



**DR A J CANNON AM FAAL**  
DEPUTY CHIEF MAGISTRATE AND SENIOR MINING  
WARDEN FOR SOUTH AUSTRALIA  
ADJUNCT PROFESSOR AT MÜNSTER UNIVERSITY,  
GERMANY AND FLINDERS UNIVERSITY  
SCHOOL OF LAW

14<sup>th</sup> March 2017

Dr Ted Tyne  
Executive Director Mineral Resources  
Department of State Development  
GPO Box 320,  
Adelaide SA 5001

DSD.miningactreview@sa.gov.au

Dear Dr Tyne,

I refer to the call for comment on the proposed review of legislation regulating mining activity in this State. I shall confine my comments to a few matters of principle. Wardens Fahey and Sprod have seen this submission and agree with it.

#### **Private Mines**

Private mines are a hangover from the avoidance of compensation claims when minerals rights in old freehold titles were resumed by the Crown in 1971. Their continued existence is sometimes now a danger to clear titles in land subdivisions. It would be a benefit if the Private Mines that are not operated, and are not likely to be, are now all revoked. I suggest that the Act be amended to put an obligation on the Director to apply to revoke a Private Mine where he is aware that it is not being effectively operated. Now that the mining process under these titles is effectively regulated DSD knows which Private Mines are not being mined, but may be reluctant to instigate the steps to revoke them. Placing an obligation on the Director to take action would enable him to do so without criticism. Thus this historic anachronism could be brought to an appropriate end.

#### **Transparency**

Consideration should be given to all agreements affecting access to land being registered on the Mining Title and accessible to searching. There will be complaints that commercial confidentiality needs to be maintained but those claims should be seriously scrutinised. No doubt the same claims were made in relation to land transactions when Torrens Title registration was introduced in 1886 but we now accept that knowing the sales price history of property is in fact a public benefit. Surely the same is true of transactions affecting other title owners in mining projects. Public access to this information would lead to consistent approaches to access agreements and to the price paid for access. The consequent transparency would make local community benefits clear to all. Consistent with this approach, and because these agreements will often affect successors to the freehold or other title, consideration should be given to amending the *Real Property Act 1886* to allow for them to be noted on the registered title without affecting existing mortgages or later dealings which are made subject to those access rights.

### **Jurisdiction of the Courts**

The Wardens Court should be the court of first instance which decides factual matters (up to a generous jurisdictional monetary limit) and the ERD Court the appellate court which also deals with Native Title issues. The recent amendment that put exempt land determinations in the ERD Court is problematic. Where a mining project is proposed on agricultural land then exempt land issues often arise at the first exploration stage and so any objection to entry by a landowner will often include exempt land considerations. These are best raised in the Wardens Court at the same time as considering entry issues. The present split jurisdiction system causes expense and confusion. I reject the allegations of bias of the Wardens Court raised in the Legislative Council at the time when this amendment removing this jurisdiction was passed. We rarely have appeals because we are not in fact biased in favour of any party. The Wardens Court properly acknowledges it has a duty to encourage mining but goes to great lengths to ensure the proper protection of landowners with conditions and compensation. The Wardens bring special expertise to their work and the court's processes are affordable, flexible and prompt for unrepresented parties. The Wardens Court is well respected in the communities where it works.

### **Compulsion and Enforcement**

In relation to compulsion and enforcement of environmental and other conditions different tools are necessary according to the circumstances of the project and resources of the company. A bond is assurance of performance when a company has limited resources and so probably should be routinely used for new projects with unproven mining operators. Fines after the event may be ineffective where a company fails leaving unresolved environmental issues. The threat of a fine for a well-resourced company, apart from the bad publicity it may generate, depends on how large it is. As a rule of thumb fines typically are imposed at a level of about a third of the maximum so one might think in the context of a significant mining project that the present level of maximum fines is rather low.

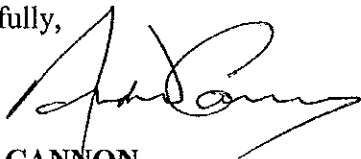
### **Work on Opal Tenements**

The proposal that the minimum hours per week for working opal claims be replaced with a non specific duty to work will cause the court and DSD compliance officers difficulty. The right to hold an opal mine depends on it being properly worked and given the difficulties of proof some certainty of the obligation is essential. Some flexibility may be desirable to accommodate miners who live away from the field and those who work away, such as FIFO workers. This could be achieved by leaving 20 hours a week as the norm but permitting an exception only where it is approved by the Wardens Court. These applications could be made with a simple affidavit explaining the reason and the proposed working arrangement. DSD would have an opportunity to comment on whether the proposal is appropriate and any order could be noted on the Precious Stones Register. If, for example, the proposal required a campaign of work over a particular period then the Compliance Officers could check the claim at that time so that the integrity of the work requirement could be maintained. I am confident the Court could handle this workload without additional resource requirements.

### **Rules of Court**

Consistent with other jurisdictions this might be an occasion to grant to the Wardens Court its own rule making power. If this is adopted I suggest that the power should be vested in the Senior Warden and at least two other Wardens.

Yours faithfully,



**ANDREW CANNON**