

Landholder rights and Access Arrangements in relation to mineral exploration and mining in South Australia

Guidelines for Landholders and Mineral Explorers

Minerals Regulatory Guidelines MG4

Mineral Resources Group

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A guide to landholder rights and what to expect during mineral exploration and mining

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Cover photo. Mineral company liaison officer on a site visit to discuss project with local landholders. (Photo 407196)

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Revision history

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1.1	09/02/07	Reformatted; added 'Introduction' (Section 1); revised 'Role of PIRSA' (Section 8) and 'PIRSA contacts' (Section 9).
1.2	09/11/07	Revised to include exploration activities.
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1.4	28/07/08	Reformatted; edited.
2.0	01/07/11	This new version has been created to incorporate legislative changes made to the Mining Act 1971 which came into operation on 1 July 2011. It incorporates relevant content and guidelines from the now superseded <i>MG7 Guidelines for mineral explorers: landholder liaison in South Australia</i> .

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Shortened forms

DEF	declaration of environmental factors
EWA	exploration work approval
PEPR	program for environment protection and rehabilitation
PIRSA	Primary Industries and Resources South Australia

PART 1 – Guidelines for Landholders

1 Introduction

Part 1 of this document has been prepared by Primary Industries and Resources South Australia (PIRSA) to provide you as a landowner with information about your statutory rights and what you may expect in regards to proposed exploration and mining operations on (or near) your property. It is aimed primarily at pastoralists and other rural landholders (both leasehold and freehold); however it is recognised that there may be other parties who have an interest in land.

Part 2 of this document provides a guideline for explorers on the principles of effective engagement and consultation. Good relations between a landowner and explorer can only be developed through open, honest and transparent communication processes.

PIRSA and the South Australian Government are committed to ensuring exploration and mining activities follow a suite of well-established procedures that have been in practice worldwide for many years and have proven to be safe and environmentally responsible.

In general, exploration and mining activities are conducted in accordance with the requirements of appropriate Australian Standards, the South Australian *Mining Act 1971* (Mining Act) and Regulations, and site-specific approval requirements. Each of these documents seeks to create an environment of best practice operations and requires that mining companies perform their activities within a framework of responsibility for the environment, public safety and interaction with landowners.

These guidelines aim to ensure that landowners are aware of their rights and considerations in relation to having exploration activities or an operating mine on (or near) their land. For proposed mines, this information is provided in addition to the detailed public information contained within the mining proposal, and for operating mines the program for environment protection and rehabilitation (PEPR) for the mine or quarry. The companion Minerals Regulatory Guidelines MG1, *Guidelines for miners: mining approval processes in South Australia*, provides detail on the statutory assessment process required to be followed for all new mining proposals in South Australia. These documents can be obtained from the PIRSA Customer Services Centre¹ or from the PIRSA Minerals website². Copies of the Mining Act and Regulations are available at cost from ServiceSA³ or free download from the South Australian legislation website⁴.

As mineral rights are not held by right of title to land in South Australia, but are generally vested in the Crown, the Mining Act allows for private companies to conduct mineral exploration and mining on most land in South Australia, including freehold and pastoral land, subject to approval by PIRSA. However, where land is being used for certain purposes the Mining Act provides that such land is 'exempt' from mining and exploration until an agreement is reached, or 'waiver' signed which specifies under what conditions operations may take place, so that impacts to the existing land use are minimised and/or appropriately compensated. You may be approached by a mining company to enter into a Waiver of Exemption Agreement to waive your statutory rights under the Mining Act. The mining company must first serve you with a Waiver of Exemption Notice (Form 23A) which includes a draft Waiver of Exemption Agreement (Form 23B). These guidelines are designed to assist you in deciding whether or not to sign a waiver agreement.

1 Level 7, 101 Grenfell Street, Adelaide 5000, phone +61 8 8463 3000, email <pirsa.customerservices@sa.gov.au>

2 <www.minerals.pir.sa.gov.au> Go to Mining Operations, Mining Operations Guidelines.

3 EDS Centre, 108 North Terrace, Adelaide 5000, phone 13 23 24

4 Attorney-General's Department <www.legislation.sa.gov.au>.

PIRSA aims to continuously improve this document to ensure that it meets the needs of landholders. Your comments and suggestions for improvement would be much appreciated. Use the feedback form provided at the end of this document or email PIRSA at <pirsa.customerservices@sa.gov.au>.

