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MINING LEGISLATION IN SOUTH AUSTRALIA

(A paper presented to the 1983 Seminar - South Australia - Exploration Potential)

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Legislation for exploration and mining is the responsibility of the individual States and the Commonwealth only becomes involved in the approval of mining proposals when export or foreign finance approvals are required.

Although the basic principles of the various State Mining Acts are similar, there are significant differences at the operational level.

As it is not possible to give a detailed recital of the South Australian Act today, I propose to describe the basic philosophies of our Act and to highlight the more important provisions relating to the conduct of exploration and mining for coal and other minerals in South Australia.

Oil and gas are the subject of the Petroleum Act and will not be discussed.

One of the most important matters is the ownership of minerals.

Like all Australian States, the early freehold titles to land in South Australia included ownership of minerals.

This may have been good in 1883 but private ownership as you know creates severe impediments to modern large scale exploration.

Our new Mining Act of 1971 resumed all of these private minerals to the Crown.

Provision was however made for those persons who were actively working their minerals - or had shown some intention of doing so by conducting appraisal work - to retain their former ownership through the grant of a Private Mine.

This concession was available only for a period of 3 years from 1972-1975, when approximately 300 Private Mines were granted. Most of these are within 80 km of Adelaide and are held for construction materials.

Private Mines are not subject to the Mining Act but mineral exploration and mining in the remainder of the State is conducted under the provisions of the Act.

This contrasts with some other States where over large areas of private land, entry is a matter of sometimes difficult negotiation with the individual owners.

Special provisions exist under separate legislation for entry onto reserves under the National Parks and Wildlife Act and onto Aboriginal land but the Mining Act applies after entry has been obtained.

Where the State owns the minerals, access to land for exploration and mining can be gained through a series of tenements issued by the Government.

The first thing that these tenements have to do is to give the mining operator a secure title and to specify what he can and cannot do under that title.

I will return to this matter presently.

The operations authorised by these titles are conducted on land occupied by another party who usually has entirely different uses and expectations for the land.

Thus although there are the same conflicts of interest where the minerals are privately owned, the door is now opened for the mining operator by the Government through the tenement system.

But the Government has to recognise the surface owner's interest and provide a mechanism in the Mining Act for resolving conflicts between the parties.

I will discuss the South Australian solution to this when referring to notice of entry, exempt land and compensation.

Exploration and mining operations inevitably have some effect on other land resources on the site and the amenity of people living in the vicinity.

And so in addition to the miner and the landowner, there is a third and very diverse interest which needs to be accommodated in the Mining Act.

I think we all recognise the need for environmental management of mining operations and indeed all other uses of land.

Where we might differ is in the degree of protection that is reasonable and the manner in which Governments ensure that sound management is achieved.

I will explain a little later how we handle environmental matters in South Australia, but at this point, I want to emphasise the value of communication.

The public has very little idea of the differences, in terms of impact, between exploration and mining. Although most people appreciate the need for minerals and accept that same disturbance is necessary, much of their concern is for what happens afterwards.

We have had several controversies where there has been strong local objection to a new proposal. In almost every case, opposition has been withdrawn when details of the proposal were given and the measures to reduce impacts and rehabilitate the site were described.

Therefore please go to the farmer and to the locals and explain what you intend to do, what the actual impacts will be and how you intend to overcome them.

In recent times a fourth element has emerged and here I refer to such political issues as uranium mining and Aboriginal land rights.

While these matters are not always specifically addressed in the Mining Acts, they do have a significant influence on access to land and the conditions that are attached to mining tenements.

Thus there are four parties involved who usually have very different interests

1. The mining company who wants access to land, a secure title and to be able to get on with the job as quickly and efficiently as possible.

2. The surface occupier who has taken up the land for an entirely different use and whose income may be adversely affected by exploration and mining.

3. The public who fall into two groups:

   1) the local residents whose enjoyment of their surroundings may be affected.

   2) the conservation groups who represent the public interest in preserving or protecting the other natural land resources of the site.

4. The pressure groups who are concerned with political matters.

As custodian of the State's land and mineral resources, it is the task of the Government to balance all of these competing interests and expectations through the Mining Act.

There is a choice on how this is done.

