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12th August 2009

**Submission from Mrs Liz Penfold Member for Flinders
Public Consultation on the Mining (Miscellaneous) Amendment Bill 2009,
amending the Mining Act 1971 and Mining Regulations 1998.**

Personal Statement

It is recognised and accepted that the Crown (on behalf of the people of the State), has the unreserved right to access mineral wealth that it owns. I strongly support mining as a huge opportunity for regional South Australia to facilitate jobs and training for regional people and assist in the very survival of many communities and their services.

However the crown through the Mining Act and Mining Regulations must ensure that other land users, (particularly freehold landowners) who are impacted by this access are treated fairly and adequately compensated.

The Mining Act must also ensure that the environment and landscape are restored to the best possible condition upon completion of mining activities.

A formula and guidelines to ensure that Community Development Funding is put back into the affected communities as mining progresses so they are left with infrastructure, employment opportunities and training that will help retain people in their communities when mining is finished should also be included in the Act.

Introduction

Approximately 80% of South Australia's current mining exploration is on, or in the proximity of Eyre Peninsula. Landowners in the region are only just becoming aware that mining companies have the right, subject to compliance with the current Act, to enter their land and if minerals are found, to undertake mining.

These people are often third and fourth generation farmers with a strong and enduring attachment to their productive farming properties. These are not pastoralists with large remote holdings like those who have previously been affected in mining developments in South Australia but mostly freehold landholders.

These farmers are not used to negotiating and dealing with (often) large mining companies that have the benefit of specialised staff and advisers to ensure the interests of their shareholders are well looked after and the best deals are obtained from the negotiations.

Farmers and their families are often at a significant disadvantage in negotiations and do not know where to turn for help. The costs and pressures of mining exploration and the subsequent rights over their land, if mining companies decide to go ahead, are causing great distress. This is particularly a problem as landowners usually have to sign non disclosure agreements and then they can't even talk to the people they would normally confide in, in times of difficulty. I am aware of suicide and attempted suicide and significant depression being attributed to the process being forced upon farming families by the presence of minerals beneath their land.

Notwithstanding any confidentiality agreement farmers must, under amendments to the legislation, have the right to discuss these matters with their financial advisers, who may be professionals such as lawyers, accountants and their bankers but may be in the form of family members who are beneficiaries under a family trust or similar legal arrangement or any member of the family who in the past has been a financial or religious confidant.

I am advised the present Code Of Conduct for Landholders and Mineral & Energy Explorers in South Australia <http://www.resourcessa.org.au/media/files/11712.pdf> is not specific enough to individual farming situations. The preamble states that the code recognises the rights and concerns of both explorers and private landholders and secondly that it presents a clear path for dialogue and negotiation of access. This is contrary to information given to me and this Code has no power to enforce anything.

After my discussions with some of the people who have first hand experience of the process, I hereby make the following suggestions for provisions to be included in the Bill to help reduce the pressures on farmers and their families who inadvertently find themselves caught up in this bewildering and daunting circumstance.

1. An Independent Arbitrator.

Under Section 16 of the Mining Act, the minerals are owned by the Crown and therefore the elected Government on behalf of the people have the responsibility to ensure that all parties are treated equitably.

The Mining Act is presently so biased towards Mining that it causes severe mental trauma for some families.

A government appointed independent arbitrator with knowledge of mining and farming industries and the relevant Acts, with powers of enforcement, is desperately needed. This arbitration needs to be done on a case by case basis as all situations are unique.

Farmers spoke of mining representatives making it quite clear that they had, 'big name firms' looking after their interests. In one case the company supposedly looking after the interests of the farmer, and being paid by him, is believed to have provided sensitive information to the mining company's solicitors.

PIRSA representatives are not seen to be forthcoming with a firm view about Landholder's Rights in the Act. Their frustrating advice is that each situation is to be negotiated between the Mining Company and the Land Holder which while this may be true is an unfair situation.