2 Role of PIRSA

PIRSA's main role is to ensure that the Mining Act and Regulations are complied with, but also to ensure that mineral resources, which are owned by the whole community, are developed in a way that balances the economic, social and environmental effects.

PIRSA will assess exploration activity applications and ensure these activities are conducted in a manner compliant with the approved PEPR, current industry standards and any conditions that are placed on the approval. PIRSA will follow up any complaints from landowners and take appropriate action as required.

For mining proposals, PIRSA will ensure that the Form 21 (Notice of entry on land) has been served and that the appropriate waivers have been obtained. PIRSA will ensure that statutory consultation has occurred on the mining proposal, and will assess the proposal submitted by the mining company to ensure that appropriate environmental standards (outcomes) are set, and that appropriate strategies and procedures are in place to provide assurance that the mining company can operate the lease in way that will meet those standards. The required standards are determined on a case-by-case basis and are reflected in the lease conditions imposed on the lease at grant, and in the PEPR, which is reviewed and approved from time to time during the life of the mining operation. PIRSA also has a role to ensure compliance with the Mining Act, lease conditions and the approved PEPR.

3 Notice of Entry

Prior to gaining access to your land for the purpose of exploring, mining or pegging a claim for future mining, a person must first be authorised as required under the Mining Act. This authorisation may be given by written agreement with you or by serving you a statutory Form 21 (Notice of entry on land) under the Mining Act.

If Form 21 is given, the notice must be served at least 21 days before entering the land. The notice may be served by personally handing the notice to you or through the post.

If you are a freehold landowner you have a right of objection to entry. An objection must be lodged with the Warden's Court and within 3 months from the date of service of the form (the objection may be lodged after the mining operator has entered your property and commenced the activity). PIRSA can assist you in how to lodge a complaint. Pastoral leaseholders are not able to lodge an objection, but may still be able to claim compensation.

Sections D, E and F of Form 21 must include details of *what*, *where* and *when* the activity is proposed or a process to inform you at the appropriate time about the specific activity. Appendix A1 outlines questions to ask a mineral explorer when contacted regarding access to your property. Appendix A2 outlines the type of questions an explorer should be asking you before they enter your property.

You should expect to see from the company the following information:

- a reasonable description of the proposed exploration or mining operations
- maps and plans that show the location of proposed activities
- the proposed duration of operations

- potential impacts on your continued use and enjoyment of your land, and how those impacts will be managed by the company
- proposed commitments by the company on the environmental standards and outcomes to be achieved, developed after consultation with you, that will be incorporated into the exploration work approval, mining proposal or PEPR submitted to PIRSA for approval
- information on your rights under Part 9 of the Mining Act which deals with access to land, use of declared equipment and compensation

If you do not consider the level of information supplied is adequate to meet your needs then you should ask the company for more information.

Posters summarising typical mineral exploration processes and their associated environmental management are provided in Appendix A3.

Note: fossickers (those who gather minerals as a recreation and do not disturb the land or water with machinery or explosives) are not subject to the Mining Act and can only enter the land with the owner's permission.



Example of mineral exploration drilling. (Photo 407194)

4 Use of declared equipment

'Declared equipment' includes major earthmoving equipment such as excavators, bulldozers and drilling rigs. Where declared equipment is proposed to be used, authorisation may be given by written agreement with you or by serving you a statutory Form 22 (Notice of use of Declared Equipment). Form 22 is required to be served for the use of declared equipment on exploration licences, retention leases and mineral claims, but is not required on a mining lease.

If Form 22 is given, the notice must be served at least 21 days before entering the land. The notice may be served by personally handing the notice to you or through the post.

If you are a landowner you have a right of objection to the use of the declared equipment. An objection must be lodged with the Warden's Court and within 3 months from the date of service of the form (the objection may be lodged after the mining operator has entered your property and commenced the activity). PIRSA can assist you in how to lodge a complaint. Pastoral leaseholders *are* able to lodge an objection in this case.

Under section 70F of the Mining Act, PIRSA is able to direct the mining operator to restore any damage to your land as a result of use of the declared equipment.

