee heard that it was not always achieved. This was of particular concern where the site was considered to be scarce agricultural land. The Harrops wrote in their submission:

> The mining minister and the exploration company all conceded that the land, regardless of any rehabilitation will never return to full production. The mining industry constantly tell us through the media that land once it has been rehabilitated it will be productive again, but they only use pastoral land as an example not broadacre cropping land.[49]

Eyre Peninsula farmers Mrs Sally and Mr Alan Richardson provided the committee with photographs of their property in subsequent years after an exploration company had drilled on it. The company had rehabilitated the land but, as shown in the photographs on the next page, its productivity returned only slowly and in patches.

[45] *Select Committee on Land Access: Transcript of Evidence*, 3 May 2021, p. 8.

[46] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 21.

[47] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, pp. 140 and 141.

[48] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 48.

[49] Mr Neil and Mrs Jackie Harrop, Submission 10, p. 2.

The photograph above, provided by the Richardsons, was taken in the first year after drilling. To the left, land untouched by the exploration operation grows a normal crop. To the right, land that was rehabilitated following exploration grows little.

The photograph above, also provided by the Richardsons, was taken in the second year after drilling and shows land rehabilitated after exploration. The growth of the crop is irregular.

Mrs Richardson explained:

> With the restoration process, these guys didn't understand soil. We have very little topsoil…It's something like three inches. They easily took six inches off the top and when they put it back, all the subsoil, which is basically clay—it has no biome in it, no vegetable matter, nothing—was all mixed up together and upside down and they thought they had done a wonderful job…in the third year afterwards we [were] still not getting production out of that site.[50]

Yorke Peninsula farmers Mr Brenton and Ms Sue Davey said of their property, which is within a mining tenement:

> This productive cropping land will never be returned to its pre-mining state, permanently diminishing its future productivity. Full rehabilitation is not proposed post-mine closure, thereby destroying the natural food producing resource.[51]

Accountability for rehabilitation

A repeated message the committee heard in evidence was that resource companies need to be held accountable for planning, funding and undertaking proper rehabilitation of land where they have conducted exploration or mining activities. Several approaches were suggested.

The Law Society of South Australia proposed that the Mining Act state explicitly that the aim of rehabilitation was to restore the land to its prior condition and purpose as far as practicable:

> Whilst the current legislation does deal with rehabilitation generally, we suggest the primary aim for any mine site should be (and should be expressed in the legislation to be) to, as far as practicable, have the land rehabilitated and returned to the use to which it was put prior to the mining operations commencing.[52]

However, the committee acknowledged that rehabilitation need not always restore land to its former use. The South Australian Multiple Land Use Framework (refer to page 35 for more information) encourages whatever is the best use of land at a given time, including through different purposes in sequence if appropriate. Regardless, it was demonstrated to the committee that restoring land to its former use may be promised by a resource company but not delivered, as in the cases of the Harrops and Richardsons. Setting clear and realistic expectations for rehabilitation is therefore an important part of accountability.

Further, funding for proper rehabilitation should be an integral part of planning an exploration or mining project. As Yorke Peninsula farmer Mr Bill Moloney told the committee:

> There's an argument put forward that it is uneconomic to refill the hole left from mining. We say if it's uneconomic to mine without filling in the hole and properly rehabilitating the site, you shouldn't be mining prime agricultural land.[53]

The Daveys noted that it is not uncommon in Australia for an old mine to be abandoned and left to the government to remedy:

> Too many mines around Australia have been abandoned due to the resource company going broke; leaving the Government to clean up their mess (which takes years) and costing the taxpayers millions of dollars to complete rehabilitation. Rehabilitation should be the sole financial responsibility of the resource company.[54]

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[50] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, pp. 98 and 99.

[51] Mr Brenton and Ms Sue Davey, Submission 29, p. 2.

[52] The Law Society of South Australia, Submission 32, p. 5.

[53] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 120.

[54] Mr Brenton and Ms Sue Davey, Submission 29, p. 5.

Dispute resolution and mediation

An important aspect of a land access regime is an unbiased dispute resolution function. To be clear, rarely was it suggested to the committee that the existing dispute resolution processes were biased. Currently, land access disputes can be heard by the Warden's Court; the Environment, Resources and Development Court; and the Supreme Court—none of which are affected by the conflict of interest that was suggested to be present in DEM.

A new option for dispute mediation through the Small Business Commissioner was introduced in the recent amendments to the mining legislation. The commissioner is able to hear disputes between landowners and resource companies, guided by the Mining and Resources Industry Land Access Dispute Resolution Code. More generally, the commissioner can also provide information to either party to help them understand the land access regime. The South Australian Chamber of Mines and Energy commended the process:

> The Code helps farmers and resource companies by providing mandatory alternative dispute resolution processes on a low (or no) cost basis overseen by the Small Business Commissioner. This independent process is designed to help resolve farming land access disputes as quickly and cheaply as possible.[55]

The committee heard mixed feedback about mediation through the Small Business Commissioner. It was commended by Mr Richard Laufmann, Chief Executive Officer of Rex Minerals Ltd, who described his experience of it as a quality process even though the outcome was not what he had wanted.[56] Grain Producers SA also applauded the initiative while noting that it did not obviate the need for other improvements to the land access regime.[57] Mr Malcolm and Mrs Cathy Redding disagreed with each other on whether their experience with the Small Business Commissioner had been fair, but both were critical that the mediation had been under pressure both by time and by the other party.[58] Mr Brian March felt that mediation through the Small Business Commissioner was 'many times more expensive and limited' than the Warden's Court and also doubted its ability as a fair adjudicator:

> It is clear that the Small Business Commissioner is to assist the mining operator to work out the issues the mining operator has with land access.[59]

On balance, the committee concluded that introducing mediation through the Small Business Commissioner had been a positive change but acknowledged the desire of some landowners for more options for fair, accessible and independent dispute resolution.

The Landowner Information Service

A positive outcome of the *Leading Practice Mining Acts Review* was the establishment of the Landowner Information Service (LIS) on 2 July 2020. The LIS is funded by DEM and operated by Rural Business Support, a not-for-profit organisation that provides agribusiness services and independent support to farmers and rural small business owners. It was initially funded for a one-year pilot program. As described by Rural Business Support:

> …the LIS provides free, factual, independent and impartial information to landowners, farmers and community members who are new to the exploration and mining process, or are unsure or confused about

[55] South Australian Chamber of Mines and Energy, Submission 24, p. 15.

[56] *Select Committee on Land Access: Transcript of Evidence*, 21 June 2021, p. 33.

[57] Grain Producers SA, Submission 34, p. 21.

[58] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 135.

[59] Mr Brian March, Submission 7, p. 3.

> their rights and responsibilities when considering external interest regarding exploration, mining and/or quarrying on their land.[60]

The LIS provides landowners with knowledge of their options, rights and responsibilities to help them make informed decisions about land access. Mr Brett Klau, Landowner Information Service Officer, provided statistics to the committee current to 20 September 2021 showing that the service had been well utilised. Since commencement, it had received 57 inquiries from unique clients. Of the responses to a survey undertaken on completion of the pilot program, 100 per cent of clients indicated that they had gained a better understanding of their rights and obligations in relation to land access, and 95 per cent indicated that they were extremely satisfied or satisfied with the service.[61]

The LIS was strongly supported throughout the inquiry, including by Grain Producers SA,[62] the South Australian Chamber of Mines and Energy,[63] the Association of Mining and Exploration Companies[64] and Cement Concrete and Aggregates Australia.[65] Eyre Peninsula farmer Mr Jared Sampson spoke of its important service:

> From personal experience, if this service had been in place in our community 12 or 13 years ago we wouldn't have seen families put under the pressure they were under and falling apart. The value it adds isn't so much from a legal perspective, but it gives them someone to talk to, to find the correct path to navigate through the complexities of the issues…
>
> Had [the LIS] been there in our community when [requests for land access] started, it would have taken a lot of the issues out. We might have seen not necessarily a more favourable outcome, but we would have seen a more harmonious relationship between the exploration company and farmers because the language would have been a lot clearer and better understood. When there's a misinterpretation of 'exempt land' as an example, we are both coming to the table with unrealistic expectations, because we end up arguing over something that we don't fully understand. It really highlights the importance of the LIS.[66]

In its written submission to the committee dated 30 April 2021, Rural Business Support recommended that the LIS be funded on an ongoing basis given its success. Subsequently, the committee was pleased to note that, without any intervention by the committee, funding for the LIS was extended in the 2021-22 State Budget, which was handed down on 22 June 2021 during the course of the inquiry. Funding of $2.2 million over four years was provided to support the continuation and expansion of the LIS.[67]

Proposed solutions

Given the evidence outlined above, the committee acknowledged the common theme of failings in the regulation of the resource industry, especially in relation to exploration. The committee observed that the provisions of the Mining Act were sufficient to prohibit negligent or substandard behaviour by resource companies, however it was evident that the law was not always effectively enforced. The committee therefore gave consideration to measures that could overcome the perceived conflict of

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[60] Rural Business Support, Submission 26, p. 2.

[61] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 232.

[62] Grain Producers SA, Submission 34, p. 22.

[63] South Australian Chamber of Mines and Energy, Submission 24, p. 15.

[64] *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, p. 150.

[65] Cement Concrete and Aggregates Australia, Submission 31, p. 2.

[66] Sampson, Hansard, pages 166, 172 and 173

[67] Government of South Australia, 22 June 2021, *State Budget 2021-22: Budget Measures Statement, Budget Paper 5*, p. 35.

interest in the department, prevent poor behaviour by resource companies and improve landowner confidence in regulation.

Mandatory membership of an association

The committee inquired into whether mandating that all resource companies be members of an industry association would deter 'cowboy miners'.

In South Australia, state and national mining industry associations include the South Australian Chamber of Mines and Energy (SACOME); the Australian Petroleum Production and Exploration Association (APPEA); the Association of Mining and Exploration Companies (AMEC); and Cement Concrete and Aggregates Australia (CCAA), all of whom made submissions to the inquiry.

Among their functions, industry associations guide and expect their members to uphold ethical standards and best practice in operation. Membership of any association is currently voluntary. A resource company that did not intend to follow the law would presumably not be a member of an association.

The committee explored the question of mandatory membership as an idea to discourage unscrupulous operators. Mr Warren Pearce, Chief Executive Officer of AMEC, commented on this:

> …we want to set professional standards for our members and we expect our members to live up to an industry standard and to be good corporate actors. We would be reluctant to let a company join our association if we didn't feel they could do that because it tarnishes the reputation of all our members and our broader industry…We do have processes where we would expel a member if indeed they did something that we considered to be substantially outside industry expectations.
>
> …I think any company that's able to meet the legislative requirements and environmental requirements and community expectations should be able to continue…However, it's difficult to ask the associations to police that when we don't have an ability, really, to prohibit or restrict behaviour.[68]

Mr Pearce went on to suggest that a 'good actor test', similar to a provision in Victoria, could be one way forward. Such a test would be administered by the mining department and require a proponent to demonstrate good history and reputation before a mining tenement is granted.

The committee accepted that mandating membership of an association potentially would only shift the burden of enforcing legislative compliance away from DEM and onto the associations, something they were not equipped for nor ever intended to do. Mr Pearce was clear that associations supported and expected the department to investigate breaches and enforce the law.

Mr Lachlan Pontifex, Director, Resource Policy and Engagement at DEM, confirmed to the committee that the recent amendments to the Mining Act introduced a good actor test in the form of an assessment:

> One of the other key powers that's been introduced in the new act and the regulations is the requirement as part of an exploration licence application to outline any material contraventions of the Mining Act in South Australia or related environmental protection legislation in South Australia or any other Australian jurisdiction, and that information is assessed as part of the application process for any new exploration tenement or any other tenement application as well.[69]

[68] *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, pp. 156 and 157.

[69] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 248.

Any 'black marks' against a company are recorded on a public register. Dr Paul Heithersay, Chief Executive of DEM, described this as 'a very powerful lever…no company wants to be on a register like that, because that affects their investability'.[70] Dr Heithersay thus assured the committee that poor behaviour by resource companies has consequences:

> My feeling about this is that we are gradually raising the bar in terms of what you are required to be when you turn up here. In early years it was really just showing that you had a financial capability to do the job. Now, it's far more than that. Our minister, when we first joined, was quite adamant in our strategic statement that it was all about responsibly unlocking resources. He was basically focused on, 'We only want the credible performers here, we don't want the cowboys.'[71]

Ensuring proper rehabilitation

The committee heard various ideas to ensure that rehabilitation of land after exploration or mining is appropriate and performed to a high standard.

An additional financial obligation, such as an upfront bond, was proposed as a way to strengthen a resource company's commitment to rehabilitation. Section 62 of the Mining Act provides that a resource company may be required to pay a bond to ensure that any liability, including in relation to the future rehabilitation of land, will be satisfied. The committee heard that bonds were sometimes seen as inadequate and disproportionate to the project, as Eyre Peninsula farmer Mr Leon Veitch observed:

> Another part that probably needs clarifying in the Mining Act is the size of the bond required before a company enters land. I have heard stories of them being an absolute pittance, literally—multibillion dollar projects with a few hundred thousand dollar bond in it. It's just ridiculous.[72]

Moreover, bonds are discretionary. Grain Producers SA (GPSA) advocated for mandatory bonds, submitting that it would provide landowners with assurance that any liability, including compensation owed, would be paid regardless of the actions or solvency of a resource company:

> GPSA believes that landowners deserve certainty in relation to compensation owed to them.
>
> GPSA's [suggested amendments to the Mining Act] seek to make this bond mandatory on all tenement holders conducting any form of authorised operation under the Act. GPSA is aware of landowners who have not been paid compensation for mining operations, despite there being a legal obligation to do so. A compulsory bond would mitigate this risk and ensure that landowners are able to access any compensation owed, even in the event of default.[73]

GPSA acknowledged that payment of an upfront bond would be an extra cost to resource companies at the beginning of a project. However, it asserted that a company should not be conducting exploration or mining activity if it did not have the financial resources to rectify the impacts of those activities in terms of both compensation to landowners and environmental rehabilitation.

The committee also considered that payment of an upfront bond could have the effect of deterring small and potentially unscrupulous operators, so-called 'cowboy miners', from attempting exploration or mining in the first place. Mandating a significant upfront bond would prove a proponent's financial capability, eliminating underfunded operators and thus giving both DEM and landowners greater certainty that they would not be left pursuing a company to fulfil its obligations.

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[70] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 248.

[71] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 250.

[72] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 54.

[73] Grain Producers SA, Submission 34, p. 10.

In addition to bonds, the Mining Act establishes two funds that can be used specifically for rehabilitation purposes. The Mining Rehabilitation Fund, under section 62AA, is paid into by resource companies if required of them. The Extractive Areas Rehabilitation Fund, under section 63, is funded by royalties received by the state on extractive minerals.