The legislation could attempt to address every situation in advance through a detailed set of rules and regulations - a clearly impossible task because of the site specific nature of exploration and mining operations.

Or it could - as the South Australian Act does - provide discretionary powers to meet each situation as it arises.

One criticism of the discretionary system is that people operating under the Act want to know the rules in advance. There is also concern about inconsistencies in administration.

However we feel that the discretionary system has many advantages because it provides the flexibility necessary to treat each case on its merits and to vary approvals by negotiation as circumstances change.

Some people are also wary of discretionary powers because they include the ability to refuse an application without reasons or legal grounds for appeal. However, discretions are generally used to specify the manner in which something is done, rather than to say simply that it can or cannot be done.

For example, in a valuable landscape area, approval for exploration would be given with the proviso that access is to be gained without extensive track construction - and we leave how to do that to the explorer.

Having outlined the issues that a Mining Act has to address, let me return to the subject of tenure and discuss the matter of continuity of title as one moves from the exploration stage through appraisal to production.

We are all aware that the effect of mining a deposit on the landowner, the locality and the environment cannot be determined until the deposit has been discovered and defined.

With the competing interests I discussed earlier, no Government would be so brave - or so foolish - as to give an automatic right to mine at the start of a grass roots exploration programme.

But the Government can and does give an exclusive right to apply to proceed to the next stage of appraisal or production.

In this way the explorer is protected from his competitors even though his expectation of working every discovery cannot be guaranteed at the beginning of an exploration programme.

In return the tenement holder accepts an obligation to perform.

If he doesn't or if he cannot qualify for the relief provided in the Act, then it is reasonable to expect the ground to be given up to another party who wants it and who can perform.

This is the main role of the Warden's Court in South Australia - in granting relief, determining forfeiture applications for non performance and settling other disputes.

The Court is not involved in the hearing or granting of applications for tenements as it is in some States - here these are matters for the Minister under his discretionary powers.

Now it is time I talked specifically about the South Australian Mining Act.

The landowner's interest is accommodated in three ways.

1. Through notice of entry which has to be given at least 21 days before first entering.

   On freehold and perpetual leasehold land, the owner has a right of objection to the Warden's Court but only on the grounds of substantial hardship.

   Notice of entry provisions apply on pastoral leases but the lessee has no right of objection.

   On exploration and prospecting tenements (but not on production tenements) notice of the use of declared equipment also has to be given.

   In general terms, declared equipment means earth moving machinery but there is a detailed specification in the Regulations.

   The owner of any land can object to the Warden's Court on the grounds of hardship from the use of declared equipment.

2. The second protection for the landowner lies in the exempt land provisions.

   This concept is simply that the rights attached to a mining tenement cannot be exercised on exempt land until a waiver of exemption has been concluded either by the parties or in the Land and Valuation Court.

   You should read the definition in Section 9 of the Mining Act carefully to be aware of all of the classes of exempt land but in general, it includes all existing intensive uses of land:

   - cultivated fields, orchards, vineyards
   - land within 150 metres of a bore or surface water storage facility
   - land within 400 metres of a dwelling house
   - waterworks easements and Government forest reserves

Negotiation of a waiver of exemption is usually based on an agreed amount of compensation and the waiver applies to a specified programme of work.

Thus on proceeding from exploration through appraisal to production, three waivers may have to be negotiated - each time the compensation being consistent with the work to be carried out and specified in the waiver.

Where the parties cannot agree on the details of a waiver, the Land and Valuation Court only determines the amount of compensation - not whether a waiver should be given.

3. The third protection for the landowner is a general provision for compensation to be paid to the owner of any land suffering financial loss, hardship or inconvenience as a consequence of exploration or mining operations.

The range of tenements available reflects the needs of the industry in proceeding from grass root mineral search to production.

The Department has compiled a summary brochure on the Act but I emphasise that you must go to the Act and Regulations for the actual legal provisions.

An Exploration Licence is used for large scale mineral search.

It has a maximum area of 2 500 km^2 and may be granted for an initial term of 2 years with provision for extension for a further 3 years at the Minister's discretion.

There is no requirement to progressively reduce the area during the term of the licence.

The obligations are to carry out an agreed programme of work for a specified expenditure and to provide technical reports on a regular basis. These are kept confidential during the term of the licence but are placed on open file for use by other exploration companies when the licence expires.