5 General compensation rights

Section 61 of the Mining Act provides for compensation to you as a landowner (including pastoral leaseholders) for economic loss, hardship and inconvenience caused by mining operations on your land. This could include compensation for negotiating access to your land and any costs to you in obtaining independent legal advice. A checklist for compensation issues is provided in Appendix A4.

PIRSA is not able to provide advice on the appropriate level of compensation, as this needs to be determined on a case-by-case basis through negotiation.

If you are unable to reach an agreement on the appropriate amount of compensation, either you or the mining company are able to take the matter to the 'appropriate court'. The appropriate court varies depending on the amount of compensation sought. As part of the hearing on compensation, the court may order the mining operator to rehabilitate your land disturbed by mining.

As exploration is usually transitory and a low-impact activity on a person's land, there is often less scope for compensation. However, a landowner is still entitled to seek compensation and if the parties cannot agree the Warden's Court will decide the issue.

6 What is exempt land?

The categories of exempt land are set out in section 9 of the Mining Act, and those relevant to private landowners are summarised below:

- land that is lawfully and genuinely used as a yard, garden, cultivated field (any field that is cultivated on a regular basis and/or is in the process of being re-established as cultivated land), plantation, orchard, vineyard, or as an airfield
- land that is situated within 400 m of a building or structure used as a place of residence
- land that is situated within 150 m of a building or structure with a value of \$200 or more used for an industrial or commercial purpose, or a spring, well, reservoir or dam. (Note that the Warden's Court has previously ruled that a water bore falls within the definition of a well.)

For landowners there are two categories of exempt land. Your property may be exempt because: (i) *on it* is a house and sheds, cropping land, a vineyard etc.; or (ii) *of the proximity* of your house, sheds or water supply to the proposed exploration or mining activities on neighbouring land.

It is important to note the difference between the area of an exploration licence or mining lease and the site of exploration or mining operations within that area. The set-off distances for exempt land (e.g. 400 m from a residence) apply from the closest point of the proposed mining operations, rather than the boundary of the licence or lease.

Exempt land provisions also apply to activities that are authorised under a miscellaneous purposes licence granted under the Mining Act. This includes things like access roads, pipeline and powerline corridors, and mineral processing plants.

Exempt land provisions do not apply to private mines. If you are a neighbour of a private mine, the operator may be able to mine closer to your home than 400 m depending on the terms of the mining operations plan for that mine. No new private mines can be granted by PIRSA.

7 What does exempt mean?

Exempt land means that a mining company cannot conduct any activities under their licence or lease until the landowner decides to waive the exemption and has reached an agreement with the mining company regarding compensation and conditions of entry. If the parties cannot negotiate an agreement to waive the exemption, the Environment Resources and Development Court may determine the mining company's right of entry.

In most cases, negotiation between the parties is successful in reaching agreement on compensation and conditions for waiving the exempt status of the land.

The Mining Act provides that in the rare event of disagreement, the onus falls on the mining company to apply to the Environment Resources and Development Court for a determination. In cases where a determination has been sought, the Environment Resources and Development Court has generally found that a combination of specific access terms and conditions and compensation can be determined to satisfy the needs of both parties.

The preferred outcome is that the parties reach this outcome through their own agreement. Either party may engage lawyers or other advisers to advise on an agreement. A landowner is entitled to claim up to \$500 from the mining company to seek legal assistance in relation to the exempt land provisions in the Mining Act. If you are claiming costs for legal assistance ensure you provide a copy of the account to the mining company for ease of payment.

Prior to entering into an agreement, the mining company must first give notice using the statutory Form 23A to the person who has the benefit of the exemption.

If the outcome is an agreement, the Mining Act and Regulations provides that an agreement must include the following details:

- the full name and address of both parties
- the details of the exemption
- set out any conditions which the exemption will be subject to
- include a statement which sets out the cooling-off rights of the person who is waiving the benefit of an exemption.

Alternatively, you may use the statutory Form 23B as the Agreement. In most cases Form 23B will usually be produced by the mining company to the landowner. The landowner and the mining company must sign this form.