Section 62AA(4) of the Mining Act provides that the Mining Rehabilitation Fund can be used 'to achieve appropriate environmental outcomes on the closure of authorised operations', including reinstating, improving or restoring the land. Like the payment of a bond, payment to this fund is discretionary. Grain Producers SA argued that it should be mandatory for the same reasons payment of a bond should be mandatory.[74]

A further idea to address concerns about rehabilitation was to establish a role similar to that of the Queensland Rehabilitation Commissioner. The Queensland commissioner is an independent statutory position that develops technical and evidence-based information on complex mine rehabilitation matters, reports on best practice and oversees rehabilitation performance in the state.[75] Yorke Peninsula farmer Mr Bill Moloney said to the committee:

> …we need an independent rehabilitation commissioner, separate from DEM, to oversee the rehabilitation of any mine from the start and on an ongoing basis until after the mine closure. To erect a fence around a mine pit to keep people out would hardly be seen as best practice mine site rehabilitation.[76]

Mr Leon Veitch took a similar view on the quality of rehabilitation work performed by resource companies. As previously quoted, he was incredulous that 'scattering some sticks' over his land comprised the 'universally accepted standard' of rehabilitation claimed by the resource company.

A commissioner independent of DEM would not be perceived to favour the mining industry and, importantly, could define the accepted standards of rehabilitation in South Australia. As has been the experience of Mr Moloney and Mr Veitch, landowners and resource companies have disagreed on what comprises 'properly rehabilitated' under the Mining Act. An independent rehabilitation commissioner could set the standard of best practice and thus avert such disputes.

Separating the functions of the department

The suggestion for a rehabilitation commissioner was one of many proposals put to the committee that were fundamentally about establishing a new, independent regulatory body for some or all aspects of land access. This was often framed as separating the regulatory function from DEM, thus solving what some landowners see as a conflict of interest in the department between its dual roles as promoter and regulator of mining.

As summarised by Mr Brenton and Ms Sue Davey in their submission:

> DEM's dual role of being the [promoter] of mining as well as the Regulator/Assessor is our main cause of concern.
>
> The two roles need to be separated, with regulation being done independent of the Government. DEM's role of assessing mining proposal (and similar) applications also needs to be separated, and these applications also need to be assessed independent of the Government.[77]

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[74] Grain Producers SA, Submission 34, p. 11.

[75] *Queensland Government: Queensland Rehabilitation Commissioner*, https://www.qld.gov.au/environment/land/management/rehab-commissioner (accessed 11 August 2021).

[76] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 120.

[77] Mr Brenton and Ms Sue Davey, Submission 29, p. 3.

Mr Leon Veitch agreed:

> The reason the Mining Act goes so badly…is that we have a department that is both the regulator and giving out approvals, and it is very clear this does not work. Ultimately, the goal of the whole department is to facilitate mining and you cannot be going around with a big stick and stopping them from trying to gather data, etc., if you are trying to encourage this mining, so the need for an independent regulator is a definite must.[78]

There were various ideas for the form an independent body could take and precisely what it would do, including combinations of the following:

- As has been discussed, an officer similar to the Queensland *Rehabilitation Commissioner* to ensure integrity in rehabilitation. The Yorke Peninsula Land Owners' Group (YPLOG) envisioned that this role could also serve as a more general regulator provided it was 'outside of DEM completely'. (Supported by YPLOG)
- An *independent regulator* for the mining sector to assess exploration and mining applications, giving consideration to the impact on arable land. (Supported by Grain Producers SA and Ms Alison and Mr Malcolm Meier)
- An officer similar to the New South Wales *Land and Water Commissioner* who could review all exploration and mining approvals from a natural resources management perspective. (Supported by YPLOG and Mr Brenton and Ms Sue Davey)
- A *governing body*, called Land Access SA, to be part of the Department for Environment and Water with authority to manage mining approvals, dispute resolution, strategic land management, penalties and other associated activities. (Supported by Alliance Management and Consulting Services)
- An *advisory panel*, comprising independent members with practical understanding of agriculture, mining and other perspectives, to engage resource companies and landowners, inform decision-making and assist in dispute resolution. (Supported by Ms Dianah Walter and Land Access and Management Services)
- *The Department for Environment and Water* (DEW) could assume the regulatory function currently with DEM. As the department concerned with the preservation and sustainability of land regardless of whether it is used for agriculture, mining or another purpose, DEW could be trusted to make fair decisions about land access. (Supported by the Inverbrackie Creek Catchment Group)
- A *mining ombudsman* to oversee regulation and compliance and be an independent arbitrator of land access disputes. There were various views on the function of an ombudsman. It could be a new role or a new power for the existing South Australian Ombudsman (according to Mr Brian March), an independent regulator (according to Mr Bronte Gregurke), or a separate entity from the regulator with a purpose only to adjudicate complaints and queries (according to Livestock SA).

The committee noted that the desire for an independent regulator is not new. In 2013, the House of Assembly's Natural Resources Committee recommended in its 91st report that 'the State Government appoint an independent mining regulator to ensure that all provisions of the Mining Act and related legislation are adhered to', adding that it should be 'like an ombudsman'.

[78] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, page 54.

The Natural Resources Committee had been considering, among other matters, land access disputes at Whyalla. In its report, it said in relation to the department responsible for mining at the time, the Department for Manufacturing, Innovation, Trade, Resources and Energy (DMITRE):

> The fundamental problem as [landowners] see it is that DMITRE is compromised and conflicted; DMITRE is attempting to serve two masters—it is a government department attempting to promote and regulate mining at the same time…
>
> …an independent regulator who was not trying to promote mining but to look after the rights of all parties was required. This person could facilitate and review landholder/mining negotiations.[79]

In contrast, Dr Paul Heithersay, Chief Executive of DEM, put to the committee his reasons why keeping the regulatory function with DEM was preferable to having an independent regulator. He argued that the technical expertise required for regulation would be difficult and costly to replicate in a separate body. Further, he referred to the Fraser Institute's Investment Attractiveness Index, an annual ranking of mining jurisdictions around the world according to how much they appeal to investors. In 2020, South Australia ranked No. 7 out of 77 jurisdictions, and the only Australian jurisdiction to outrank it was Western Australia at No. 4. Dr Heithersay commented:

> New South Wales and Queensland are bigger than South Australia and they should be higher in that index, but they are not. Why not?
>
> I would argue that that's partly around their regulatory regime. I think people appreciate the one window to government.[80]

Dr Heithersay put to the committee that South Australia's high ranking on the Investment Attractiveness Index was evidence of the appeal of having a single department, or 'one window', for all mining promotional and regulatory functions.

He also challenged some of the evidence the committee heard regarding the department being unresponsive to complaints, asserting that the department reacts quickly to complaints because it is in the best interests of both the department and industry that it does so. Comparing how DEM would respond to a complaint to how an environment agency would respond, he suggested that 'we've got more skin in the game to fix those sorts of problems than [a hypothetical environment agency] that has a million other issues that are non mining related'.[81]

Dr Heithersay acknowledged that DEM may continue to be perceived as having a conflict of interest but contended that the perception is not the reality. He considered that DEM is logically best positioned to be the regulator:

> We need to be in a position to say [to resource companies], 'Stop doing that right here, right now, otherwise we're going to hand you a multithousand dollar fine. Don't do that again, otherwise you're going to be on this list and you will not get a tenement.' You can see how that is really integrated into the mines department. If you disconnected it in another agency that has a multitude of other issues that are more numerous than we will have, you lose it.[82]

[79] Natural Resources Committee, Parliament of South Australia, 26 November 2013, *Whyalla Region Fact-Finding Visit 23-24 October 2013*, p. 46.

[80] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 258.

[81] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 259.

[82] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 259.

Code of conduct for exploration

Many of the land access disputes described to the committee related in some way to the culture of resource companies, which was perceived as at least inconsiderate, if not abusive. In most cases, it was particularly explorers that were criticised.

Explorers may enter agricultural land at an inconvenient time for the farm or have unreasonable expectations of a landowner's ability to respond quickly to correspondence. Mr Jim Franklin-McEvoy, Chair of Inverbrackie Creek Catchment Group, gave an example of this when he told the committee about a resource company that served a notice of entry to landowners in the Adelaide Hills, with a 42-day time frame for response, while those landowners were fully occupied with the bushfire crisis of January 2020.[83]

Among the worst examples of alleged poor behaviour by resource companies, both explorers and miners, were incidents of bullying and trespassing,[84] intimidation and verbal abuse,[85] threats of legal action by 'attack dog lawyers'[86] and even death threats.[87] The extent to which such conduct occurs cannot be quantified. Mr Warren Pearce, Chief Executive Officer of the Association of Mining and Exploration Companies (AMEC), observed that it was not typical of explorers:

> …the overwhelming majority of mineral explorers operate in good faith and seek to not only meet but exceed engagement expectation, and the vast majority of interactions between mineral explorers are amicable, reasonable and fair.[88]

However, this was contradicted by other evidence such as from Mr Franklin-McEvoy, who said that 'ongoing bullying tactics' by resource companies were 'pretty common'.[89] He believed that these companies operated on an assumption that farmers were uneducated and would sign anything because they could not understand it.[90] His view was supported by Eyre Peninsula farmer Mr Jared Sampson, who described a particular resource company's attitude to him as 'condescending', treating him and his brother as 'uneducated country hicks'.[91]

To address unacceptable behaviour, AMEC supported a voluntary code of conduct for mineral explorers and offered to work with the state government and other stakeholders to develop it.[92] A code of conduct would aim to foster good working relationships between resource companies and landowners beyond the legislative obligations. Hillgrove Resources Ltd, operator of the Kanmantoo copper mine, likewise said that poor behaviour would be better addressed by codes of conduct than by further amendments to legislation, feeling the latter would only increase regulatory burden:

> Hillgrove strongly supports the use and explanation of Codes of Good Practice and Conduct being used as a basis for engaging with the landowners. In our view, exploration companies that subscribe and practice

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[83] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 212.

[84] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 47.

[85] *Select Committee on Land Access: Transcript of Evidence*, 29 June 2021, p. 86.

[86] Mr Malcolm and Mrs Cathy Redding, Submission 21, p. 1.

[87] Alleged by Mr Barry Stringer, as heard by the committee at a site visit on 14 July 2021.

[88] *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, p. 151.

[89] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 213.

[90] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 217.

[91] Sampson, Jared, 5 July 2021, email to Mr Shannon Riggs with subject 'Re: Parliament of South Australia—Select Committee on Land Access'.

[92] Association of Mining and Exploration Companies, Submission 30, p. 5.

> these codes under the auspices of their respective professional associations is a basis for genuine conversation with rural landowners.
>
> Hillgrove strongly endorses a co-operative conversation between the rural and exploration associations to resolve and agree on land access practices, rather than resort to regulation.[93]

The South Australian Chamber of Mines and Energy also supported the use of codes of conduct. It already produces codes for its member companies to follow in pursuing best practice in stakeholder engagement. Principles covered include:

- advising landowners well in advance of undertaking any activities;
- liaising with landowners in good faith;
- respecting a landowner's rights, privacy, property and activities;
- treating information about a landowner's business confidentially;
- paying compensation promptly; and
- taking responsibility for the actions of employees and contractors.[94]

Grain Producers SA considered that a code of conduct for tenement holders should be mandatory.[95] Membership of mining industry associations, and therefore adherence to their codes of conduct, is voluntary. As has been previously discussed, mandating membership of an industry association would be problematic, so any mandatory code of conduct presumably would need to be implemented and enforced by the regulator.

Dr Paul Heithersay, Chief Executive of DEM, considered that codes of conduct are useful and that it would be sensible for the department to endorse such codes. He added that codes of conduct would need to be specialised for the regions where they operated as circumstances vary substantially and a single code for all operations across the state is not realistic.[96]

Conclusions

The committee was presented with compelling evidence calling for a mechanism to strengthen the enforcement of the Mining Act independent of the Department for Energy and Mining. A considerable proportion of the complaints of landowners heard by the committee could likely have been avoided or resolved satisfactorily had the act been effectively enforced. The committee accepted the evidence of landowners that the department had not always been responsive or effectual and that this could be ascribed to a conflict between the department's dual roles as promoter and regulator, whether or not this conflict was only a perception.

Of the many options considered for the form of an independent body, the committee favoured an ombudsman to be tasked with overseeing and enforcing the provisions of the Mining Act concerning exploration. Rather than separating and dispersing the functions of DEM, the department would retain its role as regulator while the new ombudsman would provide a layer of oversight. The ombudsman would serve as a point of contact for landowners to raise concerns, and it would be empowered to ensure that contraventions of the act were addressed.

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[93] Hillgrove Resources Ltd, Submission 12, p. 7.

[94] South Australian Chamber of Mines and Energy, Submission 24, p. 16.

[95] Grain Producers SA, Submission 34, p. 18.

[96] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 255.

The committee felt that a code of conduct for explorers would be an excellent mechanism to improve standards of behaviour in the industry. Explorers would be required to declare their acceptance of the code of conduct before they could commence work. The code could cover a wide variety of matters, including required standards for proper rehabilitation of land. The ombudsman would be tasked with developing and enforcing this code of conduct.

Finally, the committee was impressed with the performance of the Landowner Information Service to date. Evidence showed that the service was well utilised and was achieving its aims of supporting landowners to navigate the land access regime. The committee felt that the new ombudsman could incorporate the Landowner Information Service and in fact be an expansion of its existing function.

Recommendation 2: Protecting agricultural land

The committee recommends that the Department for Environment and Water be tasked with undertaking comprehensive mapping of existing land use and attributes with a view to the development of standalone planning legislation:

a. informed by investigation of the land access regimes of Queensland and New South Wales as elements of those regimes may be appropriate for South Australia; and

b. noting work already undertaken in relation to land use potential by the Department for Environment and Water and the Department of Primary Industries and Regions.

Scarce agricultural land

A fact repeatedly raised in evidence to the inquiry was that South Australia's agricultural land is scarce. It is estimated to be between 4 and 5 per cent of the state's total area, depending on the definition used. Throughout the inquiry, the committee heard this land variably termed *agricultural*, *cropping* or *arable*, often with added qualifiers such as *prime, strategic, productive, sustainable* or *cultivated.* For the purposes of this report, *agricultural land* will be used to refer to what all these terms are attempting to describe: the limited land in South Australia that is in any way useful for agriculture.

Precisely how to define this land is a subject of debate. Yorke Peninsula farmer Mr Bill Moloney suggested simply 'anywhere you can reliably grow food'.[97] Ms Joy Wundersitz of the Yorke Peninsula Land Owners' Group spoke about the criteria used by Queensland and New South Wales to identify such land, which included 'some very rigorous, empirically verifiable, scientific criteria against which agricultural land can be mapped'[98] such as soil compaction and topography.

Reliable rainfall is a particular measure of interest. A longstanding indicator of rainfall in South Australia is Goyder's Line, mapped by Surveyor-General George Goyder in 1865, which runs roughly east-west across the state. Land south of Goyder's Line is considered to receive enough rain to support cropping, while land north is better suited to grazing.

[97] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 121.

[98] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 127.

