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Re: Leading Practice Mining Acts Review *Mining Act 1971* and Regulations Discussion Paper

The Nature Conservation Society of South Australia (NCSSA) welcomes the opportunity to provide a submission on the Leading Practice Mining Acts Review *Mining Act 1971* and Regulations Discussion Paper and appreciates the extension of time granted to enable us to do so. As South Australia's primary nature conservation advocacy organisation, NCSSA has an active interest in the protection and conservation of South Australia's natural resources with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities, management of protected areas and remnant native vegetation.

Since 1962, NCSSA has been a strong advocate for better laws and policies to protect natural ecosystems in South Australia from the impacts of human-induced disturbances such as clearance of native vegetation and inappropriate land use, particularly in areas that have significant conservation values. We believe that this review presents an opportunity to address deficiencies in the Act and improve the regulation of mining activity in South Australia. It will also enable further assessment and improvement of processes to manage current and emerging threats to South Australia's native wildlife and natural areas posed by activities conducted under the Mining Act and its Regulations.

Please refer to the following pages for our responses to specific sections of the Discussion Paper that are of particular importance to NCSSA. If you would like to clarify or discuss any of the points raised please contact me on (08) 7127 4633 or via email at nicki.depreu@ncssa.asn.au
Yours sincerely,

Nicki de Preu

Conservation Ecologist

Nature Conservation Society of South Australia

NCSSA Feedback on Specific Sections of the Discussion Paper

2. SUSTAINABLE FUTURES

In South Australia, assessment and approval of exploration and mining activities is generally exempt from a number of key pieces of environmental legislation namely the *Environment Protection Act 1993* and the *Planning, Development and Infrastructure Act 2016* (that is to replace the *Development Act 1993*). These Acts are also not generally applicable to the regulation of exploration and mining activities undertaken through licences and leases under the Mining Act. A particular issue of concern to NCSSA is the exemption from approval under the *Native Vegetation Act 1991* for clearance of native vegetation associated with exploration or mining activities. For example, there are currently a number of Regulations under the NV Act that exclude a range of mines from the requirement to provide an SEB offset regardless of the level of impact or consideration environmental impacts. These mines are generally for mineral extraction and are mostly located in areas that have already been extensively cleared of native vegetation such as the Adelaide Hills, Barossa, Fleurieu and South East regions. Given the importance of all remnant native vegetation in these areas their ongoing operation is resulting in significant environmental impacts without any requirement for compensation or reparation for the environment. To ensure that mining exploration and activities are undertaken in a sustainable manner, we strongly recommend that this issue is addressed as a matter of the highest priority - particularly in areas where threatened species and ecological communities are known to occur.

NCSSA strongly recommend that the SA Government and DSD have a responsibility to strengthen both the *Mining Act 1971* as a critical part of this review to ensure Matters of National Environmental Significance are protected and actions with unacceptable or unsustainable impacts are refused. Although the Discussion Paper places great emphasis on the importance of the mining sector to the State's economy it fails to acknowledge the impact that mining exploration and development has on the State's unique environmental assets and long-term sustainability. The SA Government and DSD have responsibilities to ensure protection of these assets through the *"Commonwealth – SA Assessment Bilateral Agreement"* where mining could impact on *Matters of National Environmental Significance* (MNES) under the *EPBC Act 1999*. In our view, the SA Government has failed to implement any statutory changes to existing SA Legislation and Regulations to provide appropriate powers to mandate compliance with these important responsibilities. The second last paragraph on Page 44 of the Discussion Paper states that "this review will not impact on this important accreditation, but rather strengthen it" yet we see no demonstrable evidence that this will occur based on past decision making and approval processes.

We support the proposal put forward in Section 2.1.1 to strengthen preventative measures and increase transparency as a mechanism to ensure environmental sustainability of the mining industry. We acknowledge the current preventative tools listed on Page 46 of the Discussion Paper. We recommend that the current Regulations in relation to the audit of environmental outcomes are strengthened to provide specific power for the Minister to request an independent, external audit of the Environmental Management Systems for all mining leases and tenements. We also support the proposal to strengthen preventive measures to allow the Minister to condition PEPRs so that operations cannot commence until payment of a bond or achievement of a specific compliance direction.