It is important to note that once you have entered into an agreement with the mining company you have five business days to cool-off from the date the agreement was made. If you have reason to rescind the

agreement, you must do so in writing and give it to the mining company either in person; or by post; or drop it off at their business address; or facsimile; or email.



Exploration company liaison officer meeting with local landholder. (Photo 407176)

8 Freehold landowner's right of veto over mining of extractive minerals

Apart from the exempt land provisions, it is also important to note that there are special rules for freehold landowners with respect to the mining of extractive minerals. The Mining Act distinguishes between the mining of extractive minerals such as sand, rock, gravel and clay, and other types of minerals in a number of ways.

Importantly for freehold landowners, the Mining Act confers this effective right of veto over mining of extractive minerals, as the landowner must consent in writing to mining, and this decision cannot be overruled in the Warden's Court.

It is up to the landowner if they propose to give consent that they ensure they have a comprehensive agreement with the operator on issues of access, rehabilitation, compensation etc.

9 Things to consider regarding exempt land

There are a number of factors that landowners need to be aware of in claiming exempt status or deciding to enter into a waiver agreement for this land. These are discussed below.

9.1 Exempt status does not prevent the pegging of a mineral claim

There is a specific exclusion that allows a mining company to merely peg a mineral claim on exempt land without a waiver agreement. A mineral claim is essentially a small exploration tenement that is not granted by PIRSA but comes into existence upon the act of pegging. It is then registered by PIRSA. This means the mining company can only put pegs in the ground to identify the area of the claim. After it is pegged and registered no work can be done on the claim without a waiver agreement.

9.2 Exempt status does not prevent the granting of a licence or a lease, only operations

The Mining Act specifically prohibits operations from taking place without a waiver agreement, rather than preventing the grant of a tenement such as an exploration licence or mining lease. This means PIRSA can grant a licence or lease without sighting any waiver forms.

9.3 Exempt status should be claimed and is a matter of fact

Although mining companies are usually required to serve a Form 21, Notice of Entry, on landowners⁵, which alerts owners to what exempt land means, there is no onus on the mining company to make an assessment of the land for exempt status. In most cases it will be obvious and in the interests of the mining company not to go onto that exempt land.

However, landowners should always take positive steps to protect their rights under the Mining Act to assert their exempt land status to the explorer, and seek agreement with the mining company if they wish to do so. If there is a dispute over whether land is exempt (e.g. whether land is cultivated or not), this is a matter of fact that needs to be determined by the Environment Resources and Development Court.

9.4 Exempt status and location can change over time

It is possible that changes in the use of your land can affect the exempt status, or vice versa. For example, if cultivated land is left uncultivated for a very long time, it may no longer be considered cultivated and therefore not exempt. Similarly if you move or abandon a dam or a structure then the status of the exempt land around those things will change.

⁵ Unless an agreement has been reached.

9.5 Exempt status cannot be created after a tenement has been granted or a claim pegged

The Mining Act makes it clear that a landowner cannot claim exempt land status for doing things like constructing a shed, dam etc., or deciding to plough a field, after an exploration licence or mining lease has been granted by PIRSA. Satellite imagery is usually available to verify when structures were constructed.

9.6 Waivers are not forever

The Mining Act allows the exempt status of land to revive either at the end of exploration or mining operations to which an agreement or court determination is related, or to an earlier time stipulated in the agreement or determination. This means that it is possible for landowners to negotiate with a mining company for operations to be conducted efficiently and to leave their land as soon as possible.

Landowners should consider whether or not to waive the exempt status only for exploration in the first instance, and to reserve the right to negotiate a new waiver agreement for any proposal to proceed to mining.

You are also advised not to grant a waiver that generally waives your rights for any mining activities that may be conducted in a mining lease, but rather the waiver should be specific to the exploration work approval or mining proposal discussed with you and approved in the PEPR.

9.7 Understand the impacts mining may have on your use of the land

Before waiving your rights or agreeing to compensation, you should expect that the company will give you sufficient detail of their proposed activities such that you may make an informed decision on the proposal. This information should include details of *what*, *where* and *when* the activity is proposed. Refer to Section 3 for what you should expect to see from the company.

9.8 Interests of mortgagees

If freehold or leasehold land is mortgaged, then landowners may have an obligation to their mortgagee to seek their consent to enter into a waiver agreement.