However, the committee noted that a site's location relative to Goyder's Line, the quality of its soil, its topography or any other defining environmental factor did not necessarily demonstrate its worth as agricultural land. For example, many farms on Eyre Peninsula may not meet those definitions yet support robust and successful agricultural businesses. A definition of agricultural land based on only environmental factors could therefore be too narrow. Ms Wundersitz acknowledged this:

> …you are never going to get protection of all agricultural land from the margins right through, so where's the compromise?...that's perhaps one of the problems of using, if you like, the topography, the physical characteristics, as the measure of whether an area should or shouldn't be considered.
>
> What none of those criteria actually looks at is productivity. If productivity and capacity were built into [the definition], then…even though [a site] looks marginal in terms of those physical characteristics, in reality its production capacity is good enough to actually say, 'No, you really shouldn't be doing mining here.'[99]

Regardless of definition, it is unarguable that South Australia has little of this agricultural land. Ms Wundersitz added that climate change is contributing to reduced rainfall and hotter temperatures overall, thus agricultural land continues to diminish while simultaneously being the most sought-after land in the state. Grain Producers SA, representing the grain industry, noted that that industry alone has a target to achieve $6 billion in gross food revenue by 2030 from produce grown only on South Australia's limited agricultural land.[100]

The same land is also in demand for urban development. Some of the best agricultural land in the state is also the most populated. Ms Fiona Simson, President of the National Farmers' Federation, noted that there is no policy in Australia that 'gives finite agricultural land any primacy, whether you are talking about urban development or whether you are talking about mining development'.[101]

Against this backdrop, the difficulty of land access for mining is clear. Agricultural land—already limited in quantity and contested by both agriculture and encroaching urban development—is also frequently the very land under which mineral deposits are found. This situation is perhaps more common in South Australia than in other Australian jurisdictions, as noted by Mr Warren Pearce, Chief Executive Officer of the Association of Mining and Exploration Companies:

> It's a more fractured issue here in South Australia than it is in other jurisdictions because you have a situation where the mining jurisdiction in some cases, particularly in regard to copper, lies in areas of very croppable land, so you have direct conflict.[102]

The committee was therefore interested in hearing ideas about conserving agricultural land and how best to make decisions about its use.

Multiple land use frameworks

The principle of multiple land use is key to the debate around the use of agricultural land. Multiple land use is a policy position that enables land to be used for different purposes simultaneously in order to maximise its benefits to the community. A related principle, sequential land use, refers to land being used for different purposes over time in sequence. Both principles are in contrast to the 'lock the gate' philosophy that would see landowners have a right to veto any change to their land at any time.

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[99] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 128.

[100] Grain Producers SA, Submission 34, p. 1.

[101] *Select Committee on Land Access: Transcript of Evidence*, 7 June 2021, p. 18.

[102] *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, p. 156.

The Department for Energy and Mining considered that a multiple land use framework was the best approach to resolving disputes over land, including agricultural land,[103] and noted that the Australian Productivity Commission concluded likewise in its 2020 report *Resources Sector Regulation*:

> Leading-practice policies seek to balance the trade-offs between resources development and other land uses to maximise economic benefits for the community. These policies should thoroughly consider the costs and benefits of allowing resources development, and have approval processes proportionate to the risks of resources development on the relevant land.[104]

In 2016, South Australia implemented the South Australian Multiple Land Use Framework. The framework 'encourages the consideration of multiple land use where appropriate, and it recognises the importance of land ownership and the need for timely engagement with landowners, communities and organisations'.[105] The South Australian Chamber of Mines and Energy (SACOME) noted that 'South Australia was a national leader in the development of a multiple land use mechanism to resolve conflict arising from competitive demands for land use'.[106] The Minerals and Energy Advisory Council elaborated:

> Governments around Australia have since embraced this concept, which supports different uses of land being undertaken simultaneously and sustainably to maximise the net benefits of the land for present and future generations.
>
> Where simultaneous land use is not possible, South Australia's Multiple Land Use Framework encourages sequential land use and allows land to return to a former or alternative land use once the current land use comes to an end.[107]

The principles of the South Australian Multiple Land Use Framework were incorporated in the recently amended mining legislation. According to SACOME:

> These frameworks represent policy evolution that reinforces the primacy of the Crown as grantor of interests in land but does so in a considered manner that balances the benefits and consequences of decisions about land use; and places a premium on respectful and transparent stakeholder engagement.[108]

A multiple land use policy could facilitate, for example, both a farm and a quarry operating side by side on the same property. Sequential land use could enable a farm to become an open-cut mine, after which the pit could be converted for aquaculture if reverting to the original farm were not possible. The aim is to exploit the highest value use of the land at each stage.[109] In doing so, a decision for land use is not about supporting one industry over another[110] but rather enabling all parties to pursue their rights and opportunities through a process of negotiation with each other.

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[103] Department for Energy and Mining, Submission 9, p. 2.

[104] Australian Productivity Commission, November 2020, *Resources Sector Regulation: Productivity Commission Study Report*, p. 123.

[105] *Department for Energy and Mining: South Australian Multiple Land Use Framework*, https://energymining.sa.gov.au/minerals/land_access/multiple_land_use_policy_framework (accessed 3 August 2021).

[106] South Australian Chamber of Mines and Energy, Submission 24, p. 10.

[107] Minerals and Energy Advisory Council, Submission 3, p. 3.

[108] South Australian Chamber of Mines and Energy, Submission 24, p. 11.

[109] Ms Rebecca Knol, Chief Executive Officer, South Australian Chamber of Mines and Energy, *Select Committee on Land Access: Transcript of Evidence*, 3 May 2021, p. 8.

[110] Mr Warren Pearce, Chief Executive Officer, Association of Mining and Exploration Companies, *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, p. 156.

Hon Robert Brokenshire, speaking to the committee on behalf of Livestock SA, agreed that the best use of land is the highest value activity, which should be determined without prioritising one industry over another. To this end, he suggested that South Australia would benefit from a scoping study over time, such as 50 years, to gain more clarity on the economic benefits of mining contrasted with sustainable farming.[111] He made the point, shared by others,[112] that a mine has a limited life—necessarily ending when the resource is exhausted—but farming is a sustainable industry, a strength that should be taken into account when assessing its value.

The committee was supportive of the South Australian Multiple Land Use Framework and its application to the mining industry but noted the experiences of some landowners who asserted that a multiple land use policy was problematic for agriculture. Farmer Mr Neil Harrop said, 'They keep telling us that mining and farming can coexist, but we have had five years where we don't think it can.'[113] Mr Leon Veitch, also a farmer, gave his perspective:

> Through the whole process, we have been told till the cows come home that it's all about coexistence. This is another general word that has no clear definition. To me, miners coming on a farm is comparable to termites in your house. Coexistence does not work in practice when one party is destroying the assets of the other party, when the mine has gone from Warramboo there will be a giant hole left, a giant mound that is full of salt and nothing else. There is no coexistence in that. There cannot be. It's been a big catchcry of the department, ministers, etc., and it just cannot work.[114]

Multiple land use seeks not to favour any interested party, but in light of comments such as the above, the committee heard many ideas for ways to give agricultural land the 'primacy' sought by the National Farmers' Federation. Such primacy would give South Australia's agricultural land extra protection from mining in recognition of its scarcity and importance to the prosperity of the state.

Queensland and New South Wales were often mentioned in submissions as two jurisdictions considered to have particularly effective measures for protecting agricultural land. The committee noted the comments of Dr Paul Heithersay, Chief Executive of the Department for Energy and Mining, that the legislative and regulatory models of both these jurisdictions were examined when designing the recent amendments to the Mining Act.[115] These models are discussed below.

Queensland: the Regional Planning Interests Act 2014

Queensland's Strategic Cropping Land Act 2011 commenced on 30 January 2012 with this purpose:

> …to implement a legislative framework that recognises the state's strategic cropping land (SCL) as a finite resource and [provide] the crucial balance between often competing interests for primary producers, resource developers and urban development.[116]

Strategic cropping land (SCL) was defined as 'a scarce natural resource identified by soil, climatic and landscape features that make it highly suitable for crop production'.[117]

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[111] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, p. 179.

[112] For example, refer to the submissions of Ms Claudia Tregoning, Ms Dianah Walter, Mr Neil and Mrs Jackie Harrop and Mr Bill Moloney.

[113] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 139.

[114] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 55.

[115] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 245.

[116] Environment, Agriculture, Resources and Energy Committee, Parliament of Queensland, November 2011, *Report No. 6: Strategic Cropping Land Bill 2011*, p. 1.

[117] Environment, Agriculture, Resources and Energy Committee, Parliament of Queensland, November 2011, *Report No. 6: Strategic Cropping Land Bill 2011*, p. 6.

Under this act, a trigger map identified broad regions with cropping potential where SCL might be found. To conduct activities in one of these regions, a resource company would first have to prove to the Queensland mining department that the land it wished to develop did not meet the definition of SCL by performing an on-site assessment.

If the department determined the land to be SCL, it would assess the impacts of the proposed project according to processes in the Environmental Protection Act 1994 (Qld) and/or the Sustainable Planning Act 2009 (Qld). Projects that would have a permanent impact on SCL could be rejected entirely or approved only with substantial mitigation measures. Examples of permanent impacts were impeding the land from being cropped for at least 50 years, using open-cut mining or storing hazardous waste.

The Strategic Cropping Land Act was repealed on 13 June 2014 and superseded by the Regional Planning Interests Act 2014, which remains in force in Queensland today. The act identifies four types of land that are 'of regional interest' due to its character as a natural resource:

- priority agricultural areas: areas of highly productive agriculture by certain definitions;
- priority living areas: land near towns or other settled places that might be settled in future;
- strategic cropping areas: the new name for SCL, defined in section 10(2) as 'land that is, or is likely to be, highly suitable for cropping because of a combination of the land's soil, climate and landscape features'; and
- strategic environmental areas: areas with environmental value according to the Environmental Protection Act (Qld), indicating they are conducive to ecological health.

The act aims to protect these four categories of land from inappropriate development while supporting the coexistence of mining and other activities, including 'highly productive agricultural activities'. A proponent seeking to explore or mine must first obtain a regional interests development approval (RIDA). This process includes consulting with the landowner, who has an opportunity to advise the department of any concerns. The department may approve all or part of a RIDA, place conditions on it or refuse it.

Grain Producers SA favoured the Queensland regime as an example of potentially best practice land access rights.[118] The Yorke Peninsula Land Owners' Group (YPLOG) was similarly supportive, commending Queensland for having a standalone regime separate from mining legislation. However, YPLOG favoured the older Strategic Cropping Land Act, describing the objectives of the newer act as 'notably weaker', with a shift in focus from protecting SCL from mining to managing it to coexist with mining.

YPLOG noted that, since the Regional Planning Interests Act commenced in 2014, none of the 42 applications for a RIDA to mine or undertake another project on protected land have been refused. YPLOG also considered that gaining an exemption from a RIDA is too easy. For example, a resource company does not need a RIDA if the proposed activity will have a duration of less than one year, which would exempt most exploration activities.[119]

[118] Grain Producers SA, Submission 34, p. 19.

[119] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, pp. 18 and 19.

New South Wales: Strategic Regional Land Use Policy

Where Queensland uses legislation to protect agricultural land, New South Wales predominantly uses a policy framework. Among the measures in New South Wales aimed at protecting agricultural land from the impacts of mining are:

- coal seam gas exclusion zones, which ban new activity near existing and future residential areas and critical industry areas in the Upper Hunter;
- a Land and Water Commissioner, established under the Mining Act 1992 (NSW), to review exploration approvals, oversee land access agreements and provide independent advice and advocacy for landowners in relation to exploration;
- Agricultural Impact Statements, prepared as part of the approval process for exploration or mining proposals, which detail the significance of agricultural resources in the area and how impacts upon them will be minimised; and
- the process described below to protect strategic agricultural land.[120]

New South Wales identifies two types of 'strategic agricultural land' that require particular protection from the impacts of mining and coal seam gas activities:

- Biophysical: land that has high-quality soil fertility and a reliable water source and is capable of sustaining high levels of productivity.
- Critical industry cluster: land where there is a concentration of significant agricultural industries that are related to each other, contribute to the identity of the region and provide significant employment opportunities. The two critical industry clusters currently identified are the equine and viticulture industries in the Upper Hunter.[121]

Before a resource company can submit a development application for exploration or mining on strategic agricultural land, it must pass the gateway assessment process overseen by the Mining and Petroleum Gateway Panel. The panel is an independent body constituted under the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (NSW) and comprises experts in the fields of agricultural science, hydrogeology and mining and petroleum development.[122]

The panel assesses the proposal against scientific and technical criteria and issues the resource company with a certificate. The certificate may be unconditional or it may impose conditions upon the company, such as requiring it to modify its project in some way before it makes its development application under the mining legislation. The panel is not able to refuse to issue a certificate but only to impose conditions.

The Yorke Peninsula Land Owners' Group commended the New South Wales regime for its independent panel of scientific experts and for requiring the gateway approval early, before a development application is made under the mining legislation. However, they considered the policy

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[120] *NSW Department of Planning, Industry and Environment: Initiatives Overview*, https://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/Summary-of-Initiatives (accessed 20 July 2021).

[121] *NSW Department of Planning, Industry and Environment: Gateway Assessment and Site Verification*, https://www.planning.nsw.gov.au/gateway-assessment-and-site-verification (accessed 20 July 2021)

[122] NSW Mining and Petroleum Gateway Panel, http://www.mpgp.nsw.gov.au/index.pl?action=home (accessed 20 July 2021)

approach of New South Wales to be less rigorous than the legislative approach of Queensland and found it unacceptable that the panel cannot refuse to issue a certificate.[123]

Western Australia: surface rights

Western Australia's legislative model was raised less often in evidence than the models used in Queensland and New South Wales, but it provides a unique alternative. Section 29 of the Mining Act 1978 (WA) exempts private land from mining from the surface to a depth of 30 metres. Private land is defined in section 29(2) to include genuinely and regularly used yards, stockyards, gardens, orchards, vineyards, plant nurseries and plantations and land under cultivation.

In practice, land at a depth greater than 30 metres can be mined by accessing it on an angle from a place outside the private property, but the land from the surface down to 30 metres remains exempt unless the owner and occupier consent. The Law Society of South Australia noted that there does not appear to be any recourse for a resource company to access the surface land if the landowner does not consent.[124] Equally, the Yorke Peninsula Land Owners' Group (YPLOG) noted that there does not appear to be any recourse for a landowner if they object to mining at deeper than 30 metres below their property.[125]

The Law Society felt that this system of 'surface rights' would be an improvement if adopted in South Australia, believing that it struck a good balance between enabling a resource company to mine and allowing a landowner to refuse access.[126] YPLOG did not favour the Western Australian approach because of its reliance upon mining legislation to protect cultivated land. However, YPLOG felt that similar surface rights could be included 'as an outcome option' if a system more like that of Queensland or New South Wales were adopted in South Australia.[127]

Adopting interstate approaches

There was no evidence put to the committee that either the Queensland or New South Wales regimes were suitable for adoption in South Australia in their entirety. There were also conflicting views about whether adopting even certain parts of those regimes would be effective. YPLOG was in favour of 'cherrypicking' the best features of the interstate regimes:

> …wholesale adoption of one or other of the two interstate approaches is not appropriate. Instead, we should 'cherry pick' only those aspects from each model that best suits South Australia's specific environmental conditions and agricultural requirements and modify or change these as considered appropriate…
>
> …in 'cherry picking' from the NSW and Qld regimes, it is crucial that South Australia develops a clear understanding of the limitations of the two regimes to ensure we do not repeat the same mistakes.[128]

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[123] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 16.

[124] The Law Society of South Australia, Submission 32, p. 5.

[125] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 7.

[126] The Law Society of South Australia, Submission 32, p. 5.

[127] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 7.

[128] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, pp. 16 and 18.