We strongly support the statements in Sections 2.3 of the Discussion Paper that "appropriate rehabilitation of all mining operations should be non-negotiable" and that "planning for mine closure and progressive rehabilitation throughout the life of the mine is leading practice behaviour". At present, rehabilitation directions are controlled by the requirement to rehabilitate land in accordance with the requirements of a

PEPR. If the PEPR is not of a sufficiently high standard, then the direction may not be adequate to ensure rehabilitation is of an acceptable standard to achieve required environmental and ecological objectives. We recommend that the Mining Act be amended to enable the Minister to issue rehabilitation directions to achieve specific environmental outcomes, as currently applies to the Commonwealth *Offshore Petroleum and Greenhouse Gas Storage Act 2006.* We also recommend that Compliance Officers direct further effort towards monitoring and public reporting of the effectiveness of mine site rehabilitation programs and whether they are achieving measured environmental outcomes.

We support the proposal to improve government and industry accountability by expanding the types of information available on the Mining Register with the aim of demonstrating compliance with the Mining Act and Regulations. We believe there are a range of other documents that would lead to improved accountability such as making available to the public information regarding all applications, draft programs, plans and policy documents concerning best practices in environmental, community and social issues. For example, projects where mining and conservation outcomes have been successfully achieved and case studies of Significant Environmental Benefits and offsets that have demonstrated actual ecological outcomes would assist in improving consultation processes and accountability.

In relation to private mines we consider the current environmental regulation to be completely inadequate. There is an expectation by the community that all mines will be operated according to minimum environmental standards and that the regulator will act to ensure these environmental standards are attained. The fact that the regulator is limited in its powers in relation to private mines not only undermines trust in the mining industry, but also in the regulator. We strongly recommend that private mines must be regulated to the equivalent standard as mines operating under a mining lease. Ideally the operators should be required to hold a defined mining tenement to conduct operations, and be subject to conditions on the mining tenement. As a minimum requirement, the operators must be required by law to prepare a PEPR (which must be available to the public), and they must be subject to the full range of compliance and enforcement mechanisms under the Act, for example, for failing to operate in accordance with the PEPR.

3. THE BENEFITS OF A STREAMLINED, RIGOROUS AND COMPETITIVE REGULATORY ENVIRONMENT

The fact that Mineral Resources Division (MRD) of the DSD/PMC is responsible for promoting and regulating mining activity in South Australia is an issue of serious concern to NCSSA. This regulatory system means the regulator retains close relationships with members of the mining industry that it is meant to regulate crating a potential conflict of interest between the promotion of mining and measures to ensure effective environmental protection. We acknowledge that the division of the MRD into distinct areas with clearly defined functions and responsibilities in relation to the administration of the Act is aimed to reduce this conflict of interest. However, the fact that the DSD is undertaking this review with the stated aims of 'strengthening' the "one Window to Government" model rather than appointing an independent body to conduct the review further reinforces the lack of transparency in relation to governance that is of major concern to the conservation sector.

We strongly support the recommendations made by the Environmental Defenders Office SA in their submission to the current review aimed at ensuring the independence of the regulator, in particular:

- That the Minister for the Environment have a right of direction over a mining lease application where a proposed mining operation is likely to have significant impacts on the environment;

- The urgent need for environmental assessment of mining projects, and compliance and enforcement be taken out of the hands of the Mining Minister and DSD/PMC, and placed into the hands of an independent environment agency/department;
- The establishment of an independent expert scientific committee to ensure decisions regarding both conventional and unconventional resource extraction are informed by the best available science; and
- The appointment of an independent Land and Water Commissioner to provided oversight and expert advice regarding mining exploration across South Australia.

We strongly recommend that the Commonwealth Environment Minister retain full statutory discretion under the *EPBC Act 1999* with respect to the approval conditions for mining activities that impact on MNES, regardless of the advice provided by the SA government that, as outlined above, may have a conflict of interest in decisions over major developments including mining.

Section 3.5.4 of the Discussion Paper states that "The protection of specially protected areas is of the utmost importance" yet the map on Page 22 shows that only a very small proportion of the entire State is actually subject to restricted exploration and mining activity. We strongly recommend 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 strongly support the proposal in Section 3.10 of the Discussion Paper that proposes to regulate the removal of moss rocks under the NRM Act. We have long had concerns regarding the lack of effective regulation of the removal of moss rocks under the Mining Act and the associated environmental impacts both at a micro- and macro-ecosystem level. In many parts of the Eastern Mount Lofty Ranges where moss rock removal has taken place these outcrops provide the only remaining habitat for a number of rare and threatened reptile species and lichens in an areas where native vegetation has been heavily cleared or is extremely fragmented.