

15 March 2017

Via email

Re: Review of the *Mines and Works Inspection Act 1920* (SA)

The Environmental Defenders Office (SA) Inc (“the EDO”) is an independent community legal centre with twenty five years of experience specialising in environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education.

We appreciate your recent briefing and the opportunity to provide a submission on revisions to the *Mines and Works Inspection Act 1920* (SA)- the Act.

The Act seeks to protect of property and amenity, prevent nuisance, and protect the health and safety of mining workers. The protection of property and amenity, and preventing nuisance, are issues that largely fall within the purview of environmental law today. This submission will focus on the review of the Act only as this relates to environmental protection, rather than the health and safety of workers.

In our view, the Act is clearly outdated in relation to protection of the environment.

1. It is prescriptive regulation that is inconsistent with modern regulation, which is generally risk-based, performance-based, or outcomes-based.
2. The focus in the Act and Regulations on the protection of property and amenity, and preventing nuisance, means that the scope of the Act in relation to environmental protection is far narrower than that of other modern resource and environmental legislation. For example, the major provisions for protection of the environment are the defined duties in relation to the regulation of ‘amenity’ in Part 3 of the Regulations, which are narrow and prescriptive.

3. The penalties for breaching the Act are extremely low, compared with penalties in other modern resource and environmental legislation.

In relation to mining activities that are the subject of authorisations (exploration licences and mining leases) under the *Mining Act 1971* (SA), the Act adds little, if anything, to the current environmental protection provisions of the *Mining Act 1971* (SA). The EDO supports the repeal of the Act in relation to mining operations that are within the regulatory scheme of the *Mining Act 1971* (SA). In relation to these operations, in our view, there are no environmental issues covered in the Act that could not be adequately (if not better) addressed in the *Mining Act 1971* (SA).

However, the EDO has concerns in relation to repealing the Act in relation to those companies, enterprises and/or operations that are not subject to the regulatory scheme of the *Mining Act 1971* (SA). If the Act is to be repealed, then at least equivalent provisions for protection of the environment need to be placed on all mining operations, either in the Mining Act, or other legislation under which such operations are authorised, for example, the *Local Government Act 1999* (SA) and the *Highways Act 1926* (SA).

The Review offers an opportunity to improve the environmental regulation relating to mining under the *Local Government Act 1999* (SA) and the *Highways Act 1926* (SA). Currently, s. 294 of the *Local Government Act 1999* (SA) contains very little in the way of obligations on management and rehabilitation. The only obligation placed on councils which is related to the environmental management of mining operations, is that, except in relation to an owner or occupier of the land, the council is liable for any nuisance or damage caused while in occupation of land for mining. In relation to land owners and occupiers, the Act simply places an obligation on Councils to pay reasonable compensation for damage caused to any crops on the land, and reasonable compensation for any other loss or damage caused by the council. The only provision concerning rehabilitation is the obligation to remedy damage to land caused by the council while in occupation of the land, but only 'to such extent as this may be reasonably practicable'. This is not adequate in terms of current community expectations of environmental management and rehabilitation in relation to mining activities.

The *Highways Act 1926* (SA) contains even less detail on environmental management and rehabilitation of land where mining for road building materials has taken place under s. 20; nor is it obvious how such mining works are regulated. The provisions regarding the environmental regulation of mining under the Local Government Act and the Highways Act do not contain obligations regarding management and rehabilitation that are to be expected from modern mining activities. The fact these works are undertaken by government entities should not result in a lower standard of environmental protection than mining activities undertaken by private operators.

In summary, the EDO supports Option B identified on p 16 of *Discussion Paper 1*, being the repeal of the Act, and the transfer of relevant provisions to other legislation as required, provided that sufficiently rigorous and robust environmental protection provisions are applied to all mining operations. Alternatively, if the Act is not repealed, but continues to regulate environmental issues at all or some mines, then the Act needs to be updated to reflect modern principles of environmental law and regulatory practice.

Please advise if you require clarification on any of the issues raised in this submission.

Yours faithfully

A handwritten signature in cursive script that reads "M Ballantyne". The signature is written in black ink on a white background.

Melissa Ballantyne  
Coordinator/Solicitor  
Environmental Defenders Office (SA) Inc.