Yorke Peninsula Council had a similar view:

> …we feel that a comprehensive and consistent approach could possibly be a blend of the frameworks implemented in Queensland and New South Wales, as a possible way forward and a basis for change in South Australia.[129]

However, Ms Rebecca Knol, Chief Executive Officer of the South Australian Chamber of Mines and Energy (SACOME), felt differently:

> …SACOME hopes to see…recognition that pursuit of best practice is not necessarily an outcome of cherrypicking from other jurisdictions. Many competing factors must be balanced in determining an effective land access framework.[130]

This view was shared by Ms Danielle Martin, Director, DMConsulting, who appeared before the committee with officers from Rex Minerals Ltd:

> …there are elements of legislation all around that look better or worse than others, but I guess they can't be cherrypicked into one best-practice framework for reasons of the consequences associated with each of them.
>
> What I would say is that the certainty and the transparency around the process seems to be the one thing that actually is best practice, irrespective of the nuances of individual legislation.[131]

The committee concurred that 'cherrypicking' elements of land access regimes from other jurisdictions for adoption in South Australia had the potential to create a fragmented system. Any new system for the protection of agricultural land in South Australia would need to take a holistic view of the state's unique circumstances.

Separate legislation

There were varying views in the evidence about whether any new system to afford agricultural land greater protection from mining should be established with standalone legislation, be included in mining legislation, be included in planning legislation, or take another form such as a policy. Groups such as YPLOG and the Inverbrackie Creek Catchment Group and individuals such as Mr Brenton and Ms Sue Davey advocated for new legislation, entirely separate from the mining framework.

New legislation separate from the mining framework would recognise that land access is not solely a mining issue but has far-reaching impacts, especially on agriculture. The impetus for new legislation is specifically that the land access regime in the mining framework is perceived to have no regard for agriculture, as the Daveys explained in their submission:

> It is clearly obvious that the Mining Act provides no protection for our precious cropping and agricultural land in SA. The focus of this Act is merely on managing the impacts of resource activities…
>
> A new piece of legislation is therefore required.[132]

[129] Yorke Peninsula Council, Submission 14, p. 1.

[130] *Select Committee on Land Access: Transcript of Evidence*, 3 May 2021, p. 4.

[131] *Select Committee on Land Access: Transcript of Evidence*, 21 June 2021, p. 36.

[132] Mr Brenton and Ms Sue Davey, Submission 29, p. 2.

According to YPLOG, there is evidence to suggest that courts are cognisant that the primary intention of the Mining Act is to support resource development and therefore any decision of the court should not obstruct this. In its submission, YPLOG quotes from a judgement by the Senior Warden, Warden's Court, July 2008:

> I have interpreted the Act in the context that it was intended to encourage mining…The purpose of the Mining Act (1971) is to encourage mining and the Warden's Court should allow mining to occur where it can be done so having proper regard to the rights of owners of the land.[133]

YPLOG therefore advocated for 'the development of separate legislation that sits outside of, and overrides, the Mining Act as it pertains to land access requirements by resource companies in areas of strategic agricultural land'.[134]

YPLOG made clear that new legislation should have a focus on protecting agricultural land from mining. The Chair, Ms Joy Wundersitz, explained:

> …what we are going to argue for is a very separate, standalone piece of legislation that focuses on the need to protect sustainable agricultural land in relation to resource company intrusion because that creates the independence.[135]

Ms Wundersitz asserted that this would be similar to the approaches taken by Queensland and New South Wales, the jurisdictions most often considered in the evidence to have strong regimes for protecting agricultural land.[136]

The committee agreed that regardless of the form of a new system, and without 'cherrypicking' from other jurisdictions, South Australia can learn from interstate approaches. A place to start, taking inspiration from both Queensland and New South Wales, could be to define and map South Australia's agricultural land.

This exercise has been attempted previously. The committee was aware of work undertaken by the Department for Environment and Water, and its predecessor the Department of Environment, Water and Natural Resources, to assess land use potential throughout the state by modelling soil and land attributes, such as susceptibility to erosion and levels of acidity and salinity. This information supports policy development when new uses of land are being considered.[137] The committee also considered that the Department of Primary Industries and Regions would have valuable input.

The committee envisioned that any new attempt to identify and protect agricultural land would build upon this existing work. It could also take into account the character preservation districts and Environment and Food Production Areas, described below, which are existing measures to protect certain regions of the state from residential development.

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[133] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 4, quoting a judgement of the Warden's Court.

[134] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 22.

[135] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 121.

[136] Including the Yorke Peninsula Land Owners' Group, Mr Brenton and Ms Sue Davey, Mr Bill Moloney, Yorke Peninsula Council and the Inverbrackie Creek Catchment Group.

[137] *Department for Environment and Water: Assessing land use potential*, https://www.environment.sa.gov.au/topics/Science/Information_data/soil-and-land/assessing-land-use-potential (accessed 13 October 2021).

South Australia: character protection and EFPAs

In South Australia, two acts commenced on 18 January 2013 concerned with protecting agricultural land, termed here 'cultivated land', from residential development. The Character Preservation (McLaren Vale) Act 2012 and the Character Preservation (Barossa Valley) Act 2012 were designed to recognise and protect the special character of the McLaren Vale and Barossa districts. 'Special character' is defined as rural and natural landscape and visual amenity; heritage attributes; the built form of the townships; viticultural, agricultural and associated industries; and scenic and tourism attributes.

These acts restrict additional residential development in the McLaren Vale and Barossa districts in an attempt to halt urban sprawl and enable farming and primary production to continue in these areas. The creation of new allotments for residential purposes is prohibited.

While these acts do not relate to protecting agricultural land from mining, they are an example of how defined geographical areas can be singled out for special protection. When introducing the character preservation districts, the then Minister for Urban Development, Planning and the City of Adelaide said that the government expected that the districts could be a framework for future districts that required protection.[138] The acts were reviewed in 2018 and found to be working as intended.[139]

Another means of protecting agricultural land in South Australia from urban sprawl are the Environment and Food Production Areas (EFPAs), which were established on 1 April 2017 under the Planning, Development and Infrastructure Act 2016 as part of South Australia's new planning system. Similar to the character preservation districts, EFPAs protect agricultural land from urban encroachment by prohibiting the division of land for new residential allotments. Land can be divided for non-residential allotments by concurrence of the council or the State Planning Commission.[140]

[138] *Hansard*, House of Assembly, Parliament of South Australia, 28 September 2011, p. 5,176.

[139] Media release of Mr Stephan Knoll, the then Minister for Planning, 30 July 2018, *Character Preservation Act Review Complete,* available at https://www.stephanknoll.com.au/character_preservation_act_review_complete.

[140] *PlanSA: Environment and food production areas*, https://plan.sa.gov.au/resources/planning/environment_and_food_production_areas (accessed 20 July 2021).

Below is a map[141] showing the EFPAs in green and the two character preservation districts in purple. There is no overlap between the two as the later creation of the EFPAs was intended to cover land not already included in the character preservation districts.

Geographical regions mapped in this manner are similar to the critical industry clusters of New South Wales. Another approach could be to define protected land not by its location in a greater region but by particular criteria relating to its value as a natural resource, such as New South Wales' biophysical strategic land or Queensland's strategic cropping areas. These criteria would need careful consideration and could include factors such as environmental conditions or a history of agricultural productivity.

Exempt land

The current Mining Act already provides some protection, and therefore some definition, of agricultural land. Section 9 defines various types of 'exempt land', such as yards, gardens and forest reserves. Relevant to agricultural land is section 9(1)(a)(ia), which provides that exempt land includes 'a cultivated field, plantation, orchard or vineyard'. The act does not provide any more detailed definition than this.

[141] The map can be viewed in high resolution at the PlanSA website: https://plan.sa.gov.au/resources/planning/environment_and_food_production_areas

Some submissions to the inquiry suggested that agricultural land should be exempt from mining in the most absolute sense. Ms Dianah Walter, a resident of Yorke Peninsula, said:

> I see this inquiry as a potential vehicle to consider ways land such as that here on the Yorke Peninsula can be excluded, exempted, and fundamentally protected from mining and exploration in perpetuity.[142]

Ms Claudia Tregoning felt likewise:

> Viable farming and agriculture land, indigenous cultural sites and waterways inclusive of endangered environment where species would become extinct, should be exempt from exploration and mining. Full Stop.[143]

Hon Robert Brokenshire, representing Livestock SA, agreed while acknowledging it was a 'bold' idea. Livestock SA would like South Australia's arable land, which it estimates to be 6 per cent of the state, entirely excluded from 'open-cut and extensive mining invasion', excluding building and road-based materials. Hon Mr Brokenshire added that resource companies are interested in arable land not because it is the only place minerals can be found but because it has already been developed with infrastructure, thus sparing the resource company from having to build it:

> Most of the time, mining companies can obtain the same product outside of this area [arable land] at this point in time. Looking forward, we understand, with all the aeromagnetic survey work, there are rich deposits of a lot of minerals in the areas outside of that 6 per cent.
>
> However, there are economic benefits for mining companies to actually mine in that 6 per cent area. What are they? Well, for a start, infrastructure access that all taxpayers have paid for…So there is obviously a benefit for shareholders to actually come in as close as they can.[144]

The Inverbrackie Creek Catchment Group also wanted arable land to be exempt from mining, though it would make an exception where the value of the proposed mining greatly outweighed the value of the agriculture:

> …our limited arable land (~4% of the State) requires strong and effective protection against inappropriate resource development. As such, mining exploration and development must be forbidden in the arable regions of SA unless significant deposits (100x the existing agricultural production value) are believed to exist.[145]

An unassailable exemption that prevents mining from occurring on agricultural land in any circumstance would be essentially the same as the 'right of veto' previously discussed. The committee was of the view that a right of veto would be incompatible with Crown sovereignty over minerals. Similarly, exempting agricultural land from mining at all times would be contrary to Crown sovereignty and was not supported by the committee. As the South Australian Chamber of Mines and Energy (SACOME) observed:

> A right to veto, a declaration of moratoria or a special exempt area brings with it legitimate concerns about sovereign risk and undermines the perception of a jurisdiction as a location in which investment can be made with certainty.[146]

In practice, the term 'exempt' in the Mining Act does not refer to an absolute protection from mining but rather a greater protection. If a resource company wishes to conduct an activity on exempt land, including agricultural land as defined by section 9(1)(a)(ia), it can negotiate with the landowner to obtain a waiver of the benefit of the exemption. If negotiations fail, it can apply to a court for a waiver, and the

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[142] Ms Dianah Walter, Submission 4, p. 2.

[143] Ms Claudia Tregoning, Submission 1, p. 2.

[144] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, pp. 178 and 179.

[145] Inverbrackie Creek Catchment Group, Submission 13, p. 3.

[146] South Australian Chamber of Mines and Energy, Submission 24, p. 12.

court will consider conditions and compensation to the landowner in light of any adverse impacts they would experience. SACOME explained the process in its submission:

> The Mining Act observes the concept of 'exempt land'…The Mining Act requires an explorer or operator to negotiate a 'waiver of exemption' as a precondition to accessing land and carrying out operations.
>
> If agreement cannot be reached, the matter can be resolved via the Warden's Court, the Environment, Resources & Development Court, or the Supreme Court.
>
> In determining whether to waive exempt land, the Court will consider the adverse impacts of the proposed operations, and whether those impacts can be remedied by conditions and compensation.
>
> If conditions and compensation cannot remedy the impacts, the Court will not waive the benefit of exempt land and the proposed operations cannot occur on that land.[147]

The Minerals and Energy Advisory Council (MEAC) also outlined the process in its submission, though it had a different way of describing the outcome should the matter go to court:

> If an agreement cannot be reached, the matter is resolved by an independent Court, ensuring that the terms of access to exempt land can be determined in a fair, independent and reasonable manner if they cannot be reasonably agreed.[148]

It may be that MEAC's wording more accurately reflects the reality that it is rare for a court not to waive the benefit of exempt land. The committee heard evidence that if a resource company seeks a waiver in court, it is almost a foregone conclusion that they will succeed in obtaining it. This was highlighted by the Yorke Peninsula Land Owners' Group (YPLOG):

> In brief, arguably the most fundamental problem centres on the procedure by which a resource company can obtain a waiver of exemption over cultivated land.
>
> Since 1971, responsibility for this decision has rested with either the [Warden's] Court or the Environment, Resources and Development Court. Over the past 40 years, YPLOG has identified only one case—relating to an expansion to an existing, small scale quarry—where an exemption application by a resource company was refused.[149]

Grain Producers SA agreed that waivers are too easily obtained. Chief Executive Ms Caroline Rhodes described the provision for exempt land as a 'superficial protection due to the ease of obtaining a waiver of exemption'.[150] Grain Producers SA asserted in its submission:

> The fact is that most court decisions have allowed the tenement holder to access exempt land which shows that courts have usually rejected the [landowners'] concerns as to the impact of the mining on the landowner, and his/her land and business.[151]

Terramin Australia Ltd explained that landowners unfamiliar with the Mining Act are often understandably confused that 'exempt' does not mean truly immune:

> Specifically the use of term of 'Exempt Land' has caused significant misunderstanding for landholders as to their rights and has resulted in confusion and sometimes lengthy court processes that ultimately grants the mining operator the right to conduct an activity and the landowner some compensation. This compensation is often less [than] what the mining operator offered in the first place. It is not unreasonable for a landowner to believe that the term 'Exempt Land' means that their land is exempt from mining activity under all circumstances. This is simply not the case, more often than not, where a mining company is seeking to conduct an activity on Exempt Land and the landowner is not in agreement, the matter will progress slowly

[147] South Australian Chamber of Mines and Energy, Submission 24, p. 13.

[148] Minerals and Energy Advisory Council, Submission 3, p. 3.

[149] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 3.

[150] *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, p. 162.

[151] Grain Producers SA, Submission 34, p. 4 of Attachment A.

> through the legal system and result in the mining activity going ahead in exchange for [some] compensation for the landowner.[152]

Mr Anthony Kelly, Partner, Mellor Olsson Lawyers, who appeared before the committee with officers from Grain Producers SA, confirmed that many landowners misunderstand the term 'exempt land'. He said that they believe that if land is 'exempt', then according to the common definition of that word it must mean that a resource company 'can't come in, do anything with it or touch it'.[153] Further, the landowner is disadvantaged in that going to court over exempt land has a cost and generally results in an unfavourable outcome for them, a situation Mr Kelly described as an 'imbalance of power':

> So you toddle off to court, you spend a lot of money arguing the toss about what the scope of that exemption should be and then, almost inevitably, some sort of mining activity proceeds...
>
> The farmer has the mining company come on. They say, 'We want to access your exempt land. Here's our terms. Agree or don't agree. If you don't agree, we are going to court.' The farmer is in a position of either having to agree or having to fork out of his own pocket for the court proceedings and seeing that process go through, having that pressure put on the family, having the significant cost incurred, all with no certainty about (a) the outcome or (b) whether they will be able to recover those costs, depending on what the outcome is.[154]

To address this 'imbalance of power', Grain Producers SA recommended that a court consider a broader range of factors when determining the adverse impacts of exploration or mining on exempt land. It suggested prescribing the following factors in the Mining Act to ensure that they are always considered in every land access dispute:

> (a) any negative business impact; and
>
> (b) any negative reputational impact; and
>
> (c) any negative impact on a residence and residential amenity; and
>
> (d) any negative impact on neighbouring property, including a residence and residential amenity; and
>
> (e) any loss in property value; and
>
> (f) any anxiety or stress imposed on the landowner; and
>
> (g) any other consideration that the court thinks necessary.[155]

Grain Producers SA argued that, by taking these points into consideration, a court could more fairly assess the impact of exploration or mining on exempt land, including agricultural land. This could result in more occasions when a court refuses to waive the benefit of exemption in recognition of the importance of South Australia's scarce agricultural land, and this in turn would increase the confidence of landowners that they can have a favourable outcome in court.