Farmers have spoken about gaining the best information from other farmers who have been through the process before them. An advisory committee could be formed of stakeholders with at least 4 farmers who have experienced the process. They should be permitted to advise farmers or anyone who may be affected by this process. The committee would of course not be permitted to discuss these matters with any other parties.

2. Counsellors

The pressure of farming is in itself significant, particularly in times of drought. Adding to these stresses are

- the need for farmers to read and understand documents that contain jargon completely foreign to them,
- having to deal with people who are often university educated and in control of the information,
- have people on their land and in their homes who have not been invited,
- meet significant costs involved in time and travel to meetings,
- hire often very expensive advisers to help them,
- the loss of time to undertake their normal farming and family activities,

Many farmers are left feeling out of control of their lives and their properties.

The signing of the non-disclosure agreement when negotiating means families can't even confide in those people they normally would, for fear of incurring a penalty. The farmer must have the right to include in any non-disclosure agreement the names of parties who the farmer normally relies upon for appropriate advice. Some advisors such as a lawyer and accountant could be automatically included.

If the farm has to be sold there is often significant guilt at losing the family farm to deal with, combined with their grief and the grief of immediate and extended family.

To counter these considerable negative stresses, councillors must be made available who know and understand these industries to assist farmers and their families work through all the issues. Councillors should be able to direct farmers to independent legal practitioners specialising in mining law with financial assistance through a free legal aid system provided to affected farmers where necessary.

There should be a formula for the compensation of farmers for loss of time and interruption to their business operations while negotiating with Mining Companies. This may be covered by a rental charge on the mining company for every day that a mining company is operating on the farmer's land or a minimum fixed access fee plus a rental. This would also provide an incentive to mining companies to complete investigations in a timely manner and should be adequate to compensate, as a minimum, the costs and time involved. All fees of this nature should have an escalation clause to cover CPI increases otherwise they will get out of date quickly and be very difficult to update periodically.

If the farm is not sold and the whole of the farm is not being mined, the farmer should have the right to occupy the remaining property and utilise it as normal with compensation for loss of income and viability i.e. loss of future income and market value.

If the farm has been sold but tenements do not include the whole of the farmer's land they should be permitted to rent under normal share farming arrangements, or to live rent free, at least until settlement date.

Farmers should be compensated for any damage to existing crops, pastures etc through exploration by mining companies. The fee should be established in advance and should be increased with inflation.

3. Right of Entry

When a mining company makes first contact with the farmer and requests right of entry, the Form 21 should be accompanied with copies of the relevant Acts referred to in the documentation. Farmers will often be taken by surprise and will not know where to start to find out what their rights and responsibilities are, but having immediate access to the relevant Act will help. This should be accompanied by a simple explanation of the land holders rights and responsibilities plus a list of the people who would be able to provide independent advice or be able to act on behalf of the landholder.

Even if the farmer has access to a computer and internet service, it is often slow and unreliable and the farmer must have the knowledge and be allowed time to access relevant information. Many farmers will still need more help as they will not have the education level or time to do the research necessary.

The right of entry needs a minimum 60 day response time instead of the current 21 day time limit. For a farmer to interrupt their farming enterprise to source the information and get appointments with the relevant people, they need to understand what is happening and they must have adequate time. The current three weeks timeframe is unjust and inadequate.

The Mining Company must receive written approval from the government (PIRSA) to enter into negotiations with the landholders and the government should forward a copy of that written approval with a copy of the legislation to the farmer to enable the farmer to have sufficient time to seek appropriate advice as noted above. This must take place before the mining company has the right to contact and in some cases harass the farmer (refer problems raised under Exploration and Acquisition).

4. Exploration

The initial exploration phase may not be so stressful, that is, until the build up to the decision to mine or not to mine. However everything is forced upon the farmer who is expected to respond and defend their position, without back-up or support. This is magnified as the process goes from Ground Exploration to Test Drilling to Inferred Resource to Infill Drilling for actual Resource Quality and Quantity, and Preparation for Mining.

