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### **Submission on the South Australian Mining Act Review 2025**

Dear Paul

Cement Concrete & Aggregates Australia (CCAA) welcomes the opportunity to provide input on the South Australian Mining Act Review 2025.

Cement Concrete & Aggregates Australia (CCAA) is the voice of the heavy construction materials industry representing cement manufacturers, concrete suppliers, and extractive operators throughout Australia.

Our members range from large global companies to SMEs and family operated businesses and are engaged in the quarrying of sand, stone and gravel, the manufacture of cement and the supply of pre-mixed concrete. These businesses service local, regional, and national construction and infrastructure markets to meet South Australia's building and construction needs through the provision of roads, railways, bridges, ports, airports, hospitals, schools, and footpaths. The reliable and cost-effective supply to these markets is fundamental to sustainable growth and it is CCAA's aim to promote policies that recognise the importance of these materials to Australia's sustainable future.

#### **Recommendations**

In addition to the points and supporting information outlined below and our referenced submissions, CCAA makes the following specific recommendations:

1. CCAA and all of its member companies are unanimous that there should be no changes undertaken to the private mine provisions contained in the Mining Act. They were comprehensively and materially addressed four years ago to reflect what we see in the Act today. It is on this basis that all of the companies who hold private mines work and have the right and expectation that they will be able to continue on a clearly defined basis into the future including in relation to their operating documents, until at least 2036.
2. CCAA would be supportive of a change to the Mining Act that would automatically see Private Mines lose that status if the Private Mine has not been used for a period of 10 continuous years or more, provided that there was an appropriate transition period if adopted.
3. CCAA contends that it is worth considering a change to the term "Private Mines" to reflect the nature of the term and also to reflect the changes that occurred under the new Mining Act 2021. A term such as "Foundation mine" could be considered.

4. CCAA supports the submissions made by the South Australian Chamber of Mines and Energy (SACOME) and the Association of Mining and Exploration Companies (AMEC) in relation to matters not covered by CCAA

## **Issues Paper**

The Issues Paper seeks to create discussion and invites submissions on six different parts of the Mining Act as follows:

- Exploration tenure;
- Part 9B of the Mining Act 1971;
- Forfeiture;
- Legislative consistency;
- Legacy matters;
- Technical and operational amendments.

These are diverse issues of relevance to many different participants in the mining industry in this State. Given the nature of the CCAA's member representation, it is not proposed to make detailed submissions in relation to all of the items contained in the Issues Paper, however CCAA supports the submissions made by the South Australian Chamber of Mines and Energy (SACOME) and the Association of Mining and Exploration Companies (AMEC) in relation to matters not covered by CCAA

Of particular and critical importance to the extractive industry represented by the CCAA are the matters addressed in section 5, relating to "Private Mines".

CCAA members were disappointed to see such an important subject noted simply as a "legacy matter". To CCAA members, the issues raised under that heading foreshadow critical further erosion of the status of the concept of the "private mine" in this State.

## **Private Mines**

### **Background to private mines**

The private mine is a concept unique to South Australia and historically carried with it material differences from the provisions otherwise applied to the regulation of the extraction of minerals in this State.

Its origins arise from the Mining Act introduced into South Australia in 1971 which, in its amended form, remains the foundation of the regulation of mining activity today. At the time the Act was introduced, a large percentage of the State's resources, in particular its extractive resources, were the property of persons holding Certificates of Title that included ownership of, and the right to mine, the minerals contained in that land largely without impediment and to the boundaries of the land.

The Mining Act 1971 however, sought to take ownership of those minerals from their owners and vest them in the State. By way of substitution for taking those minerals, the Mining Act provided for a scheme which enabled persons for a limited time period, who had the benefit of the ownership of those minerals, to apply for and obtain a "private mine" under the Act and in that capacity, to retain the right to the resources on their land and to continue to operate with a less restrictive legislative regime than otherwise applied.

The private mine was the subject of discrete legislative and regulatory provisions and except to that extent, the other regulatory provisions of the Mining Act did not apply. The value of a private mine to those who sought and obtained one was seen (and was intended) to be in substitution for the specific proprietary rights to minerals that were contained in the Certificates of Title those persons previously held.

In many cases, the economic value of private mines and the minerals to which they related, was high and justified the amounts paid for private mines on the rare occasions they came on the market. Private mine status was valuable and highly prized. It is accordingly no surprise that the present foundations of nearly all of the major extractive industry operations across the State lie in private mines.