Prescribed distances

The definition of 'exempt land' in section 9 of the Mining Act includes 'prescribed distances' of land surrounding a place of residence. The prescribed distances, provided in section 9(5), vary according to the type of exploration or mining: for low-impact exploration, 200 metres; for advanced exploration or the recovery of extractive minerals, 400 metres; and for other operations a distance prescribed by regulation or, if not prescribed, 600 metres.

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[152] Terramin Australia Ltd, Submission 23, p. 1.

[153] *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, p. 172.

[154] *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, p. 172.

[155] Grain Producers SA, Submission 34, p. 6 of Attachment A.

These distances were introduced following the *Leading Practice Mining Acts Review*. Previously, a distance of 400 metres from a place of residence applied for all exploration and mining, regardless of the level of impact. The new act makes this distinction, increasing the distance to 600 metres for high-impact operations while decreasing it to 200 metres for low-impact operations.

Grain Producers SA informed the committee that these prescribed distances 'fall far short of community expectations' and do not take into account how exploration or mining operations can hamper the privacy and amenity of a home, an industrial or commercial building, or a water source such as a dam.[156] It proposed that 'adequate buffer zones' between operations and places of residence should be: for low-impact exploration, 400 metres; for advanced exploration or the recovery of extractive minerals, 600 metres; and for other operations a distance prescribed by regulation or, if not prescribed, 1.5 kilometres.[157]

Agricultural Impact Statements

Agricultural Impact Statements are a measure in place in New South Wales to ensure that the impacts of exploration or mining on agricultural land are identified and minimised. As explained by the Yorke Peninsula Land Owners' Group (YPLOG) in its submission,[158] a resource company is required to prepare an Agricultural Impact Statement for a proposal that may impact agricultural land, water and business in the area. The statement details the significance of these resources and outlines how the company will minimise the impact of its activities upon them.

YPLOG has been calling for Agricultural Impact Statements to be introduced in South Australia 'for many years'.[159] Mr Brenton and Ms Sue Davey recommended likewise in their submission.[160] In particular, YPLOG considered that Agricultural Impact Statements would be useful information for a court in deciding whether to grant a waiver of the benefit of exemption in relation to exempt land. YPLOG explained:

> Our observations of court hearings indicate that the presiding officer, despite his/her best intentions, has little if any understanding of the complexities of modern agricultural processes to enable them to assess the likely short or long term impact of the proposed activities on either the land or the farmer's ability to conduct his/her business.[161]

YPLOG contended that Agricultural Impact Statements would provide the information specific to agriculture that a court may need to reach a balanced decision on a waiver.

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[156] Grain Producers SA, Submission 34, p. 9.

[157] Grain Producers SA, Submission 34, p. 3 of Attachment A.

[158] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 17.

[159] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 18.

[160] Mr Brenton and Ms Sue Davey, Submission 29, p. 4.

[161] Yorke Peninsula Land Owners' Group and Concerned Farmers Group, Submission 25, p. 3.

Fracking

A specific issue raised with the committee in relation to the protection of agricultural land concerned hydraulic fracturing, commonly termed 'fracking'. Fracking is a method of extracting natural gas from the ground by drilling wells into which a liquid is injected at high pressure, creating underground fractures that allow the release of gas. It is controversial because of its potential for environmental impacts, particularly the contamination of groundwater.

On 30 March 2018, South Australia introduced a 10-year moratorium on fracking in the Limestone Coast region of the South-East. This followed an inquiry by the Natural Resources Committee from 2014 to 2016 that found fracking should not proceed in the South-East without social licence, which is the acceptance and approval of the local community. The Natural Resources Committee found that social licence for fracking does not yet exist in the South-East.[162]

Hon Robert Brokenshire, speaking to the committee on behalf of Livestock SA, recommended that fracking in the South-East be prohibited on an ongoing basis, rather than by a finite moratorium, with a review every 10 years. He indicated that this would give greater certainty to primary producers in the area.[163]

The moratorium on fracking in the South-East is now in its fourth year. It is a complex and contentious subject that goes beyond the scope of this inquiry. The land access regime considers whether mining has a low or high impact but otherwise does not differentiate between specific mining methods.

Conclusions

The committee acknowledged the scarcity and high value of South Australia's agricultural land and was persuaded that it could be better protected from the impacts of exploration and mining. The committee favoured new, standalone planning legislation as the means of this protection, and it considered that the Department for Environment and Water would be well placed to examine this proposal as it has no partiality towards either agriculture or mining.

Such legislation could be developed only following a comprehensive investigation of existing land use and attributes. The committee noted that substantial work to define and map agricultural land has been undertaken over the years by both the Department for Environment and Water and the Department of Primary Industries and Regions. Any new legislation should build upon that existing knowledge.

It was also clear from evidence presented to the committee that certain features of the land access regimes of Queensland and New South Wales had proved to be particularly successful in those jurisdictions. Any new legislation should be informed by an investigation of the strengths of those regimes and how they could be adopted in South Australia to achieve the highest standard of protection for agricultural land.

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[162] Natural Resources Committee, Parliament of South Australia, 29 November 2016, *Inquiry into Unconventional Gas (Fracking) in the South East of South Australia: Final Report*, p. 11.

[163] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, p. 176.

Recommendation 3: Landowner expenses and income

The committee recommends that:

a. the amount available to a landowner to obtain legal assistance in relation to exempt land be increased to $10,000 and expanded to include all professional fees; and

b. consideration be given to providing an ongoing income stream to landowners should a mine be developed.

Current compensation provisions

Under section 61 of the Mining Act, landowners are entitled to compensation for 'any economic loss, hardship or inconvenience suffered by the owner' as a result of exploration or mining activity on their land. Section 61(2) specifies that matters to be considered in determining the amount of compensation are damage to the land, loss of productivity or profits, and 'any other relevant matters'.

The amount of compensation is decided through negotiation between the landowner and the resource company. If they cannot reach an agreement, either party can apply to an appropriate court to make a determination. Hillgrove Resources Ltd described an example of a successful negotiation relating to a site near its Kanmantoo Copper Mine:

> The landowner has received financial compensation for the activities occurring on their property. In this case the land has now been acquired [by] Hillgrove under mutually agreed terms. As part of the sale the previous landowner continues to crop and graze the land at their discretion, and retain all revenues from their activities on the land.[164]

In all evidence received by the committee, there was no dispute that a landowner should receive fair compensation for land access. The Crown has the right to access minerals, and as a landowner is unable to refuse access, this imposition is recognised in due compensation for the landowner. However, the committee heard evidence from some landowners that they found the process flawed and the outcomes inadequate.[165] Ms Caroline Rhodes, Chief Executive Officer of Grain Producers SA, also described compensation rights as inadequate, saying that they 'do not provide sufficient certainty, clarity or protections for landowners'.[166]

Negotiation process and compensation criteria

Evidence presented to the committee often criticised both the negotiation process and the criteria considered when determining the amount of compensation. Firstly, on the negotiation process, the landowner is often an unwilling party and may be less equipped with finances, time and knowledge of the legislation to be able to negotiate a satisfactory outcome. Grain Producers SA noted that although the landowner does not initiate the exploration or mining proposal, the burden is on them to demonstrate the proposal's negative impacts:

> Any protections for primary producers are in reality superficial, in that the system provides resource companies with a general right of access subject to the landowner demonstrating to a court that the proposed operations would likely result in substantial hardship or substantial damage to the land.[167]

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[164] Hillgrove Resources Ltd, Submission 12, p. 4.

[165] For example, refer to the submissions of Ms Alison and Mr Malcolm Meier and Mr Leon and Ms Gina Veitch.

[166] *Select Committee on Land Access: Transcript of Evidence*, 19 July 2021, p. 162.

[167] Grain Producers SA, Submission 34, p. 3.

The Law Society noted that, should a landowner object to an offer of compensation at the negotiation stage, their only recourse is to go to court and risk bearing the cost:

> …the onus is presently on the landowner to go to Court, and to bear the significant financial cost of commencing and running legal proceedings. Notwithstanding that section 61(2a) of the [Mining] Act allows for the possibility of compensation to cover reasonable costs in connection with a dispute, this does not unequivocally provide for the landowner to recover costs, nor does it preclude the court making an order against a landowner, if unsuccessful, that the landowner pay the costs of the miner…[168]

Terramin Australia Ltd observed that, in a worst case scenario for the landowner, the amount of compensation determined by the court could be less than the amount first offered by the resource company.[169] Going to court is therefore an uncertain and potentially costly undertaking for a landowner, discouraging them from exercising their right to pursue compensation in court. Eyre Peninsula farmers Mr Leon and Ms Gina Veitch described compensation as 'an area of friction', with 'the fear of legal action' leaving many landowners feeling that the land access regime is biased towards resource companies.[170]

Secondly, the committee heard that the criteria considered when determining an amount of compensation, described in section 61(2) of the Mining Act, are currently too vague. Their broad description, coupled with the confidential nature of negotiations between parties, has led to little uniformity in compensation agreements. Ms Fiona Simson, President of the National Farmers' Federation, gave a hypothetical example:

> …let's say we are talking about a powerline going through, a big high-voltage powerline, and for the landowners they are all confidential negotiations. One landowner thinks he has done quite a good job negotiating $10,000 for the tower until he goes to the pub and finds out that his neighbour has negotiated $100,000.[171]

Rex Minerals Ltd agreed and argued that more detailed prescription of compensation criteria would benefit landowners and resource companies alike:

> The matter of compensation is perhaps an area that would benefit from increased prescription and transparency in order to ensure fair outcomes for all landowners. Currently, compensation outcomes are confidential and, as a result of the truly negotiable nature of agreements, can vary markedly from landowner to landowner. Some jurisdictions, indeed government development processes within the State, set out compensation schedules (often referred to as 'just terms' compensation) for land use upon which transparent assessments can be made and compensation amounts determined. This approach may lessen the burden of negotiation on landowners and the potential inequities created by individuals' abilities and appetites to negotiate, as well as setting out a clear and transparent calculation methodology for all parties. Essentially it would be establishing a 'known quantity' for investors/companies.[172]

Grain Producers SA (GPSA) agreed with this approach and cited Western Australia as the jurisdiction that may currently have the best practice in this area:

> GPSA notes that the Mining Act 1978 (WA) is substantially more prescriptive than the Mining Act 1971 (SA) in regard to relevant compensatory factors for landholders and/or occupiers. The legislative recognition of such factors sets a stronger basis for compensation negotiations between mineral entities and landowners, and hence works to counteract the substantial imbalance between landholders and mineral entities in such negotiations.[173]

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[168] The Law Society of South Australia, Submission 32, p. 3.

[169] Terramin Australia Ltd, Submission 23, p. 1.

[170] Mr Leon and Ms Gina Veitch, Submission 20, p. 1.

[171] *Select Committee on Land Access: Transcript of Evidence*, 7 June 2021, p. 22.

[172] Rex Minerals Ltd, Submission 18, p. 6.

[173] Grain Producers SA, Submission 34, p. 19.

GPSA went on to recommend some additional criteria to consider in determining an amount of compensation. These included any negative impacts of mining upon a landowner's business, reputation, residence, residential amenity and property value as well as any anxiety or stress caused. The Law Society of South Australia echoed this in proposing the development of a detailed compensation framework:

> …whilst section 61 of the Act makes reference to compensation and the fact that it includes any damage caused to the land and any loss of productivity, the reference to considering 'any relevant matters' when determining the compensation payable is unnecessarily vague and unhelpful to both the miner and the landowner when it comes to determining compensation. It ought to be expressly identified in the [Mining] Regulations what the entitlement to compensation will include (noting that this is what occurs in some interstate legislation).[174]

The Law Society suggested that criteria for determining compensation could include:

- the actual value of the subject land;
- any loss occasioned by reasons of severance, disturbance or injurious affection;
- maintenance and repair of access roads, fences and other infrastructure;
- the relocation of dams, water points, fences and other infrastructure;
- impact on any remaining farming activities, including productivity loss, impacts on whole farm operations/rotations and yield loss;
- stock impacts, including consequential losses;
- biosecurity control matters;
- time spent by the landowner;
- professional fees; and
- any other relevant matters.[175]

Greater prescription of compensation criteria, as suggested by the Law Society and GPSA, may make the process of determining compensation more clear, certain and equitable, and may reduce the occurrence of applications to a court for a decision.

Tenement rental

Section 56M of the Mining Act provides for tenement rental payments to landowners that are additional to the right to compensation. The amount paid to landowners is 95 per cent of the sum prescribed by regulation. The Minerals and Energy Advisory Council described these payments as 'above and beyond the concept of compensation',[176] regarding the land access regime as already generous towards landowners. The Association of Mining and Exploration Companies (AMEC) agreed:

> In South Australia, 95% of tenement rental for a mining lease on freehold land is paid directly to the landholder. While the Government is clear this should not be considered compensation, it is all but in name.
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> This compensation does not occur in any other Australian jurisdiction. Freehold landholders are guaranteed a substantial monetary benefit if a mine is developed on their land.[177]

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[174] The Law Society of South Australia, Submission 32, p. 4.

[175] The Law Society of South Australia, Submission 32, p. 4.

[176] Minerals and Energy Advisory Council, Submission 3, p. 2.

[177] Association of Mining and Exploration Companies, Submission 30, p. 5.

However, this view was disputed. AMEC considered tenement rental payments to landowners as compensation 'all but in name', but some landowners considered tenement rental payments to be an entirely separate matter from compensation. The Department for Energy and Mining took the latter view, making it clear in its submission that 'the right to compensation is additional to rent paid to landowners',[178] and the committee accepted this position.

It should be noted that landowners in South Australia do not receive a share in the royalties of any mine on their land. According to the principle of Crown sovereignty, royalties generated by a mine are paid to the state. The burden on landowners is acknowledged and counterbalanced through compensation and tenement rental.

Market value of land for acquisition

Section 62A of the Mining Act provides that a landowner may apply to the Supreme Court to require a resource company to acquire land where the company's activities substantially impair the landowner's use and enjoyment of that land. The amount paid under section 62A(2)(b)(i) is 'an amount equivalent to the market value of the land'. The committee heard evidence that this was inadequate. Yorke Peninsula farmer Mrs Cathy Redding explained:

> We don't want to live next to a mine. We aren't safeguarded if Rex [Minerals Ltd] do not buy us and we have to stay. As the law is written, we don't feel we would get a fair hearing in court…We understand that the court gives a value on your farm at 1.3 to 1.5 times its current value. We would be worse off here due to the duplication of the infrastructure and machinery, even if we found land similar in value to ours.
>
> We also understand that we can go to court and ask Rex to buy us, but again we can't be guaranteed a fair price value. Then, how would Rex pay it? How do you put a price on compensation? Take away your life's work, your farming son's legacy, to rubbish it.[179]

Grain Producers SA (GPSA) suggested that section 62A be amended to provide that the amount paid for the acquisition of land be three times the land's market value. GPSA cited Mr Rowan Ramsey MP, federal Member for Grey, who in 2015 developed a policy proposal to establish a minimum offer of three times an independent valuation of a property. GPSA took the view that Mr Ramsey's proposal would more appropriately compensate the landowner 'for the inconvenience, as well as costs, tax, or other liabilities that may result from the acquisition'.[180]

Hon Robert Brokenshire, Board Member of Livestock SA, specifically wished to see the production value of land be taken into account in a valuation. He argued that an agricultural property may have been improved over many years and thus have a higher fertility than the district average, a quality a landowner considering moving because of a land access request may not be able to find in a new property elsewhere.[181]

Impact on land value

The committee heard that some landowners feared the impact that exploration or mining may have upon the value of their land, considering that the presence of a tenement could make the land unattractive to potential buyers because its future was uncertain. Succession planning could also become difficult as the future value of land to be passed down to children was unknown.

