

Consultation on draft mining regulations

GUIDANCE MATERIALS

Package one: land access

- *Access to land*
- *Exploration licences*
- *Mineral claims*
- *Transparency*



**Government
of South Australia**

Department for
Energy and Mining

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Introduction

The Department for Energy and Mining (DEM) is developing updated mining regulations to enable the revised *Statutes Amendment (Mineral Resources) Act 2019* to commence on 1 January 2021.

The regulations support how the provisions of the revised Act are applied.

By law, the regulations cannot introduce new issues and topics outside the scope of the Act and need to be written in a way that explains how the Act will operate and how DEM will regulate mining in our state.

Commencing at the start of August 2020, the draft mining regulations will be released in three separate packages for public consultation. These packages have been prepared to support you to make a submission as part of the consultation process and include:

- **Package one** – will focus on land access, including access to land, exploration licences, and mineral claims. Package will be released from **Monday 3 August**
- **Package two** – will focus on compliance and enforcement matters, including compliance and enforcement, opal mining, Warden’s Court, Mining Register, royalties and finance and competency of mining managers. Package will be released from **Monday 10 August**
- **Package three** – will focus on operating approvals, including private mines, and a consolidated mining approvals approach made up of topics on common provisions, production tenements, and operating approvals. Package will be released from **Monday 17 August**.

DEM will carefully consider submissions when finalising the regulations.

Please note this explanatory document also contains information relating to the revised Act. While the revised Act is not under consultation, this information is important to help you understand the draft regulations and provide a submission.

Access to land

Introduction

The land access framework under the *Mining Act 1971* (Mining Act) requires explorers and miners to interact appropriately with landowners and communities, to support the responsible development of our mineral resources. This includes requirements for negotiation of land access agreements.

The *Statutes Amendment (Mineral Resources) Act 2019* amends the Mining Act. This revised Act was finalised and passed in October 2019, providing a new, improved balance between landowners' property rights and opportunities for explorers and mining companies to explore for and develop mineral resources owned by the state.

What are the key changes in the draft regulations supporting the Act?

Entry on land

A person who serves a notice of entry must keep a record of the notice served and provide a copy of the notice to the Department for Energy and Mining's Mining Registrar, who will place it on the Mining Register.

Service of documents

Under the regulations, any notice or document under the revised Act to be given or served on a person (other than a person who holds or may hold native title) may be:

- provided personally
- addressed to the person and sent via registered post to the person's last known address or address for correspondence or service
- sent via email to an email address provided by the person.

Any notice or document provided to the Minister, Mining Registrar or Director of Mines will be via email or online portal.

Waiver of exemption

Some exempt areas of land in South Australia require permission from the landowner or an order from the relevant court to conduct exploration and mining operations. To conduct exploration or mining operations on these specific areas requires what is known as a waiver of exemption. A waiver of exemption is a document that states the landowner agrees for specific activities to occur on their land.

The draft regulations require a tenement holder to provide the owner of land with the following information:

- a copy of the approved program for environment protection and rehabilitation (PEPR), if available
- a copy of the relevant proposal
- a copy of any tenement holder's response to a submission in relation to the application
- information outlining the rights of the owner of land.

If the tenement holder and owner of land enter into an agreement to waive the benefit of exemption, the tenement holder must notify the Mining Registrar within 21 days of the agreement being signed or if the tenement is not yet registered, provide a copy of the agreement with the application. This includes waivers of exemption for exploration licences.

The information sheets that will accompany statutory notices provided to owners of land will provide easy to understand information explaining the purpose of the notice and the owner of land's rights in relation to the proposal.

Public participation

Exploration and mining projects affect communities and the environment. As a result, providing the public with an opportunity to participate in the decisions about exploration and mining operations in South Australia is of great importance. This includes the public being aware of what the government must do to ensure adequate public consultation on an application, when and how the public can participate and provide input into an application and what a miner or explorer must do to engage with the public.

As part of public participation, there are three distinct components. These are:

1. Engagement by the applicant on the preparation of a draft application for a Mining Licence (ML), Miscellaneous Purpose Licence (MPL), Retention Lease (RL), Special Mining Lease (SME), or a change in operations
2. Public consultation on applications that are run by the government
3. Engagement by the applicant on the preparation of a draft PEPR or a revised PEPR.