You should also consider advising other relevant parties who have an interest in activities on your land (for example sharefarmers) about a waiver agreement.

9.9 Agreements and determinations run with the land and the tenement

A waiver agreement or determination is binding on the successors in title to both the land and the holder of the mining tenement.

Although waiver forms are registered on the Mining Register, this does not mean that they will be revealed on a property title search. Owners of land that have entered waiver agreements should disclose the existence of a waiver agreement to a potential purchaser of the land.

9.10 Disclosure of agreements

The Mining Regulations require that the waiver agreement between the landowner and the mining company be lodged for registration with the Mining Registrar. In the case of an exploration licence a copy of a waiver agreement must be lodged only when requested to do so by the Mining Registrar.

An Environment Resources and Development Court determination is a public document, unless the parties seek a confidentiality order from the court as part of the determination.

9.11 What sort of compensation is available?

As discussed in section 7 above, A landowner is entitled to claim up to \$500 from the mining company to seek legal assistance in relation to the exempt land provisions in the Mining Act. It is important to note that the entitlement to claim up to \$500 is in addition to your statutory compensation rights under section 61 of the Mining Act.

As the details of waiver agreements are negotiated between the landowner and the mining company and are usually specific to that landowners use and enjoyment of their land, it is inappropriate for PIRSA to provide any sort of guidance to landowners on possible levels of compensation. There are some Warden's Court or Environment Resources and Development Court determinations that can be researched by landowners, or a legal representative may assist in negotiations.

Experience has shown that better outcomes can be achieved through the parties focusing on conditions of access and conduct of operations to minimise impacts rather than solely monetary compensation.

It is really a matter of commercial negotiation between the parties as to reaching agreement on these matters.

9.12 Combination with other agreements under the Mining Act

It is sometimes the case that a landowner may have some land that is exempt and some that it not, and that mining or exploration will affect both types of land. Section 61 of the Mining Act provides that owners of land (whether exempt or not) that are affected by exploration or mining are entitled to compensation, either through private agreement or via the appropriate Court.

It is the usual practice in these cases that the mining company will seek a global compensation agreement with the landowner to cover all land, including exempt land. The essential difference with exempt land is that the Mining Act specifically recognises the degree of impact mining or exploration will have on some existing land uses (e.g. residential housing and private commercial use) and provides some greater protection with respect to that land.

Over a number of cases in the Warden's Court, the warden has developed a certain approach to these differences, as summarised below:

- Where land is not exempt, mining ought to proceed unless the landowner can show substantial hardship. Hardship may be mitigated by conditions and/or compensation to allow mining to proceed.
- Where land is exempt, the exemption should only be removed if conditions and compensation can be imposed such that mining is not an unreasonable imposition on the landowner's enjoyment of the land.

9.13 Enforcement of agreements

If the landowner and the mining company have reached an agreement for access and compensation such that the landowner then signs a Waiver of Exemption Agreement, the agreement should provide for how the agreement will be enforced if the mining company defaults on their obligations (e.g. to pay compensation or not to go over the end date).

9.14 Role of PIRSA in relation to waivers

If the Waiver of Exemption Agreement only relates to an exploration licence, the mining company does not need to lodge the waiver agreement with the Mining Registrar, unless it is specifically requested by the Mining Registrar in a particular case.

For mining, all waiver agreements must be lodged with the Mining Registrar who ensures that the waivers are registered on the PIRSA Mining Register and are available for public inspection.

When an application for a mining lease is made to PIRSA, the applicant must identify the exempt land within the proposed lease.

In some cases, PIRSA may request a mining company to provide evidence of Waiver of Exemption Agreements.

Other than these aspects, PIRSA does not regulate or enforce waiver agreements or determinations.

10 What happens in the Environment Resources and Development Court?

The Environment Resources and Development Court is a relatively informal court in which parties are free to represent themselves or engage lawyers to represent them.

Although the Court has the power to award costs, it is less likely in cases involving exempt land unless a party is being clearly unreasonable.

The Court will hear the evidence put forward by each side and may adjourn proceedings to allow further evidence to be presented. The judge will also use the proceedings to encourage the parties to reach an agreement. The Court provides a mediation service which may negate the need for a formal determination if the parties reach an agreement.