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[178] Department for Energy and Mining, Submission 9, p. 3.

[179] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 135.

[180] Grain Producers SA, Submission 34, p. 11.

[181] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, p. 177.

Eyre Peninsula farmer Mrs Sally Richardson spoke of a friend who wished to sell his property as part of his retirement plan but was unable because of a mining lease 'hanging over him'.[182] Mr Brian March gave an example of a financial institution that had refused finance to a landowner because there was a mining interest over the land.[183]

Dr Paul Heithersay, Chief Executive of the Department for Energy and Mining, noted in relation to this issue the important difference between exploration and mining. He argued that exploration was unlikely to diminish the value of land given its ubiquity:

> Most of South Australia is covered by exploration tenements one way or the other. I would be interested to hear if individual farmers have said, 'Look, there is an exploration tenement on my property. It's de-valuing my property.' I don't think that's likely, given that most of South Australia is under an exploration tenement of one sort or the other.[184]

In regard to any impact on land value specifically from mining, Dr Heithersay commented that landowners with mines on their properties 'usually do extremely well', receiving 95 per cent of tenement rental. He explained that mines also bring benefits for rural communities, such as expanded townships, better security of electricity and water, and increased local employment.[185]

The committee was concerned by the evidence suggesting that financial institutions may devalue land because of a mining tenement. It is the intention of the land access regime that a landowner whose land is under a mining tenement should be no worse off as a result. For this reason, the landowner receives both tenement rental and an amount of negotiated compensation. The committee surmised that a mining tenement may in fact strengthen a landowner's position as, unlike agriculture, the prosperity of mining is not subject to weather.

The committee asked Mr Brett Klau, Landowner Information Service Officer with Rural Business Support, whether any landowners had spoken to him about diminished land value. Mr Klau said that four of the 44 clients to whom he had provided service directly had expressed such concerns, although it was not certain whether this was due to positions actually taken by financial institutions or simply the apprehension of the landowners.[186]

The committee invited the Australian Banking Association to answer questions on this matter. The association declined, explaining that it was not in a position to advise as there was no generic industry approach amongst banks in assessing the valuation of land for lending purposes. The committee also approached the Australian Prudential Regulation Authority (APRA), which confirmed that each bank would have its own policies. APRA remarked that banks would rely on professional valuers and would consider the productive capacity of a property, but it did not prescribe a valuation framework.

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[182] *Select Committee on Land Access: Transcript of Evidence*, 29 June 2021, p. 101.

[183] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 204.

[184] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 251.

[185] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, pp. 251 and 252.

[186] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 234, further clarified by Mr Klau's response to a question on notice received 1 October 2021.

The committee extended an invitation to Ms Katherine Bartolo, Valuer-General of South Australia, and her deputy, Mr Anthony Smit. Ms Bartolo and Mr Smit were clear that they could not speak for lenders because how the Valuer-General values land and how a financier uses that information for its own purposes are different practices. They acknowledged that a mining tenement 'could be construed as an encumbrance if it's detrimental to the property',[187] however, as Mr Smit said:

> …if there's an issue around mining—and I am not saying there is—it's how the market might be perceiving it and how the financiers are perceiving it.[188]

How the market and lenders perceive a mining tenement, rightly or wrongly, is a critical factor. Ms Bartolo and Mr Smit hypothesised several reasons why a lender could be hesitant to provide finance to a landowner whose land is under a mining tenement:

- doubt about a landowner's ability to service a mortgage if the tenement impacts the productivity of the land and therefore the landowner's income;
- if the landowner's income is supplemented by tenement rental and compensation payments, doubt about the lender's entitlement to these finances should the landowner default on the mortgage, due to the manner of payment or the legal arrangement under which they are paid; and
- doubt about what assets the lender can repossess and liquefy should the landowner default on the mortgage.[189]

Legal costs and other landowner expenses

Section 9AA of the Mining Act outlines the process when a resource company seeks a waiver to access exempt land. Section 9AA(14) provides that a landowner's reasonable costs to obtain legal assistance when responding to a request for a waiver are to be met by the resource company up to a maximum amount. The recent amendments to the act changed the maximum amount from $500 to $2,500.

Evidence to the committee suggested that this limit was unrealistic. The change was nevertheless welcomed by the South Australian Chamber of Mines and Energy:

> Landowners can now claim up to $2500 from an explorer or mining company for legal costs incurred in the process of considering a request for access to exempt land. This amount was previously set at $500. While the sufficiency of this quantum has been disputed, it nonetheless represents a 500% increase in compensation.[190]

Other evidence considered that the increase, while an improvement, was not enough. The Law Society of South Australia explained the importance of legal assistance for a landowner:

> A significant issue in relation to compensation for land access is the limited right for landowners to recover costs for obtaining advice…often the documents required for land access applications are voluminous, dealing with multiple issues. This requires a good deal of time, and therefore money, to review properly. The reasonable costs of the landowner should, we suggest, be met by the miner, noting in this respect that the situation requiring that work is not of the landowner's making.[191]

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[187] *Select Committee on Land Access: Transcript of Evidence*, 1 October 2021, p. 271.

[188] *Select Committee on Land Access: Transcript of Evidence*, 1 October 2021, p. 274.

[189] *Select Committee on Land Access: Transcript of Evidence*, 1 October 2021, pp. 264 and 266.

[190] South Australian Chamber of Mines and Energy, Submission 24, p. 15.

[191] The Law Society of South Australia, Submission 32, p 3.

Grain Producers SA (GPSA) offered its experience:

> Based on standard rates for lawyers and accountants, the $2,500 allowed for equates to in the order of 5-6 hours of professional time. Given the complexities involved and the volume of material typically provided by a resources company, this does not equate to much at all.[192]

GPSA added that it is not sufficient to consider only a landowner's legal expenses in responding to a request for a waiver to access exempt land. In practice, a landowner would need to access other types of advice, such as accounting and land valuation, to make an informed decision. These expenses are currently not considered by the act. GPSA's recommendation was that the maximum amount under section 9AA be increased to $10,000 and its scope expanded to cover all professional fees, not only legal costs.

Livestock SA supported a figure of up to $10,000 for legal costs and associated matters. Hon Robert Brokenshire, for Livestock SA, explained to the committee:

> …farmers just going about their business are not lawyers or accountants, they are farmers, and all of a sudden all these impediments are put before them and you have a situation where they need legal advice. We would argue: why should a farmer and their family be out of pocket when all they are doing is seeking legal advice, accounting advice or general advice? It is not acceptable that they are forced to be out of pocket.[193]

Conclusions

The committee was sympathetic to the financial difficulties that could be experienced by landowners in having to engage with resource companies, a situation not of their making and one that they were often not immediately equipped to confront. The committee agreed with the evidence that the $2,500 available to a landowner under section 9AA of the Mining Act to assist with legal fees in relation to a request to access exempt land was too low and too limited in scope to be adequate. It recommended that this be increased to $10,000 and expanded to cover all professional fees that a landowner may incur.

Further, the committee saw the value in providing some form of income stream to landowners in the event that a mine is developed on their land. Landowners are already entitled to both compensation and tenement rental, however the committee was persuaded that additional income paid to a landowner whose land becomes the site of a working mine would be a fair recognition of the burden upon the landowner in this circumstance.

[192] Grain Producers SA, Submission 34, p. 23.

[193] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, p. 176.

Recommendation 4: Timing

The committee recommends that:

a. the notice of entry period before a resource company can access land be increased to 90 days; and

b. the code of conduct to be developed by the mining ombudsman require explorers to have regard for the impact of the time of year due to the seasonal work of farms.

Time frames for landowners to respond

Before entering land to carry out exploration or mining operations, a resource company must either negotiate a land access agreement or provide the landowner with a notice of entry. In the latter case, the procedure for giving a notice of entry is outlined in section 58A of the Mining Act. The time between serving a notice of entry and entering the land was formerly 21 days. The recent amendments to the Mining Act doubled this to 42 days. This was commended by many, included Grain Producers SA and the South Australian Chamber of Mines and Energy, which noted that 42 days is the longest notice period in the nation.[194]

The duration of the notice period is not the only factor that can impact a landowner's ability to respond to a request for land access. It is often the case in South Australia that the landowner is a farmer running their own agricultural business. To respond to a request for land access, a farmer must find time amongst the everyday responsibilities of their work. As Eyre Peninsula farmer Mrs Sally Richardson put it: 'People don't expect to make an appointment to come and see a farmer: they expect to drop in and interrupt your day.'[195]

The work of farms is seasonal. The time of year when a notice of entry or other correspondence is received can make a significant difference to a farmer's ability to respond in a timely way, and this is not currently considered by the Mining Act. Yorke Peninsula farmers Mr Malcolm and Mrs Cathy Redding told the committee of one such experience:

> …we received a letter…just before Christmas while we were harvesting, to an old email address with a request [demanding] that we attend mediation. The timing was totally inconsiderate to our farming cycle after we had told [the resource company] previously that we often reaped into January. It also put a dampener on our family Christmas with everyone anxious.[196]

The Reddings added in their written submission that they felt further pressure because a late response was taken as tacit approval to proceed:

> …during our busy times like harvest and seeding…even a few hours away from farming will impact greatly the income of that farmer. Our experiences with Rex Minerals and the Department is that contact and submissions are required at our busy times of the farming year—most inconvenient! The mining company always has a paragraph that if no reply is made by a certain date, we, the farmer has no objection or are not concerned and that they can proceed (paraphrased—my words).[197]

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[194] *Select Committee on Land Access: Transcript of Evidence*, 3 May 2021, p. 7.

[195] *Select Committee on Land Access: Transcript of Evidence*, 29 June 2021, p. 100.

[196] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 133.

[197] Mr Malcolm and Mrs Cathy Redding, Submission 21, p. 1.

Mrs Richardson had a similar experience when agreed operations took place on her property with apparently no regard for the time of year and how it would impact the farm work:

> One of the first things we asked [the resource company] was could they come and mark the places that they were going to drill so that we could talk to them about how they would access those places. Obviously, we didn't want them driving all over our property. This was happening in April and May, which is leading into our busiest, most important money-making time. It's the time that sets up our income for the year. Our workers are working 10, 12, 14 hour days, fully focused on getting our crop in the ground while this is happening…
>
> I think only one of [the place markers] was within 100 metres of where they actually ended up drilling, so that was a waste of our time and his time…In that half a day, he was paid for his work; we donated our time and, on top of that, we lost our production time.[198]

Dr Paul Heithersay, Chief Executive of the Department for Energy and Mining, assured the committee that the seasonal nature of farming is something that both the department and industry are aware of and take seriously:

> This debate is really about that interface of farming versus exploration in the first instance. Let's get that right so that farmers can get on with their work. Explorers are very cognisant of the time of the year, of biosecurity and all the things that actually matter to farmers.
>
> They should be completely equipped to do that. We will come down pretty heavily on people who don't abide by that because it's in our interest to make sure that everybody is playing the game properly.[199]

Nevertheless, it was clear to the committee that the timing of exploration activity had been problematic in the past. Considering these difficulties, the Law Society of South Australia suggested that time frames for landowners to respond to notices of entry should be extended further and should ideally be set with consideration to the time of year as it affected the farm:

> Typically a miner will, as part of an application for obtaining a mining licence or lease, produce a significant amount of accompanying material, which can take months to prepare. In responding to the application, a landowner will accordingly have to spend a significant amount of time reviewing this information, which is typically a considerable added burden and something they must do in addition to undertaking their usual employment or other duties.
>
> It is therefore critical that reasonable time frames (that is, longer timeframes than presently typically apply) are put in place to allow this to occur, as often the time frames are fairly limited.
>
> In addition, it is also important to consider the timing of notices and allow longer timeframes for responses depending on the time of year when notification is given. The reason for this is that it is not uncommon for notification to occur over holiday periods or during busy farming periods such as sowing, harvesting or shearing, which makes it even more difficult for landowners to respond.[200]

Hon Robert Brokenshire, representing Livestock SA, commented that a time frame of a minimum of 90 days would be more realistic than even the recent extension to 42 days:

> To get all of their information together, 90 days will go very quickly…The notice is daunting to property owners, most of whom have not encountered such before. Depending on the time of year…lambing, calving, seeding, harvesting, silage, haymaking—landowners need adequate time to establish their rights and the processes due to them from the initial notification.[201]

The committee considered that a farmer's seasonal work schedule should be respected not only for notice of entry requirements under section 58A but also for the scheduling of any work to be undertaken on the land, such as the half-day of marking drilling locations on the Richardson property. It was clear

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[198] *Select Committee on Land Access: Transcript of Evidence*, 29 June 2021, p. 96.

[199] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 252.

[200] The Law Society of South Australia, Submission 32, p. 3.

[201] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, p. 176.

from the evidence that this awareness and respect could be lacking. In Mrs Richardson's words: 'He didn't understand our big picture and we didn't understand his big picture, and what he took for granted and we took for granted were two different things.'[202]

The uncertainty of long tenements

Mining projects typically progress slowly. In South Australia, an exploration licence is granted for a period of up to six years, renewable to a maximum period of 18 years. Few exploration projects lead to mining. Dr Heithersay informed the committee that for exploration 'the chance of success is somewhere between one in 300 and one in 500 that you're actually going to find anything'.[203] Consequently, mines are quite rare. Exploration and mining is necessarily slow paced and often does not reach full fruition even after many years of investment.

The committee heard that, while the mining industry can accept this risk and uncertainty, landowners impacted by land access requests often cannot. Their land may support an agricultural business or be the site of their home. Not knowing whether a mining tenement over their land will lead to a working mine in future limits a landowner's ability to plan in the long term, and the committee was given many personal accounts of this difficulty.

Mr Leon and Ms Gina Veitch own land on Eyre Peninsula covered by a mining tenement, but no progress has been made in the last decade. Mr Veitch questioned why the tenement was still active, theorising that if the project had not been able to find finance to begin in the last 10 years, it may never begin. He remarked:

> It's 10 years for us now, and we could really see ourselves being in the same situation in 50 years' time because the department is happy to give extensions and renewals of lease, etc. This is the part that most people don't understand. You just cannot go on living in limbo. You've got to have clear directions. With the decisions we are making now in our business, the decisions we make today, we are looking at what we're doing in 10 years' time, 25 years' time or further. We really have to have a clear vision of where we are going.[204]

Mr Veitch also made the point that the Mining Act does not specify how an improvement, such as a new fence or building, would be valued for the purposes of compensation in future if it were constructed by the landowner while they knew the mining tenement existed. He gave an example of a house he wanted to build on his land where a mine had been proposed. After seeking legal advice, he decided not to proceed due to the 'big vagueness in the Mining Act' about how he could be compensated for the house were it impacted by a mine in future. He elaborated:

> Since 2011, we have had knowledge that that is a proposed mine, so they can go three ways with that compensation. First of all, they could say, 'No, you are not entitled to any compensation at all because you had prior knowledge.' Secondly, they could say, 'It is worth the current market value.'…Or they could reimburse you the full cost of the build.
>
> It is a very hard one to answer…[205]

Hon Robert Brokenshire, Board Member of Livestock SA, gave a similar example to the committee. He described a family with young children living in an older farm home who wished to expand their living

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[202] *Select Committee on Land Access: Transcript of Evidence*, 29 June 2021, p. 96.