The draft regulations require an applicant to engage and report the results of the engagement undertaken in preparing an application, before it is submitted to the Minister for assessment. This ensures the community can work with the applicant to shape the content of the application to reflect the expectations and concerns of the community. This applies to MLs, MPLs, RLs, SMEs and a change in operations.

At a minimum, the applicant must engage on the environmental outcomes that are expected to occur in connection with the proposed operations and take reasonable steps to consult with persons, especially, the owners of the land where the operations are proposed to be carried out. The application must set out the results of consultation undertaken in connection with the proposed operations, including:

- the person/groups consulted (especially the owners of land)
- any issues of concern raised by the persons consulted
- the steps proposed or taken to address the concerns raised.

Under the revised Act, the Minister must notify the landowner and relevant local council of an application received and seek public comment on it before making a decision. This notice should not come as a surprise to any owner, as it is good practice for the applicant to provide landowners an opportunity to contribute during the preparation of the application. This includes applications for MLs, MPLs, RLs, and SMEs and in the case of an application for a change in operations, public consultation will be required if there is an additional or different impact to the environment as a result of the proposed changes or the impact is significant.

The feedback from the community informs the decision to approve or refuse an application. If the decision is to approve, then the feedback informs the approval conditions.

All submissions from this public consultation will be given to the applicant, who must prepare a response document on the submissions.

If a lease or licence is granted, the explorer or miner cannot commence any operations unless and until they have an operating approval known as a PEPR. The draft regulations require the explorer or miner to engage with the community on the preparation of the PEPR before it is submitted for assessment. The results of consultation undertaken in connection with the proposed operations or a review of proposed operations must detail:

- the person/groups consulted (especially the owners of land)
- any issues of concern raised by the persons consulted
- the steps proposed or taken to address the concerns raised.

What other changes were finalised in the revised Act?

This information summarises other key changes finalised through the revised Act. These changes are not being consulted on through this engagement process.

Land access reforms in the revised Act

Section 9: Entry onto land – Explorers or mining tenement holders may legally access land or use land to access neighbouring land for authorised operations. To do so, they must engage with the landowners, keep them informed of ongoing activities and impacts to the land, and provide:

- 42 days' written notice of any proposed operations including to enter, explore or commence operations. Failure to serve a 'Notice of Entry' or 'Notice of Advanced Exploration Operations' attracts a maximum penalty of \$20,000
- a 'Notice of Intention to Apply for a Mining Lease (for mining and quarrying), Retention Lease or Miscellaneous Purposes Licence' (notice of intention to apply) if they intend to apply for one
- a further notice of intention to apply if the tenement holder does not lodge an application with the department within 12 months.

Landowners have three months to object to a notice served. Relevant courts include the Warden's Court, Environment, Resources and Development Court and Supreme Court.

Section 9AA: Exempt land – The revised Act provides landowners and mining operators with new, earlier and less costly opportunities to initiate negotiations and exempt land court proceedings and provides the Warden’s Court with sufficient powers to encourage early, good faith resolutions of exempt land disputes - eg conciliation powers. Landowners now have the right to start proceedings, which will provide more control and certainty about the future.

Sections 9AA and 70B: Waiver of exemption – The Minister may grant a lease or licence and approve a program for environment protection and rehabilitation (PEPR) over exempt land. However, the tenement holder must get a waiver from the landowner before carrying out any authorised operations on this land by negotiating an agreement in good faith with the owner of land, or obtaining a court order removing the exemption if an agreement cannot be reached.

Section 9: Special protection of exempt land – Increases by 200 metres the distance from a residence within which authorised operations (other than advanced exploration or authorised operations for the recovery of extractive minerals) are able to be undertaken. Exempt land in the revised Act now includes land within 200m, 400m or 600m (depending on the proposed activity) of a place of residence.

Section 9AA: Special protection of exempt land – Increases the amount of legal fees available to landowners from \$500 to \$2500 per landowner.

