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Review Team
Mineral Resources Division
Department of the Premier & Cabinet
DPC.MiningActReview@sa.gov.au

September 29, 2017

Re: Request for response to *Recommendations* that have been identified by the *Review* so far

Dear Review Team,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to comment on the *Recommendations* that have been identified by the *Leading Practice Mining Review* so far, as well as the extension to time for comment that was provided to us. Since 1962, the NCSSA has been a strong advocate for the protection of native vegetation and biodiversity in South Australia with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities and management of protected areas.

We agree that good, balanced, legislative reform needs to have public support of the community members and groups who are seeking the beneficial changes. To that end, we cautiously welcome what would appear to be positive *Recommendations* for proposed amendments to the Mining Act, subject to seeing them translated into a draft Bill. Particularly, we welcome the recommendations regarding ensuring the rehabilitation of land impacted by mining and those to increase transparency and the provision of publicly available information on mining activities.

We remain concerned, however, that the issues we raised in relation to the interaction of the Mining Act with other environmental legislation, such as the *Native Vegetation Act 1991*, have not yet been addressed. We note that further consultation on particular topics that do not form part of the first round of *Recommendations* will continue into 2018 (including on improved environmental protections), and we look forward to being involved in this consultation. We also strongly endorse the joint submission of the Environmental Defenders Office SA, together with The Wilderness Society and the Conservation Council of South Australia, on these *Recommendations*.

Please refer to the following page for our specific comments on the questions as outlined in your email of 20 September. If you would like to clarify or discuss any of the points raised please contact me on (08) 7127 4633 or via email at julia.peacock@ncssa.asn.au.

Yours sincerely,

Julia Peacock
Nature Advocate

1. ***If amendments to the Mining Act 1971 that accurately reflected the 82 Recommendations were drafted and passed, would that likely create a better environment for you/ your sector within South Australia in the future (compared to that created under the current Act and Regulations)?***

NCSSA is pleased to see the Review Team has made Recommendations and proposed amendments which appear to address many of the key recommendations from the submissions by the conservation sector regarding improving practices for environmental protection. We believe that these amendments, if passed, would make some progress towards creating a better environment for South Australia in the future compared to under the current Mining Act and Regulations. We believe the Recommendations regarding rehabilitation of land for future and current mining activities and the establishment of a rehabilitation fund will allow for improved environmental outcomes at mine closure and for rehabilitation of legacy sites beyond that achievable within the currently Act and Regulations. We also strongly support the Recommendations to increase transparency and provision of publicly available information.

2. ***What, in your / your organisation's view, are the key Recommendations that (if enacted) would likely provide the most positive benefits for South Australians?***

There are numerous Recommendations that relate to improved environmental protection and we strongly recommend that all of these proposed amendments should be enacted to provide positive benefits for South Australians. NCSSA believe that the following Recommendations are of particular importance to achieve improved environmental outcomes (based on the order in which they have been presented in the brochure rather than in terms of priority for action):

- Introducing a new right for pastoral lessees to object to notices of 'advanced exploration'.
- Introducing a notice of entry for mining leases, retention leases, and miscellaneous purposes licences to allow a native title holder, pastoral lessee or landowner a right to object, or progress negotiations, prior to the grant.
- Expanding the environmental compliance tools to apply to some operations authorised under other Acts to ensure all mining operations across the State are undertaken in an environmentally accountable manner.
- Modernising powers for compiling, keeping and providing materials, and the release of materials, to promote industry and government transparency and accountability.
- Introducing a new test for the grant of a mining lease, retention lease and miscellaneous purposes licence, whereby the Minister must not grant unless satisfied that appropriate environmental outcomes will be able to be achieved.
- Expanding referrals to the relevant Minister for applications, renewals and PEPRs authorising declared equipment which are within or adjacent to a specially protected area (the Adelaide Dolphin Sanctuary, a marine park or the River Murray Protected Area). We strongly recommend that this Recommendation is expanded to include wetlands of national and international significance and ecological communities listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (See Question 4).
- Strengthening public consultation provisions for applications for mining leases, retention leases, miscellaneous purposes licences, special mining enterprises, and relevant change of operations applications.
- Introducing a new power to require the audit of a PEPR to assess the tenement holder's ability to achieve the outcomes or requirements of a PEPR and powers to allow the Minister to condition a PEPR.
- Expanding the scope to which a compliance direction can be issued and making these consistent with other modern, leading practice environmental and resource legislation.
- Clarifying that a rehabilitation direction can be issued after the expiry of a tenement.
- Ensuring all penalties paid under the Act will be paid into a fund to assist with the rehabilitation of former mine sites.
- Introducing a civil offences and penalty regime to ensure compliance action is appropriate and commensurate with the behaviour and continuing offences provisions to appropriately address continual non-compliance with the Act.
- Significantly expanding the evidentiary provisions to ensure the regulator has modern investigatory tools available.