[203] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 252.

[204] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 50.

[205] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 50.

space. Because the land was under a mining tenement, the family was hesitant to proceed with the build for fear they may not be fully compensated should the land be acquired in future.[206]

Anticipating a mine's future is made difficult by the years that can pass as the proposal slowly proceeds with no guarantee it will come to fruition, leaving the landowner 'in limbo', as Mr Veitch put it. Mr Jim Franklin-McEvoy, Chair of Inverbrackie Creek Catchment Group, described this experience of being 'in limbo' as it applied to landowners in the Adelaide Hills who wished to develop their wineries. He explained that tourists may perceive a winery located in the vicinity of a mine to be unappealing, but nor could these winery owners afford to wait to see if a mine would eventuate:

> The continuous threat of mining in a region affects landowners and creates aversion to investment. There has been a bit of a flurry of a few cellar doors lately going in simply because people got sick of waiting…they're going to be pretty upset if the mine comes and they lose the tourists.[207]

Mr Jared Sampson, a farmer at Warramboo on Eyre Peninsula, also expressed frustration at mining tenements that exist but remain undeveloped. From the perspective of landowners, he described it as a 'cloud hanging over their head' that discouraged them from making any investment in their land or expanding their agricultural businesses. He suggested that mining tenements should expire if they are not active after a certain time, explaining:

> Surely it gets to a point where you have had your chance; let these [agricultural] businesses get onto it. Whether it is 10 or 15 years, it needs to happen because we could still be here in 15 years' time with this same issue, and it has done nothing for our community at all…
>
> There needs to be a time frame with these [mining] leases…we can't be holding viable businesses to ransom in the hope that it gets developed…
>
> It should have an expiration date…I understand that we are sitting on a significant deposit there but, if there has been no appetite in this whole period to develop it, how long do you wait?[208]

In South Australia, mining tenements can be cancelled or suspended under section 56W(2) of the Mining Act if the tenement holder contravenes the law. The tenement holder can also voluntarily give up their tenement under section 56X at any time. Aside from these circumstances, a tenement will remain current regardless of the level of activity in relation to it.

Further, the committee heard that the Department for Energy and Mining (DEM) was generally willing to grant extensions to resource companies at any stage of a project. Mr Brenton and Ms Sue Davey provided an example:

> An example of this is Rex Minerals, who received an extension (or multiple extensions) from DEM (including other Govt. agencies) for every step of the approvals process, from the time they lodged their Mining Proposals in 2013 through to submitting their Program for Environmental Protection and Rehabilitation (PEPR) in 2018.
>
> No extensions should be granted at any stage of the Government's (including other agencies) assessment process for any applications relating to exploration or mining.[209]

The Association of Mining and Exploration Companies (AMEC) also considered that delays and long time frames are too prevalent in the mining industry:

> In the South Australian Productivity Commission's Review into the efficiency and effectiveness of regulation, policies, and practices of the extractives (quarry) industry supply chain, the addition and adoption of timeframes was explicitly recommended. AMEC called for this recommendation to be implemented in the

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[206] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, p. 177.

[207] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 218.

[208] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 64.

[209] Mr Brenton and Ms Sue Davey, Submission 29, p. 3.

> Regulations, to provide much-needed assurance, given the prevalence of delays under existing legislation. These timeframes should be specific and realistic, and subject to monitoring and compliance.[210]

The committee considered that introducing sunset clauses for mining tenements could alleviate uncertainty for landowners. Under a sunset clause, a resource company's tenement would expire and be unable to be renewed if no active development of the project had taken place after a certain period of time. This would assure landowners that the prospect of mining was not perpetual and would allow them to make long-term plans for their properties. As Mr Sampson said: 'If there was a period in time where [landowners] could see that cloud would be lifted, then you have a light at the end of the tunnel.'[211]

Conclusions

The committee acknowledged that landowners may encounter difficulties due to conflicts with a resource company's time frames. While a resource company can work with a notice of entry period of any duration, undertake its work in any season and plan ahead for many years, a landowner is constrained. The landowner in this situation is often a farmer whose land is the site of both their home and business, a business subject to very different time frames to those of a resource company.

To ease these concerns, the committee recommended that the notice of entry period that must elapse before a resource company can access land be extended to 90 days from the current 42 days. It also recommended that the mining ombudsman, in developing a code of conduct for explorers (refer to Recommendation 1), include in that code a requirement that an explorer wishing to access farmland must consider the time of year in relation to the seasonal work of the farm and how best to minimise disruption.

[210] Association of Mining and Exploration Companies, Submission 30, p. 5.

[211] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 62.

Recommendation 5: Documents and a template agreement

The committee recommends that the mining ombudsman be tasked to simplify the documentation associated with the land access regime and increase understanding by:

a. working to rectify the complexity of documents and the difficulty in identifying landowners; and

b. developing a template land access agreement in conjunction with the Department for Energy and Mining.

Identifying landowners

When a resource company wishes to gain access to land, they must identify the owner of that land. Section 6 of the Mining Act provides the definition of 'owner of land', which includes but is not limited to:

- a freehold landowner; or
- a native title holder; or
- a person who controls or manages the land; or
- a person who is lawfully in occupation of the land.[212]

The most straightforward approach is to assume that the titleholder of land is its owner. However, Mr Glenn Fowler put to the committee that the definition is broad and encompasses anyone 'with a legal right for the use of the land'.[213] Less obvious owners by definition could include a trustee or a person who operates a business on the land only at certain times of year.

Mr Fowler explained to the committee that these parties can be overlooked by a resource company and never contacted, leading to delay and frustration when the oversight is later discovered. He suggested that the titleholder, when approached by a resource company, should be required to disclose all entities with a legal right for use of the land. The titleholder would presumably know this information immediately, making the process of identifying landowners both faster and more accurate.[214]

Complex, excessive documents

Once the landowner/s are identified, the resource company must either serve them with a notice of entry or negotiate a land access agreement. In the case of serving a notice of entry, the notice takes a prescribed form and the company must then wait for the 42-day notice period to elapse before entering the land. In the case of negotiating an agreement with the landowner, there is less prescription.

The form of a land access agreement in South Australia is largely unspecified. Negotiations take place between the landowner and the resource company in a manner that more naturally falls to the latter to decide as the initiating party. The committee heard that the landowner, who cannot be expected to be familiar with the land access regime or the mining legislation more broadly, can feel confronted by a negotiation for which they are not equipped.

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[212] As defined on various forms produced by the Department for Energy and Mining, such as Form 21A, 'Notice of entry on land—prospecting and low impact operations'.

[213] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 199.

[214] *Select Committee on Land Access: Transcript of Evidence*, 6 September 2021, p. 202.

The Department for Energy and Mining's January 2021 guidance document 'Land rights, access and engagement' advises landowners to seek legal assistance or contact the Small Business Commissioner or the Landowner Information Service if they require help to make a land access agreement.[215] While this assistance is helpful, it nevertheless can be stressful for a landowner to have to make potentially significant decisions about their land for an unfamiliar industry, often while continuing to operate their agricultural business on that same land.

The department produced another guidance document, 'Engagement, negotiating and agreement-making', which outlines principles of good engagement and provides guidance to both landowners and resource companies on making land access agreements. It specifies that an agreement must be in writing and is a legally binding document, but the choice of contents is open-ended. The agreement 'can be simple or staged depending on the complexities of operations'. A checklist included in this guidance document suggests only what an agreement 'should' include.[216] Again, it more naturally falls to the resource company, which has experience with agreements, to determine the contents.

Further, land access is a complex matter. A resource company seeking to enter into a land access agreement is required to provide the landowner with a substantial quantity of documentation intended to help them make a fully informed decision. However, the abundance of information can sometimes have the opposite effect if the landowner does not have the time or capacity to analyse it in detail. Mr Richard Laufmann, Chief Executive Officer of Rex Minerals Ltd, told the committee:

> Some of the language is challenging, I think, and I don't think a farmer should have to read 150 pages of community access best practice consultation documentation. I mean, come on, none of us could read it. I certainly couldn't—150 pages? It can drive you insane.[217]

Rex Minerals Ltd was not the only resource company that found the amount of documentation it was required to serve landowners was overwhelming. Hillgrove Resources Ltd gave an example:

> Under the new regulations, we recently presented a landowner with a 153-page bundle of compliance documents for exploration access. The landowner commented that dealing with this information was beyond them, but they would agree to our access based on positive previous experiences with Hillgrove. In this case, it was only the goodwill we had earned with the landowner under the previous access regime that enabled us to secure access in a timely way.[218]

Terramin Australia Ltd commented on a different aspect, noting that the complex language of the information presented to landowners was often not helpful:

> Terramin would…like to highlight the need for development of plain English standard forms that can be provided to the landowner. The current forms are difficult for landowners to understand.[219]

Template land access agreements

One idea put to the committee to address these concerns was the introduction of a standard template for land access agreements. Grain Producers SA said that the checklist for agreement-making provided in the Department for Energy and Mining's guidance document 'Engagement, negotiating and

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[215] The Department for Energy and Mining, January 2021, *Land rights, access and engagement*, p. 15.

[216] The Department for Energy and Mining, March 2021, *Engagement, negotiating and agreement-making*, pp. 14 and 19.

[217] *Select Committee on Land Access: Transcript of Evidence*, 21 June 2021, p. 31.

[218] Hillgrove Resources Ltd, Submission 12, p. 6.

[219] Terramin Australia Ltd, Submission 23, p. 2.

agreement-making' was 'not sufficient to meet the needs of landowners with substantial unfamiliarity with mining law and practice', explaining:

> …we believe that there should be a standard template agreement between landowners and resources entities to provide a comprehensive starting point for agreement making…
>
> If a standard template is agreed upon by the resources industry and relevant landowner industries, this would potentially speed up the process, reduce angst, and improve economic outcomes for all parties. It would also assist in minimising the legal costs involved as it would ensure there is a baseline standard which is afforded to all landowners and from which further negotiations could commence.[220]

A template land access agreement was also supported by the Association of Mining and Exploration Companies[221] and the Law Society of South Australia,[222] both of whom said that a template would increase confidence and certainty for landowners and resource companies alike. It would ensure that all land access agreements are consistent, comprehensive and unaffected by the negotiating skills and knowledge of either party.

Mr Peter Rayner, Managing Director of Land Access and Management Services Australia, wrote to the committee about Victoria's Commercial Consent Agreement for exploration, which he developed in 2018 in consultation with stakeholders from both the agricultural and resource industries. The Commercial Consent Agreement is a 'simplified model agreement that is equally balanced between explorers and landholders' and is recommended for use throughout Victoria.[223] It covers key elements such as compensation, time periods for access and dispute resolution procedures as well as a variety of special conditions, including protection of livestock and maintenance of access routes.

Ms Fiona Simson, President of the National Farmers' Federation, commended the New South Wales template land access agreement:

> In New South Wales, we have a very comprehensive land access agreement. Even if an explorer is just coming on to do some LiDAR sort of scanning, they must not take anything for granted if they are coming on to somebody's business or into somebody's home. It shouldn't be treated any differently to if they were entering a business in the city…
>
> The New South Wales land access agreement is very comprehensive. There was a template access agreement that all the mining companies agreed with.[224]

Queensland also offers a template conduct and compensation agreement. Grain Producers SA considered that the Queensland Land Access Code, which guides resource companies in negotiating with landowners, provides the best model for developing template land access agreements, noting that this was also a finding of the Productivity Commission in a study in 2020.[225] The Productivity Commission found:

> A standard template for land access agreements can reduce information asymmetry, help to set expectations for landholders and resources companies, and improve confidence in the regulatory system. The Queensland Land Access Code, providing a combination of mandatory conditions as well as guidelines, provides a leading-practice model.[226]

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[220] Grain Producers SA, Submission 34, pp. 14 and 15.

[221] Association of Mining and Exploration Companies, Submission 30, p. 5.

[222] The Law Society of South Australia, Submission 32, p. 4.

[223] Land Access and Management Services Australia, Submission 5, pp. 1 and 2.

[224] *Select Committee on Land Access: Transcript of Evidence*, 7 June 2021, p. 17.

[225] Grain Producers SA, Submission 34, p 25.

[226] Australian Productivity Commission, November 2020, *Resources Sector Regulation: Productivity Commission Study Report*, p. 38.

Considering these practices in other jurisdictions, the evidence to the committee was that introducing a clear, plain-English template agreement in South Australia could reduce much of the stress a landowner can experience when negotiating land access. The templates available in Victoria, New South Wales and Queensland are not mandatory, which permits flexibility while providing a useful starting place for negotiation, especially for landowners unfamiliar with such agreements.

Dr Paul Heithersay, Chief Executive of the Department for Energy and Mining, explained to the committee that the department has considered the template agreements of other jurisdictions and adopted key elements from them for use in South Australia.[227] However, the department has not mandated a particular template, preferring to allow the parties to approach negotiations in the manner of their choosing:

> There is an enormous amount of information on our website now. We keep refining the documentation that goes to companies and we are heavily into template agreements where we can get them, but bearing in mind that pastoralists/farmers are businessmen. In a negotiation, they want the best deal for themselves and they are very capable of doing it, in my experience. However, template agreements, all those sorts of things, can assist and reduce some of the angst along the way.[228]

Conclusions

The committee appreciated that the necessary complexity of the land access regime could make it difficult to navigate, particularly for landowners when confronted with volumes of information on an unfamiliar topic. This complexity could affect resource companies as well, as highlighted by the example of the problems a resource company can experience in trying to identify all parties whose interest in land makes them 'owners' of that land by definition.

The committee considered that the new mining ombudsman (refer to Recommendation 1) would be well placed to address these concerns, with the aim of making the land access regime more accessible and comprehensible for all involved. The committee also saw the merit in making available a template land access agreement that landowners and resource companies could use as a starting point for negotiations, clearly setting out rights and obligations for both. The committee recommended that the ombudsman be tasked with creating and implementing this tool.

Recommendation 6: Neighbouring properties

The committee recommends that resource companies undertaking exploration be required to consult with landowners whose properties physically adjoin the land that is the subject of the exploration and keep them informed of their activities.

Impact upon adjoining properties

South Australia's mining laws have regard primarily for the landowner whose land is the subject of exploration or mining operations. However, a resource company's activities can impact a wider area. The committee heard evidence of operations that had negative impacts upon neighbouring properties.

Parties defined as 'owners' under the Mining Act have certain entitlements, such as being served with notices of entry and receiving compensation. Looking beyond only 'owners', the Department for Energy and Mining's guidance document 'Land rights, access and engagement' encourages resource

[227] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 245.

[228] *Select Committee on Land Access: Transcript of Evidence*, 20 September 2021, p. 251.

companies ‘to interact appropriately with landowners and communities’, including neighbouring landowners.[229] Evidence presented to the committee demonstrated that engagement with neighbours is often needed but remains optional.