Section 9: Agreement and collaboration – The revised Act establishes minimum requirements to ensure tenement holders engage, consult and obtain consent (where applicable) from owners of land before entering the land or commencing operations and foundations for minimum terms and conditions of a land access agreement.

Non-regulatory improvements to conflict resolution

If a landowner and a tenement holder cannot reach an agreement, the parties may:

- request mediation assistance from the Small Business Commissioner
- apply to an appropriate court (Warden’s Court, Environment, Resources and Development Court or Supreme Court) for a ruling.

The [Landowner Information Service](#), established in July 2020, is delivered by Rural Business Support (RBS) and is a free, independent information service for South Australian landowners on matters related to exploration, extractives and mining regulatory processes.

RBS is a not-for-profit organisation that provides independent services and support to families and individuals involved in primary industries, such as farming and fishing, to help them manage change, risk and business challenges.

Exploration licences

Introduction

Mineral exploration is the process of searching for deposits of useful minerals. The *Mining Act 1971* (the Act) and regulations made under the Act are the principal laws in place for the administration of exploration titles and the regulation of on-ground exploration operations, including environmental management and rehabilitation of land. An exploration licence is the principal title issued for exploration in the state of South Australia.

To create flexibility and certainty for the industry and ensure appropriate and timely effort is being applied into mineral discovery, Part 5 of the Act was reformed.

What are the key changes in the draft regulations supporting the Act?

Additional information required for an exploration licence application

The draft regulations require exploration licence applications to include a statutory declaration confirming the applicant has not held the relevant ground in the last three months, and provide for an expansion of the current operational capability section to include a statement of awareness of environmental and stakeholder engagement aspects to be managed in that licence area.

It is intended the details of the assessment process and the information required will be provided in a Ministerial Determination and a consolidated regulatory guideline for exploration licences.

Notice of an exploration licence being granted

In the draft regulations, the regulator no longer needs to advertise the intention to grant an exploration licence in state or regional newspapers or the Government Gazette. This will reduce costs for applicants and shorten the overall exploration licence grant process by four to six weeks.

The draft regulations require a notice that a licence has been granted to be provided to the tenement holder by personal service, registered post or by email.

A key system reform is interested parties will be able to register to be automatically electronically notified by DEM when an exploration licence is granted in a specified area.

Terms and conditions of an exploration licence

It is proposed standard exploration licence terms and conditions will be published in a policy. This will streamline the exploration licence granting process for industry.

Reporting periods for expenditure statement of intention and statement of completion

Under the revised Act, licence conditions include minimum expenditure commitments. The tenement holder must complete and submit two statements:

- statement of completion – a statement of the exploration operations completed in the period and how much was spent compared to the required spend obligation. This will be published on the Mining Register
- statement of intention – a statement of intended exploration activities for the following period and estimated expenditure.

Draft regulations require reporting occurs every two years, unless otherwise requested.

Area of licence and subdivisions

The revised Act now allows an exploration licence holder to apply to surrender a part of their licence area and commercially transfer it to a third party, who will need to apply for a new exploration licence over that area. This will give explorers more commercial flexibility, encourage greater exploration in South Australia and provide an alternative way to attract exploration investment to the state.

Under the draft regulations, a subdivision application must include:

- similar information to an exploration licence application
- delineation of the area to be subdivided
- a statement as to any outstanding obligations or liabilities

- a statutory declaration that the incoming party is not a related body corporate and has not held the relevant ground in the last two years.

Any withdrawal of the application must be in writing and be provided electronically.

Information required for a renewal application

To provide industry with increased tenure certainty, encourage genuine exploration on exploration tenements and ensure ground turnover, exploration licence terms and renewals have been updated in the revised Act:

- subsequent exploration licence provisions have been deleted
- the initial licence term has been increased from a maximum of five years to six
- it can be renewed in additional six-year increments if an application is made before the licence expires
- on renewal, terms or conditions may be added, varied or revoked
- after 12 years, the area of the licence will be reduced by 50 per cent
- after 18 years the licence will expire.