A licensee cannot be plainted in the Warden's Court for failure to perform but the licence can be cancelled by the Minister for non compliance with the conditions of the licence.

Special conditions can be imposed. For example:

- prior approval may be required to do such things as track construction.

- certain activities, such as drilling within a specified distance of a heritage site, may be prohibited.

- a particular well completion procedure may be specified where useful groundwater aquifers are intersected.

Every applicant for a production tenement must start by pegging a mineral claim and having it registered in the Department.

The pegs identify the area of interest in the field. A claim conveys certain rights which are exclusive to the claimowner i.e.

- to apply for a mining lease

- to prospect and to carry out approved drilling and other appraisal activities

A claim has a maximum size of 250 ha and a term of 1 year. It lapses at the end of that year if application for a mining lease is not made.

It has a labour obligation of 100 man hours per month and a claim can be forfeited to another party in the Warden's Court for failure to comply with this commitment. The Warden may grant suspension of the labour conditions for up to 6 months.

Labour obligations are suspended while a lease application is being considered.

A mineral claim does not give a right to sell or dispose of minerals but the Director's approval can be obtained to remove more than 1 tonne for testing purposes.

The mineral claim is designed for detailed appraisal of a small area by either a prospector taking up a known deposit or a large company after a discovery has been made on an exploration licence.

Our production tenement is the mining lease.

It is granted over a mineral claim and thus has the same maximum area. However the Minister may grant a lease over a smaller area.

Although the maximum term is for 21 years, we usually grant for 7 years at a time. A lease has guaranteed rights of renewal if the lessee has complied with the Act, the Regulations and the conditions of the lease.

Mineral production is the reward for long and costly exploration and so a lease is serious business - it needs a secure title which can be extended for a long term and both the lessee and the Government need a clear understanding of what can and cannot be done.

The first time that all the facts about the site and the deposit are known is at the lease application stage and this is the first point at which a realistic environmental decision can be made on whether mining should or should not proceed.

Although the other land resources on the site are fairly obvious when the discovery is made, it is only when the deposit has been defined and a mining method selected that the actual impacts of mining that specific deposit can be identified.

Various remedial measures can be applied to prevent or reduce these impacts and rehabilitation will determine which impacts remain after mining is finished.

All of these factors are relevant to the Minister exercising his discretion on whether to grant a lease and in determining the conditions to be attached to a lease.

From the company point of view, it would appear a bit late to wait until a deposit has been discovered before this vital decision is made.

However, in practice, there can be a progressive environmental appraisal by the company from the moment of taking up a licence area through the discovery and appraisal stages as

facts gradually become available on the deposit and the potential impacts of mining at that particular location.

Thus the added risk of a refusal to mine on environmental grounds can be continually monitored and the earliest possible decision made to withdraw as soon as it becomes apparent that mining will not be approved.

For a lease application the Department requires a detailed submission consistent with the features of the site.

I emphasise "consistent with the site" because the level of detail would be very different for a simple sand dune mining operation on the Adelaide Plains, a small barite deposit in a Class A area of the Flinders Ranges or a major base metal mine in the wheat lands of Eyre Peninsula.

Before 1981, our lease document gave a right to conduct any mining operation over the whole of the area of the lease - a virtual open ticket to work not only the deposit known at the time but anything else that became economic in the future.

And so the open ticket lease had to have a number of restrictive conditions placed on it - something of a contradiction.

The present document gives a right, exclusive to other miners, to the minerals on the lease but may authorise only a particular operation. Any restrictions will be specific to that operation.

Two examples will illustrate this:

1. In a metropolitan watershed area, gold mining may be authorised but on-site treatment with cyanide not permitted.

2. A lease area may contain say, a barite deposit that can be mined with little adverse impact. It may also contain a high grade quartzite for which there is no present market and where the environmental effects of mining appear to be severe.

We can grant a lease for all minerals but authorise only the mining of the barite.

If at a later time a market arises for quartzite and the lessee can design a mining programme which overcomes the apparent environmental problems, the authorisation would be extended to allow extraction of the quartzite.

There are advantages to both parties in this system.

1. The lessee has an exclusive title to all minerals but as he only wants to mine barite, his application and supporting programme only need to cover that.