- Clarifying protections for wilderness protection areas declared under the Wilderness Protection Act 1992, to ensure clearer oversight by the Minister for Sustainability, Environment and Conservation over geological and geophysical investigations and surveys in such areas.
 - Reflecting the obligations in the National Parks and Wildlife (National Parks) Regulations 2016 and the Wilderness Protection Act 1992 to consult with co-management boards, or advisory committees and the Minister for the relevant Act for co-managed parks prior to entry for any geological and geophysical investigations and surveys.
3. ***As a preliminary step in moving towards having an improved Mining Act for South Australian communities and operators, should the Parliament seek to pass legislation that reflects the initial 82 Recommendations as a matter of urgency?***

NCSSA support the proposal that the Parliament seek to pass legislation that reflects the initial Recommendations as a matter of urgency. Further delays in adopting these Recommendations will mean that the benefits will fail to be realized by all South Australians.

4. ***What, in your / your organisation's view, are the remaining key issues that should be addressed in the Mining Act 1971 in later amendment rounds?***

There are several key issues that NCSSA raised in our submission on the Discussion Papers that have not been adequately addressed that require serious consideration in any later amendments of the Mining Act. These include:

- The current exemption from approval under the Native Vegetation Act 1991 for clearance of native vegetation associated with exploration or mining activities. There are currently several Regulations under the NV Act that exclude a range of mines from the requirement to provide a Significant Environmental Benefit (SEB) offset regardless of the level of impact or consideration environmental impacts.
- Strengthening of current Regulations under the Mining Act in relation to the audit of environmental outcomes and provision for the Minister to request an independent, external audit of the Environmental Management Systems for all mining leases and tenements.
- Further strengthening of the Act to prevent access for mining exploration or development on land covered by a Heritage Agreement under the NV Act and protection of areas that provide critical habitat for threatened species or ecological communities in addition to wetlands of national or international significance.

We also strongly support the recommendations by the Environmental Defenders Office SA for the following key issues to be addressed in later amendments to the Mining Act:

- The inclusion of ecologically sustainable development (ESD) as a specific objective or as an express matter for consideration by the Minister when administering the Act, equivalent to the South Australian Environment Protection Act and to interstate mining legislation, such as that in Victoria.
- Transfer of environmental assessment of mining projects from the Mining Minister and the DPC to either the Environment Protection Authority (the EPA), or the South Australian Department of Environment, Water and Natural Resources (DEWNR).
- Establishment of an independent expert scientific committee to ensure decisions (whether about conventional or unconventional resource extraction) are informed by the best available science.
- Establishment of an office of Land and Water Commissioner to provide oversight and advice with respect to the conduct of exploration and mining across South Australia.

Finally, whilst we acknowledge the recommendation regarding 'ensuring that provisions of the Mining Act are consistent with relevant requirements of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, to be ready for possible future bi-lateral negotiations', we reiterate our call for the Commonwealth Environment Minister to retain full statutory discretion with respect to mining activities that impact on Matters of National Environmental Significance, rather than have these important responsibilities delegated to the state level.