An application for renewal must be submitted before the exploration licence expires and draft regulations will require it to include:

- a statement of the previous term's performance
- a statement outlining the intended exploration operations for the following period and estimated expenditure
- a statement nominating the mineral or minerals that the explorer is seeking for the following period and the intended exploration model to be used

- a statement of the technical, operational and financial capabilities and resources required.

It is intended that the specific details of the assessment process and the information to be required will be provided in a Ministerial Determination and a consolidated regulatory guideline for exploration licences. This will include environmental and stakeholder engagement requirements to be addressed for that licence area.

Retention status

If a tenement holder has identified a mineral resource but can't explore for practical reasons, or they have experienced difficulties outside of their control in obtaining approval to start or continue exploration work, the revised Act allows them to apply for retention status. This will give explorers greater flexibility to manage specific issues that are outside of their control.

Retention status can reduce the licence holder's relinquishment requirements, expenditure commitments or fees payment, or exempt them from those commitments, provided they meet the requirements.

Under the draft regulations, an application for retention status must include a statement describing the relevant reason for the application, a proposed work program and, if applicable, accompanying evidence to support the assertions.

Forfeiture

The process for allowing an interested person to seek the forfeiture of a given mining tenement in their favour has been expanded under the revised Act. This aims to encourage greater competition and compliance.

Draft regulations now include exploration licences in the forfeiture regime. However, they propose:

- the interested party/applicant must demonstrate certain capability criteria to make an application
- the application cannot be made in the first two years from grant or transfer of a licence.

What other changes were finalised in the revised Act?

This information is provided to summarise other key changes finalised through the revised Act. These changes are not being consulted on through this engagement process.

Exploration Licence reforms in the revised Act

Sections 28 and 29A: Flexibility to include more area in an ERA (Exploration Release Area) – New powers to release more areas of the state.

Section 29A: Reduced administration and faster release of areas – Burdensome notice requirements have been removed to allow the release of areas in a more timely fashion and to better manage the areas up for release.

Section 30AAA: Stronger powers to set expenditure to give tenure certainty – Expenditure is currently managed through conditions at grant and renewal. These processes have been separated to allow the grant of full exploration licence terms and management of expenditure commitments to be done at the times set out in the regulations. This will provide further security of tenure for explorers. The draft regulations propose that expenditure reports will be provided every two years.

Section 30AA: Investment attracting power to subdivide exploration licences

– New power to allow explorers to subdivide an area of the exploration licence and surrender the area on the condition that the area will be granted to a third party. This concept provides an alternative means of attracting exploration investment to South Australia.

Section 30A: New limited term for exploration licences to promote turnover of the area

– New six-year terms (to best accommodate industry's two-yearly programs and budgets) to be renewed for a maximum of 18 years. At the 12-year anniversary, the area will be reduced by 50 per cent (based on the original area of the licence) and, at the 18-year anniversary, the licence will expire.

Section 33B: New retention status

– Status can reduce or exempt relinquishment requirements, expenditure commitments, or the payment of fees and can only be granted if a mineral resource has been identified but mining of that resource is impracticable for one or more reasons, or where one or more approvals are required before activities can commence or continue.

Mineral claims

Introduction

A mineral claim is a type of mining tenement under the *Mining Act 1971* (Mining Act). It allows an individual or registered business entity to prospect or explore for minerals in the area of the claim for 12 months, subject to any other required approvals. It also gives the individual or business the right to apply for a mining lease or retention lease for all or part of the area of the claim.

The revised *Statutes Amendment (Mineral Resources) Act 2019* introduces reforms to improve the marking, registration and management of mineral claims.

What are the key changes in the draft regulations?

Identification of claim areas

The area of a mineral claim may now be identified, delineated or defined electronically, or in another manner and form determined or approved by the Mining Registrar. This will create a modern, outcomes-based identification system that can adapt with technology.

If the boundary of a tenement is identified on the ground using pegs and markers, the tenement holder must take reasonable steps to make sure the area continues to be identifiable. Failure to do so will now result in an administrative penalty of \$2,500 under the draft regulations.

Application to establish a mineral claim

In addition to the information required to accompany a mineral claim application outlined in the Mining Act, the draft regulations also require the applicant to include a statement of the proposed operations to be carried out within the area of the mineral claim and a plan delineating any exempt land within the area of the mineral claim.