2. The Department does not have to consider the possibility of quartzite mining - as in the open ticket system - and so could recommend specifically and quickly on the proposal for barite without at that stage having to include conditions for mining of quartzite.

3. Both parties can thus defer assessment of a quartzite mining proposal until it arises - it it ever does. This system of partial approval and progressive assessment saves time and money for both the Department and the operator and demonstrates the advantages of the discretionary powers of the Act.

Mining leases carry a labour requirement of 100 man hours per month or a variation approved by the Minister. This is usually in the form of reduced hours or a monthly production figure.

We are fairly flexible about this and would recommend any reasonable alternative so long as the lessee demonstrates a serious and practical commitment to work the deposit.

A mining lease can be forfeited in the Warden's Court to another party for failing to meet the agreed labour commitment.

Miscellaneous Purposes Licences are available for the siting of facilities ancillary to a mining operation - tailings dams, living quarters, treatment plants.

The provisions in the Act for these are similar to those for mining leases and I will not discuss them any further.

An explorer is sometimes in the position of being unable to work a discovery because of lack of market or political issues such as a ban on uranium mining.

A Retention Lease is available as a holding tenement in this situation.

It has a maximum area of 250 ha, the same as a mining lease, and can be granted for a term of up to 5 years with renewal at the Minister's discretion.

There are no labour commitments and thus no opportunity for others to institute forfeiture proceedings in the Warden's Court.

Retention leases are also available while bulk sampling and other operations relating to economic or technical appraisal are carried out, particularly where these will take longer than the 1 year term of a mineral claim.

For example, the Bowmans coal trial pit and the Olympic Dam exploration shaft are on Retention Leases.

The type of lease can be converted to a production lease on application to the Minister.

The indenture agreement can be used for major projects such as Olympic Dam where special arrangements for infrastructure and other matters are necessary.

As a land use, mining is a complex issue and the legislation regulating it is correspondingly complicated.

There is criticism in Australia and around the world about the number of permits and approvals needed and the range of Departments to be consulted.

Until recently in South Australia, a mining operator needed a planning consent as well as a mining lease for a new operation.

These were granted by different Departments and it was possible to obtain approval from one and refusal from the other - a frustrating end to a successful exploration programme.

The Planning Act of 1982 introduced a new system of one application and one land use approval from Government.

The approval is a mining lease granted under the Mining Act.

The Mining Production Tenement Regulations of the Planning Act define areas of potential land use conflict such as the coastal zone, areas of landscape value and closely settled semi rural land.

Where a site lies within the scope of these Regulations, a recommendation to grant a lease from the Department of Mines and Energy is referred to the Minister of Environment and Planning for the advice of the S.A. Planning Commission.

If the Commission disagrees with the recommendation or the conditions to be attached to the lease and subsequent consultation between the Ministers cannot resolve the deadlock, the matter is determined by Cabinet.

No referral is required if the site is outside of the areas defined in the Regulations.

The ultimate approval, whatever the route taken, is the issue of a mining lease by the Minister of Mines and Energy.

There is also a need for the approval of the Chief Inspector of Mines under the Mines and Works Inspection Act before operations commence on a lease.

This covers various operational details such as safety and rehabilitation which flow from the basic land use authorisation conveyed by the mining lease.

Some other peripheral permits may be required under other legislation such as the Waterworks Act in watershed zones.

However, the main approval mechanism is the Mining Act and we encourage all operators when dealing with other legislation to work through the Department to ensure that there is no overlap or conflicting conditions.

Finally, a few words about Environmental Impact Statements.

The Planning Act provides for preparation of an E.I.S. where a project is of major social, economic or environmental significance.

All major mining proposals in S.A. require an E.I.S. to be prepared.

The procedures are similar to the Commonwealth system and the State Department of Environment and Planning acts as the agent of the Federal Government where an E.I.S. is required under both Acts.

Although E.I.S. procedures are managed by the Department of Environment and Planning, we encourage companies to work through us whenever an E.I.S. is required.

I have described today the basic requirements of a Mining Act and the reasons for them, together with a broad introduction on how these principles are addressed in the South Australian Mining Act.

However each State differs significantly in the way it treats these matters.

Thus I emphasize your need to be totally aware of the detailed provisions of the legislation applying in the State in which you are operating.