A Court determination is enforceable as a court order and if a breach of these orders is alleged, the matter needs to go back to the Environment Resources and Development Court.

11 What do you do if you see mining near your home without your prior agreement?

If you see mining operations near your home without your prior agreement there may be a number of possible explanations and you are encouraged to contact PIRSA to find out whether these activities are in fact authorised mining under the Mining Act or not.

For example, the apparent mining could be: illegal mining; a new council or government borrow pit for road works (which are exempt from the Mining Act); a landowner taking extractives for their own use; earthmoving under an approved development under the *Development Act 1993*; or a private mine.

In some cases your land may be exempt and therefore a waiver agreement is required, and in some cases the Mining Act does not apply and therefore the exempt land provisions under the Mining Act do not apply either.

If a mining company does encroach on exempt land without a waiver, then the person entitled to the exemption may seek orders from the Warden's Court (or ERD court???) to remedy the situation.

PART 2 – Guideline for Explorers

12 Introduction

The nature of operations in the mineral resources sector, whether they are in the exploration or mining stage, are such that they have varying degrees of economic, social and environmental effects. The sector is the source of a significant proportion of the materials and energy on which our society depends. It supports regional communities, creates employment, provides facilities and enhances services, including health, education and welfare through its contribution to local, regional and national economies. The industry's commitment to sustainable development includes minimising any possible adverse effects on the environment and community. For mineral exploration, the landholder — i.e. the person(s) who have an interest in the land by way of freehold or leasehold title, or dedicated reservation (park, road reserve, easement etc.) — is a key stakeholder in relation to the activities that explorers need to undertake as part of their business.

Good relations between landholders and those involved in mineral exploration are based on open, honest and transparent communication where each party clearly understands the interests and objectives of the other, and can discuss and agree on a process to best achieve these. The landowner and the explorer are both obliged to care for the land and use its resources in a sustainable way. This can only be achieved if each party knows what the other is doing and can integrate their management practices. The purpose of these guidelines is to promote communication to establish good working relationships between landholders who have surface rights, and explorers who are authorised under the Mining Act and Regulations to enter the land to search for mineral deposits.

13 Responsibilities of parties

In dealing with landholders, the exploration company should aim to:

- establish and maintain close liaison with the owner and occupier of the land on which exploration is conducted
- ensure the landholder is aware of their rights
- understand the landholder's business and potential impacts that may arise from exploration activities
- avoid damage to improvements (including water supplies), and carefully manage activities in relation to their effects on vegetation and land
- avoid interference with crops, livestock and other economic activities on the property
- avoid disturbance to the owner's house and other amenities from noise, dust and other nuisances
- rectify damage to the property or improvements without delay
- negotiate and pay compensation promptly
- ensure that all employees and contractors know of and comply with the company's obligations and commitments.

It is reasonable for the explorer to expect the following from the landowner:

- timely responses to requests for information or to notices issued under the Mining Act
- timely communication on any issues of concern or special management requirements for the property
- best endeavours to accommodate the explorer's reasonable needs
- timely advice on any changes to previously agreed stock or management programs
- no interference or damage to temporary markers, exploration equipment or campsite facilities etc.
- property personnel (managers, farmhands etc.) being made aware of agreements and arrangements in place with the explorer
- respect for the confidential nature of exploration and results of the work.

14 Principles of effective engagement/consultation

Engagement requires an open, active and voluntary approach to dialogue that identifies the current positions of all parties, outlines their objectives and outcomes, and discusses and identifies the processes to best achieve them. The parties may change over time, but engagement itself is a continual process.

Effective engagement with stakeholders is essential for any successful enterprise. It can also result in a more efficient use of resources through:

- increased effectiveness and efficiency during program implementation from the incorporation of local knowledge
- beneficial assistance and advice from locals/stakeholders who are interested in, and supportive of, the project
- reduced risk of conflict and associated delays, frustration and costs
- reduced risk of criticism and resistance from outside parties
- ensuring compliance with relevant legislation and approvals
- quicker and smoother approvals and permitting processes
- continued access to land for resource industry activities.