Period for lodging a mineral claim

The prescribed period to make an application to the Mining Registrar for a mineral claim has been changed in the draft regulations from 14 days to 28 days after the claim has been identified.

Size of mineral claim

The draft regulations confirm an area of a mineral claim cannot exceed 250 hectares without approval. All applications to the Minister, Director or Mining Registrar will be served by email or another electronic form. This regulation is identical to the existing regulation within the *Mining Regulations 2011*.

Notification of establishment of a mineral claim

The draft regulations require the Mining Registrar to notify mineral claim applicants when a mineral claim has been registered.

Landowners, native title parties and other interested parties will also be able to request electronic notification when a mineral claim in a region has been registered.

What other changes were finalised in the revised Act?

This information is provided to summarise other key changes finalised through the revised Act. These changes are not being consulted on through this engagement process.

Mineral claims reforms in the revised Act

Section 6: Prospecting for minerals – The definition of a tenement holder has been expanded to include a person prospecting for minerals. This means a prospector must serve a notice of entry on owners of land before entering private land.

Section 25: Rights conferred by ownership of mineral claim – A mineral claim holder cannot sell minerals or allow the minerals to leave their custody and control for any reason. The maximum penalty for failing to comply with a term or condition of a mineral tenement has increased from \$120,000 to \$250,000.

Section 70HA: Restriction of claims – The Warden's Court can now make an order limiting the establishment of a mineral claim by a person who has failed to comply with an environmental, compliance, emergency or rehabilitation direction. The stipulation that a person or their representative who holds the previous claim cannot establish a further claim within two years of its lapse, surrender or forfeiture now includes body corporates and cancelled claims.

Section 80: Overlapping tenements –

Agreements relating to overlapping tenements with subsurface and surface strata must include rights relating to access to the subsurface stratum. The maximum penalty for contravening or failing to comply with an order from the Warden's Court in relation to the regulation, restriction or prohibition of authorised operations where two or tenements include the same land has increased from \$5000 to \$20,000.

Section 70: Forfeiture and transfer –

Regulation-making powers have been expanded to stipulate minimum requirements for applications for forfeitures and transfers of mineral claims. The Warden can now recommend the government transfer the tenement.

Transparency

The revised Act includes reforms to further strengthen the transparency and accountability of South Australia's mineral resources regulatory framework.

The amended legislative framework will further strengthen:

- visibility of decision making processes related to exploration and mining operations
- compliance and enforcement outcomes through visibility of industry performance and regulatory outcomes.

It is intended that information (unless there is a legal restriction on its release) will be provided relating to the chain of regulatory and administrative decisions made in relation to a mineral tenement, with complementary information, including:

- Exploration licence assessment, grant and operations processes (including notices, determinations, programs for environment protection and rehabilitation)
- Mineral tenement assessment, grant and operations processes (including proposals, assessment reports, lease and licence conditions, notices, determinations, programs for environment protection and rehabilitation)
- Compliance and enforcement activities (including compliance and incident reports, directions, penalties, bonds and public liability insurance information)
- Proceedings, decisions, determinations and orders of the Warden's Court
- Post-production and closure activities

- Authorisations, decisions and assessment reports.

Further information about the improved Mining Register will be provided in *Package two: compliance and enforcement guidance materials*.

Provide your feedback

The draft regulations in *Package one: land access* will be open for input until **11 September 2020**. For further information please:

- Register on the [Department for Energy and Mining website](https://energymining.sa.gov.au/minerals/mining/update_on_mining_regulations_2020) to receive email updates (energymining.sa.gov.au/minerals/mining/update_on_mining_regulations_2020)
- Visit the South Australian Government's [YourSAy website](https://yoursay.sa.gov.au/) (https://yoursay.sa.gov.au/)

To provide a submission:

- Visit the DEM mining regulations website and submit a completed form online.
- Alternatively, download the form, then post or email to:

Mining Regulations Submission Form
Resource Policy and Engagement
Department for Energy and Mining
GPO Box 320
Adelaide SA 5001

Email: DEM.MiningRegs@sa.gov.au