The private mines held in this way have always been regarded by the companies fortunate enough to hold them, as rights of high value and high certainty.

### **Amendments to Mining Act in 2021**

In 2021, the Mining Act and its Regulations were introduced representing the outcomes of a major process of reconsideration and review of the Act that had been conducted for a number of prior years. That review extended over almost all provisions in the Act, but in particular, from an extractive industry perspective, major changes were made to the provisions applicable to private mines.

These changes had been the subject of extensive consideration and debate with the Department for Energy & Mining, the Minister, and the public including any person or group with an interest in the outcome.

Extensive submissions were made as part of that process included orally in meetings and ultimately by way of formal written submissions lodged by the CCAA on behalf of its members and individually by many of its members and other persons.

This was the first time the concept of the private mine had been materially reconsidered since its introduction some 50 years earlier. During that period, private mines had operated pursuant to their discrete provisions in the Mining Act and had generated effective, workable outcomes to those who held them, the Department for Energy & Mining and the community.

The 2021 amendments resulted in many changes to the Act, but the most significant for holders of private mines were:

- Despite their unique proprietary status, private mines were deemed to be a “tenement” under the Act to be dealt with and managed in ways that aligned with the provisions applicable to other mining tenements.
- Instead of holding unique status under the Act, where only provisions expressly applicable to private mines were relevant, the Act was framed in a way where all provisions of the Act were deemed to be relevant, unless specifically excluded in relation to a private mine.
- In addition to those two fundamental provisions, as the Department for Energy & Mining notes in the Issues Paper:
- Private mine operating approvals were legislated to transition from mine operations plans (MOPs) to programmes for environment protection and rehabilitation (PEPRs) on 1 January 2036.

- A streamlined process was introduced to revoke private mines that are not currently being operated and/or which have no likelihood of being operated in the future.
- A more modern definition of environment and updated and expanded compliance tools for private mines were introduced.

As indicated above, these were fundamental changes to the status of private mines which raised great concerns in the industry about them ceasing to reflect their unique proprietary origins, their value and the fact that they underpin so much of the extractive industry operations in the State.

Notwithstanding this outcome, the extractive industry operators were relieved to see that the private mine was to be preserved retaining some critical features reflective of their historic status with certain listed provisions of the Mining Act not to apply even though its operational characteristics were more closely aligned with tenements under the Mining Act.

The most fundamental provision retained was that the tenure provided by a private mine was not limited by time and had a long term provision (until 2036) before the alignment of its MOPs with the requirements of PEPRs. The removal of the applicability of the “Notice of Entry” provisions of the Mining Act was also a key ongoing feature of the Act.

There are also specific advantages granted to the holders of private mines lying outside of the Mining Act itself, including that the Planning Development and Infrastructure Act generally has no application to developments within them, and an acknowledgement of their ongoing status contained in the Nature Vegetation Act and Regulations in respect to the ability to clear as operational developments require.

There is no evidence presented that the current provisions in the Mining Act do not or cannot work effectively or that the current provisions give rise to a lack of environmental or operational rigour in their application. In particular, the experience of CCAA members over the last four years indicates the Department for Energy & Mining are applying the highest standards of rigour to any application to review a MOP for a private mine. No inadequacy in that process has been raised by DEM with CCAA.

In the above context, the CCAA and all of its member companies are unanimous that there should be no changes undertaken to the private mine provisions contained in the Mining Act. They were comprehensively and materially addressed four years ago to reflect what we see in the Act today. It is on this basis that all of the companies who hold private mines work and have the right and expectation that they will be able to continue on a clearly defined basis into the future including in relation to their operating documents, until at least 2036.

### **Revocation of a Private Mine**

It has been one of the features of the private mine in the Mining Act since 1971 that there is a process enabling the Minister to secure the revocation of private mines in circumstances where they are not operated or have no likelihood of being operated in the future.

The Issues Paper also notes that in the 2021 amendments circumstances “a streamlined process was introduced to revoke private mines”.

The Issues Paper notes there are some 316 private mines currently in existence in South Australia. This is not reflective of the nature and size of the operations conducted on private mines. When the opportunity to obtain a private mine was first introduced into the Act in

1971, in addition to the significant operating interests now represented by the CCAA, many people who had minerals on their land and thought might be capable of extraction at some future time, sought to obtain the status of a private mine over that area. Provided the appropriate information was supplied, private mines were granted to those persons. Today, many of those private mines have not ever been used or have been compromised by other developments such that they will never be able to be used.