A neighbouring property can be affected by a resource company’s activities in many ways. Eyre Peninsula farmer Mr Leon Veitch said that adjoining properties can sometimes be worse off than those directly impacted.[230] He described one situation where salt in a waste rock pile had the potential to be blown by the wind across neighbouring fields, damaging crops.[231] In another example, his neighbour experienced noise and light pollution from the mining activity on Mr Veitch’s land:

> They [a resource company] had all their light towers going and drilling 24 hours a day. Their [the neighbours’] house was fully lit up like daylight all night and there was the constant noise of the drilling. They complained to a member of staff of the mining company, and he handed them a set of earplugs. That was just how it went. It was just not acceptable and it certainly makes you angry.[232]

Eyre Peninsula farmers Mr Alan and Mrs Sally Richardson spoke of a resource company on their land who treated an adjoining property poorly. The neighbour’s paddock was used in lieu of a toilet for staff. The company also drilled under the neighbour’s house in search of iron ore, despite not having the neighbour’s permission, by drilling on an angle from a starting point on the Richardsons’ property to a depth of 600 metres.[233]

Yorke Peninsula farmer Mr Stephen Lodge told the committee of contractors who walked over a neighbour’s land where there were lambing ewes, unsettling them to the extent that a dozen lambs did not mother correctly and had to be reared by hand.[234] Hon Robert Brokenshire, Board Member of Livestock SA, gave an example of iron ore dust that blew several kilometres from a mine to a farm, where it had such a serious impact on livestock that the wool was at risk of being unsaleable due to contamination.[235]

Mr Jared Sampson could speak from firsthand experience as a mine had been proposed for land adjoining his farm on Eyre Peninsula. A proposed overburden from the mine would be only 250 to 300 metres from his house. He told the committee that consultation from the resource company had diminished over time. He had not been provided with the project’s Program for Environment Protection and Rehabilitation (PEPR) and requests for it had gone unanswered. He explained:

> If you put that overburden next door, they assure us that dust won't be an issue…it will be quite the shadow it puts across my front yard. We have had this discussion. I think, as a neighbour, the last time we would have sat down with [the resource company] was 2014 perhaps. Consultation with us is non-existent…
>
> That is very much a he said/she said situation because there are no [safeguards] in place for neighbours…
>
> [Consultation with] the developer or the exploration company. It needs to exist. Just because we are out of the footprint doesn't mean we need to be ignored.[236]

In relation to PEPRs, Hon Robert Brokenshire similarly told the committee that there was a lack of transparency for both directly affected landowners and their neighbours. Anecdotally, he believed that

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[229] The Department for Energy and Mining, January 2021, *Land rights, access and engagement*, p. 6.

[230] Mr Leon and Ms Gina Veitch, Submission 20, p. 1.

[231] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 52.

[232] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, pp. 47 and 48.

[233] *Select Committee on Land Access: Transcript of Evidence*, 29 June 2021, pp. 97 and 100.

[234] *Select Committee on Land Access: Transcript of Evidence*, 2 July 2021, p. 115.

[235] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, pp. 177 and 178.

[236] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, pp. 62 and 63.

in negotiating PEPRs, resource companies and the Department for Energy and Mining could make changes that landowners, their neighbours and interested members of the public were 'not privy to seeing' yet could have a detrimental impact upon them.[237]

Eyre Peninsula farmer Mr Matthew Carey had observed a lack of consultation with his neighbours when mining was proposed to take place on his property. He told the committee that his neighbours became aware of the development only after he thought to tell them himself:

> In mid-March, we were given our copies [of the mining lease application], that 1,500 pages of documents…The worrying thing was, though…they didn't let any of our neighbouring landholders know. We had to go around.
>
> After a couple of weeks, we were busy doing stuff, but we thought we needed to look into this. We asked the neighbours if they had been told about it. No, they didn't know, so we had to ring around.[238]

Mr Carey subsequently hosted local landowner meetings to ensure the community was aware of the mining proposal. As a group, they decided to escalate some concerns to the local council. Mr Carey indicated that he was not against mining, but he wanted to be sure the community was heard.

While the Department for Energy and Mining encourages resource companies to engage with neighbours, the legislation does not require it. The Law Society of South Australia wrote in its submission:

> …the requirement of notification should, we suggest, include a broader class of persons to whom notice must be given (such as those who may be more immediately impacted along access routes), noting the widespread ramifications of a mine. For example, a proposed mine may have a significant impact by virtue of a significant increase in heavy vehicle movements on the surrounding road network, which may impact upon a broader class of those persons than those presently identified.[239]

The evidence presented to the committee was that increased regard for neighbouring properties in the land access regime would alleviate some stress and uncertainty for communities. It could include giving neighbours notifications of activities and undertaking consultation with them. Further, Grain Producers SA suggested that nearby properties should be able to seek compensation for any consequential loss.[240] At the least, Grain Producers SA would like to see adjoining landowners be:

> …reasonably informed and respectfully, meaningfully, and properly consulted on relevant aspects of proposed operations where they might reasonably impact the use or enjoyment of their land.[241]

The committee accepted the evidence that landowners whose properties adjoin land that is the subject of a mining tenement have sometimes suffered severe indirect impacts from the activities of resource companies, especially in relation to exploration. It considered the various suggestions put to it to mitigate these impacts and recommended that explorers should be required to engage with neighbours, including keeping them fully informed about operations and seeking their input on activities that could affect them.

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[237] *Select Committee on Land Access: Transcript of Evidence*, 23 August 2021, p. 178.

[238] *Select Committee on Land Access: Transcript of Evidence*, 28 June 2021, p. 68.

[239] The Law Society of South Australia, Submission 32, p. 3.

[240] Grain Producers SA, Submission 34, p. 10.

[241] Grain Producers SA, Submission 34, p. 5.

Glossary

DEM	The South Australian Department for Energy and Mining
Exploration	The process of searching for deposits of useful minerals.[242] It is a preliminary activity that may lead to the development of a mine. Exploration is sometimes described as mining, albeit an early stage in the process. Hillgrove Resources Ltd noted that among landowners there is 'a widespread misconception that exploration and mining are one and the same',[243] arguing that a key difference is that exploration has 'minimal or low impact' while mining is more likely to have high impact. Nevertheless, much of the evidence that the committee heard from landowners related to concerns about the impacts of exploration specifically.
Mining Act	Mining Act 1971 (SA)
Mining tenement	A broad term that includes mineral claims, exploration licences and mining leases under the Mining Act.[244]
PEPR	Program for Environment Protection and Rehabilitation: 'an operational document which describes how a miner will undertake mining operations in a practical and specific way'.[245]
Resource company	For the purpose of this report, any company with an interest in minerals or energy, whether for exploration or mining.

[242] Department for Energy and Mining: Exploration, https://energymining.sa.gov.au/minerals/exploration (accessed 21 October 2021)

[243] Hillgrove Resources Ltd, Submission 12, p. 2.

[244] *Department for Energy and Mining: Tenement information*, https://energymining.sa.gov.au/minerals/exploration/tenement_information (accessed 21 October 2021).

[245] *Department for Energy and Mining: What is a PEPR?*, https://energymining.sa.gov.au/minerals/mining/mines_and_quarries/hillside_project/frequently_asked_questions2/what_is_a_pepr (accessed 24 September 2021).

APPENDIX 1: Written Submissions

The following is a list of written submissions received by the Select Committee.

No.	Name	Date received
1	Ms Claudia Tregoning	20/3/2021
2	Environmental Defenders Office	31/3/2021
3	Minerals and Energy Advisory Council	24/4/2021
4	Ms Dianah Walter	26/4/2021
5	Land Access and Management Services Australia	27/4/2021
6	Alliance Management and Consulting Services	27/4/2021
7	Mr Brian March	28/4/2021
8	Mr John Burgess	29/4/2021
9	Department for Energy and Mining	29/4/2021
10	Confidential	29/4/2021
11	Mr Charles McHugh	29/4/2021
12	Hillgrove Resources Ltd	29/4/2021
13	Inverbrackie Creek Catchment Group	29/4/2021
14	Yorke Peninsula Council	30/4/2021
15	Mr Craig Went	30/4/2021
16	Stop Invasive Mining Group Incorporated	30/4/2021
17	Ms Amber Rivamonte	30/4/2021
18	Rex Minerals Ltd	30/4/2021
19	Ms Alison and Mr Malcolm Meier	30/4/2021
20	Mr Leon and Ms Gina Veitch	30/4/2021
21	Confidential	30/4/2021
22	Mr Bill Moloney	30/4/2021
23	Terramin Australia Ltd	30/4/2021
24	South Australian Chamber of Mines and Energy	30/4/2021
25	Yorke Peninsula Land Owners' Group and Concerned Farmers Group	30/4/2021
26	Rural Business Support	30/4/2021
27	Mr Patrick Say	30/4/2021
28	Australian Petroleum Production and Exploration Association	30/4/2021
29	Mr Brenton and Ms Sue Davey	30/4/2021
30	Association of Mining and Exploration Companies	10/5/2021
31	Cement Concrete and Aggregates Australia	12/5/2021

32	The Law Society of South Australia	21/5/2021
33	National Farmers' Federation	21/5/2021
34	Grain Producers SA (resubmitted with corrections)	18/6/2021
35	South Australian Dairyfarmers' Association	2/6/2021
36	Livestock SA	2/6/2021

APPENDIX 2: Witnesses

The following is a list of witnesses called by the select committee to hearings between 3 May 2021 and 1 October 2021.

1	Ms Rebecca Knol Chief Executive Officer, South Australian Chamber of Mines and Energy
2	Mr David Scotland Director, Policy, South Australian Chamber of Mines and Energy
3	Ms Fiona Simson President, National Farmers' Federation
4	Dr Don Plowman Interim Executive Chair, Primary Producers SA
5	Mr Richard Laufmann Chief Executive Officer and Managing Director, Rex Minerals
6	Mr Greg Hall Project Director, Rex Minerals
7	Ms Danielle Martin Director, DMConsulting
8	Mr Alan McGuire Chief Executive Officer, Wudinna District Council
9	Ms Gina Veitch Warramboo farmer
10	Mr Leon Veitch Warramboo farmer
11	Mr Jared Sampson Producer Director, Grain Producers SA, and Warramboo farmer
12	Mr Matthew Carey Eyre Peninsula farmer
13	Mr Damian Carey Eyre Peninsula farmer
14	Mr Bronte Gregurke Chairperson, Stop Invasive Mining Group Incorporated
15	Mrs Sally Richardson Eyre Peninsula farmer
16	Mr Alan Richardson Eyre Peninsula farmer
17	Mr Sam Telfer Mayor, District Council of Tumby Bay
18	Ms Wendy Schneider Eyre Peninsula farmer
19	Ms Joy Wundersitz Chair, Yorke Peninsula Land Owners' Group

20 Mr Stephen Lodge
Yorke Peninsula Land Owners' Group

21 Mr John Kennett
Concerned Farmers Group

22 Mr Bill Moloney
Concerned Farmers Group

23 Mrs Cathy Redding
Yorke Peninsula farmer

24 Mr Malcolm Redding
Yorke Peninsula farmer

25 Mr Neil Harrop
Paskeville farmer

26 Mrs Jackie Harrop
Paskeville farmer

27 Mr Warren Pearce
Chief Executive Officer, Association of Mining and Exploration Companies

28 Ms Caroline Rhodes
Chief Executive Officer, Grain Producers SA

29 Mr Anthony Kelly
Partner, Mellor Olsson Lawyers

30 Ms Charlotte Wundersitz
Communications Officer, Grain Producers SA

31 Hon Robert Brokenshire
Board Member, Livestock SA

32 Mr Paul Whiffen
Director, ePlanningSA Pty Ltd

33 Mr Brian March
Eyre Peninsula landowner advocate

34 Mr Glenn Fowler
Eyre Peninsula landowner advocate

35 Mr Jim Franklin-McEvoy
Chair, Inverbrackie Creek Catchment Group

36 Mr Brett Smith
Chief Executive Officer, Rural Business Support

37 Mr Brett Klau
Landowner Information Service Officer, Rural Business Support

38 Dr Paul Heithersay
Chief Executive, Department for Energy and Mining

39 Mr Simon Constable
Manager, Exploration Regulation, Department for Energy and Mining

40 Mr Paul De Ionno
Director, Mining Regulation, Department for Energy and Mining

41 Mr Michael Malavazos
Director, Engineering Operations, Department for Energy and Mining

42 Mr Lachlan Pontifex
Director, Resource Policy and Engagement, Department for Energy and Mining

43 Mr Benjamin Zammit
Acting Director, Mineral Exploration, Department for Energy and Mining

44 Ms Katherine Bartolo
Valuer-General of South Australia

45 Mr Anthony Smit
Deputy to the Valuer-General of South Australia

The full transcripts of public oral evidence taken by Hansard can be viewed at the committee's webpage on the Parliament of South Australia website: www.parliament.sa.gov.au

APPENDIX 3: Papers Received

The following is a list of papers received by the select committee outside of written submissions and oral evidence recorded by Hansard.

No.	Item	Date received
1	Response from Ms Rebecca Knol, Chief Executive Officer, South Australian Chamber of Mines and Energy, to two questions on notice	5/5/2021
2	Presentation from Mr Richard Laufmann, Chief Executive Officer and Managing Director, Rex Minerals Ltd, entitled 'An Investment in Copper and Gold in World Class Locations'	24/6/2021
3	Various documents and papers received from Mr Leon and Ms Gina Veitch	28/6/2021
4	Various documents and papers received from Mr Matthew and Mr Damian Carey	28/6/2021
5	Various documents, papers and photos received from Mr Bronte Gregurke	28/6/2021
6	Presentation from Mrs Sally Richardson entitled 'Land Access: Our Experience' and photos from 2012 and 2013	29/6/2021
7	Presentation from Yorke Peninsula Land Owners' Group and Concerned Farmers Group	2/7/2021
8	Additional information from Mr Neil and Mrs Jackie Harrop	19/7/2021
9	Additional information from Mr Malcolm and Mrs Cathy Redding	19/7/2021
10	Additional information from Ms Wendy Schneider	19/7/2021
11	Additional information from Mr Jared Sampson	19/7/2021
12	Response from Ms Joy Wundersitz to a question on notice	19/7/2021
13	Correction to evidence from Ms Joy Wundersitz	19/7/2021
14	Document from Mrs Sally Richardson entitled 'Dam water salinity analysis over time'	7/8/2021
15	Presentation from Hon Robert Brokenshire, Board Member, Livestock SA	23/8/2021
16	Presentation from Mr Paul Whiffen, Director, ePlanningSA Pty Ltd	23/8/2021
17	Presentation and various papers from Mr Brian March and Mr Glenn Fowler	6/9/2021
18	Presentation from Mr Jim Franklin-McEvoy, Chair, Inverbrackie Creek Catchment Group	6/9/2021
19	Pamphlet from Mr Brett Smith, Chief Executive Officer, Rural Business Support and Mr Brett Klau, Landowner Information Service Officer, Rural Business Support	20/9/2021
20	Additional information from Ms Mon Saunders, Rural Business Support	20/9/2021
21	Response from the Department for Energy and Mining to five questions on notice	1/10/2021
22	Response from Mr Brett Klau to two questions on notice	1/10/2021