I am told it is not unusual for up to 80 to 100 vehicle movements on a farm during a single day as sufficient information is obtained to enable decisions to be made by the mining companies. Intrusion onto crops causing significant damage as vehicles bypass huge pot holes they themselves have caused in dirt farm tracks, is not acceptable. Using heavy equipment in farming paddocks causing compaction and other damage and disruption to farming must be managed better and the rehabilitation must be planned before mining commences. Care must be taken to replace fertile topsoil to ensure that it is replaced back on top and the disruption must not reduce the productivity of the farm more than necessary. Compensation for loss of viability must be paid or damage fully rectified. With drought and climate change many properties are already on the edge of viability and could easily be pushed over.

After Initial Drilling to establish there is a potentially viable resource (maybe 20 drill holes) there needs to be an **Environmental Bond** paid to the Landholder or an Institution holding the Mortgage, of perhaps 10% of the Valuer General's Property Value.

If Infill Drilling is started as a 3rd phase of Drilling – this bond should increase up to 30% depending on assessment of the potential damage.

The Environmental Bond would be a safeguard against irreparable damage especially with Infill Drilling. This is especially so if the project DOES NOT proceed to an Involuntary Acquisition.

The same applies to livestock and infrastructure such as fences, gates etc. If the mining doesn't go ahead, adequate compensation for lost productivity and damages must be paid.

5. Acquisition

To ensure that landowners are not disadvantaged by the superior knowledge and financial advantage of the mining companies, some form of compulsory acquisition law requiring a valuation which includes not only the value of the land but loss of earning (as the farmer may have no other skills and due to perhaps age or other factors be reasonably expected to replace the farm), loss of hereditary and lifestyle should be taken into account.

I have been told of farmers who felt so overwhelmed that they signed waivers of their rights and some who accepted prices well under what were received by others in similar circumstances and what they should have expected.

Included in the law needs to be an acquisition time frame that fits into the seasonal cycle of farming. One farmer and his family were expected to pack up and leave at one of the busiest times of the farming calendar. This was not possible and so the mining company charged rent for them to stay in their own home after years of support and co-operation during the Exploration Program.

In some cases Mining Companies are not purchasing the property from the farmer and only pay a royalty or other fee, once mining commences. However this puts the farmer at great disadvantage as they may not be able to harvest a crop whilst the Mining Company is in the process of mining. Mining royalties can take 5 years to commence and in the meantime the farmer has reduced or no other source of income.

Therefore the Mining Company should pay a fee on a yearly basis as compensation on the basis of the average of the last 5 years harvest or an appropriate proportion thereof. Alternatively the Mining Company should be forced to pay a fee at current market rates as assessed by an independent valuer as if it was a fully productive farm.

It should be noted that a mining lease (and access to the lease) does not necessarily involve the whole farming enterprise. Open and fair negotiations should be undertaken between the farmer (and/or their advocate) and mining company representatives to ascertain reasonable compromises to enable farm and mining operations in the area to continue with the least disruption. An example of this could be fencing off of mining operations preventing access by livestock.

As set out above, the mining company does not have the right to damage the farmer's property and then purchase the farm at a discounted rate taking into account current and future damage. The farmer must not be worse off as a result of the transaction and the miner substantially better off.

6. Community Benefit Fund

We must learn from what has happened in Western Australian mining communities and ensure that a set percentage of export income from a specific area is put into a Community Development fund from the **commencement** of mining. I envisage this money would be used for such things as scholarships, apprenticeships and traineeships so that children from the area can reach their potential.

Funding provided for tertiary education could be linked to them returning to fill the professions that are in short supply in the regions such as health for example. Infrastructure and training is needed in agriculture, aquaculture, fishing, tourism and manufacturing so that when mining has been completed, the community has created other industries and jobs to replace those lost.

Conclusion

The issues for farmers/landowners and mining companies will only increase as mining becomes more active in the regional areas of South Australia. It is timely that there is a review of the Mining Act so possible conflicts can be prevented and all parties are assisted to be winners from the mining activities. It is the responsibility of the Government of South Australia to ensure the vulnerable are fully protected while encouraging mining to be commenced as early as practicable.