There is no doubt that the power to seek to revoke a private mine in circumstances where it has not or will not be used needs to be retained. It is also the fact that there are likely more private mines that are not being used than are used as part of current or future mining operations. This reflects the fact that (to the knowledge of the CCAA) the Minister through the Department for Energy & Mining has never sought to undertake such a process of revocation. It is an opportunity that has been available for more than 50 years and can be taken up at any time.

CCAA would be supportive of a change to the Mining Act that would automatically see Private Mines lose that status if the Private Mine has not been used for a period of 10 continuous years or more, provided that there was an appropriate transition period if adopted.

### **The name “Private Mine”**

In a consultation meeting between the CCAA and the Department for Energy & Mining held in respect to the Issues Paper, the Department noted that some drivers of the paper were “crossbench interest in private mines” and ongoing feedback from “community groups”. It has been noted by some members of the CCAA that the use of the title “private mine” creates some perception in the community and its representatives that a “private mine” contains some element of privilege and exclusivity that is inappropriate and not available to others.

The title “private mine” is a product of the wording of the Mining Act 1971 and reflects no more than the unique nature of operating rights that were to be given to persons who had previously owned the right to minerals in their land. It is a different class of rights, not one representing exclusivity or privilege. It is a name only. In reality, private mines are just as effectively regulated today as any other mining rights granted under the Mining Act.

CCAA contends that it is worth considering a change to the term “Private Mines” to reflect the nature of the term and also to reflect the changes that occurred under the new Mining Act 2021. A term such as “Foundation mine” could be considered.

### **Issues Paper – Options and Questions**

The Issues Paper contains four “*questions*” to “*further align the regulation of private mines and other mining activities*”. The position of CCAA members is that the existing provisions of the Act should be allowed to stand as they are, none of the four options proposed are supported.

In summary, the options are:

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| <p><b>Option 1</b> “<i>Bring forward the transition of private mine operating approvals from MOPs to PEPRs prior to 2036</i>”.</p> | <p>This is not supported. It denies all of the work and effort that was put into arriving at an appropriate mechanism and time frame to achieve the effective operational provisions and timeframes settled in the 2021 amendments.</p>  |
| <p><b>Option 2:</b> Apply the definition of “<i>environment</i>” in the Mining Act to private mines.</p>                           | <p>Again, the definitions currently in place were the product of detailed analysis resulting in the 2021 amendments. There is no reason to add the additional aspects referred to which are not material to the fundamental rights of extraction available under a private mine from 2021. It is likely there would be very little material difference between the matters actually addressed in the slightly different definitions of “<i>environment</i>”.</p>   |
| <p><b>Option 3:</b> Private mines convert to a mineral tenement upon transfer by, or death of, a proprietor.</p>                   | <p>No rationale is offered for this proposal. The transfer of a private mine (usually held by a corporate entity) should not then deny its status. The private mine should be readily transferable and continue to be subject to the current Mining Act provisions. For private mines held by a personal proprietor, on death they should be transferred with all of the rights and opportunities that were available at that time. CCAA offers up an alternative method of private mine rights ceasing after a period of 10 consecutive years of not being mined.</p> |
| <p><b>Option 4:</b> Transition private mines to an existing form of claim, lease or licence under the Mining Act.</p>              | <p>Again, no rationale is offered for this at all. A private mine is a separate and distinct form of tenement under the Mining Act and should remain in that form. Private Mines have an inherently higher value from an industry perspective and any change will diminish the value of these operations and creates a sovereign risk issue. The</p>   |

status of private mines helps our industry justify investment which our state requires.

## **Conclusion**

We urge the South Australian Government to not make any further changes to Private Mines at this time, where the sovereign risk could lead to reduced investment in quarries at a time when infrastructure, hospitals, housing and renewable energy projects desperately need the industry to further invest to provide more materials to meet the increased demand.

CCAA is however prepared to work with the State Government to simplify the way in which private mines that have not been utilised for a period of 10 consecutive years or more can be revoked automatically.

CCAA also considers that a change to the term “private mines” is worth considering.

CCAA and its members are prepared to spend the time to work with the Government in the design of any changes.

CCAA appreciates the opportunity to comment on the Mining Act Review 2025 and encourages the South Australian Government to consider our recommendations.

For further information, please contact State Director Jason Kuchel on 0448 848 848 or on [Jason.kuchel@ccaa.com.au](mailto:Jason.kuchel@ccaa.com.au)

Yours sincerely

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