Successful engagement is based on some simple, practical principles that represent a mix of common sense, good business practice and ethical considerations. The Australian Ministerial Council on Mineral and Petroleum Resources (MCMPR) has identified the following key principles as important in achieving effective engagement and communication with stakeholders affected by resource industry activities:

1. *Communication.* Open and effective engagement involves both listening and talking. Two-way communication, the provision of clear, accurate and relevant information, and timeliness of discussions and information provision are important aspects of ensuring good communication.
2. *Transparency.* Clear and agreed information and feedback processes.
3. *Collaboration.* Working cooperatively to seek mutually beneficial outcomes.
4. *Inclusiveness.* Recognise, understand and involve communities and stakeholders early and throughout the process.
5. *Integrity.* Conduct engagement in a manner that fosters mutual respect and trust.

The MCMPR encourages the resources sector to adopt these principles to facilitate the building of positive relationships with stakeholders, and to help people in the resources sector develop appropriate engagement

policies and practices. The principles are intended to help the sector ask the right questions and find the appropriate answers to improve their engagement skills.

15 Guidelines for establishing and maintaining good relations

15.1 Preparations prior to entry onto land

15.1.1 Liaison officer

Either the project manager (e.g. project geologist) or an appropriately qualified person should be appointed as a liaison officer who is responsible for liaison throughout the life of the program. The appointed person must be given that specific responsibility in their duties and should preferably have knowledge of the agricultural and/or pastoral sector and an affinity for people on the land. The liaison officer should:

- be responsible to the company, and be familiar with all aspects and requirements of the project
- be authorised to make agreements and arrangements on behalf of the company
- identify all properties and landowners (and property managers) who may be affected by the program and develop a comprehensive contacts list of names, addresses/homesteads, phone numbers, emails etc.
- make direct contact with landholders to discuss the exploration program, giving sufficient notice before work commences
- inform the landholder of the liaison officer's responsibilities, contact details and who the liaison officer reports to in the company
- supply the landholder with the tenement number and conditions attached to it
- ensure that the landholder is aware of their rights; provide a copy of *Guidelines for landholders: your rights in relation to mineral exploration and mining in South Australia*
- ensure that all project personnel, including contractors, are briefed on company policy and are aware of and comply with the tenement conditions and agreements made with the owner and occupier
- ask the landholder about the location of special features of the property, including the location of known Aboriginal or European heritage sites, or areas of particular environmental sensitivity
- offer to provide information relating to the discovery of useable groundwater in exploration drillholes (location, depth, flow estimate and salinity can often be provided depending on the type of drilling undertaken)
- be available to discuss reasonable requests from the local community for information on the project.

15.1.2 Contractor responsibilities

It is the responsibility of the exploration licence holder to ensure good conduct on their licence, and therefore it is not advisable to leave landholder liaison to contractors. It is important to ensure that contractors clearly understand their responsibilities under the terms of the exploration licence, exploration work proposal and PIRSA works approval, and know and abide by the terms of agreements with the landowner and others with an interest in the land.

15.1.3 Other considerations

If possible, the field program should be made flexible enough to fit in with the often more rigid timetable of the landholder, for example, reaping, lambing and mustering. Wherever practical, serve notices required under the Mining Act personally and use the opportunity to explain the program and establish a working relationship.

The explorer should consult with the traditional Aboriginal custodians of the land to avoid disturbance of any significant Aboriginal sites. The state government Aboriginal Affairs and Reconciliation Division can advise on the relevant groups or contact persons.

If planning to use helicopters or low-flying aircraft, advise the landholder and provide details of areal extent and timing. Discuss with the landholder the planned stock program, for example, lambing and mustering, and ensure that the pilots are instructed to use the aircraft so as to cause minimal disturbance to stock.

15.2 Actions upon first arriving on the land

Upon arrival at the property, introductions should be made immediately at the homestead. Provide the landholder/manager with comprehensive details of the exploration program. In particular, the following details should be provided (see Appendix A1):

- proposed location of fieldwork (include a map)
- extent and type of operations to be conducted
- likely duration of the program
- description of vehicles and equipment to be used
- names of personnel involved, including contractors who will do the work
- living arrangements, particularly if a campsite is required.

The explorer should request the following details from the landholder (see Appendix A2):

- location of special features or special management requirements for the property including exempt land
- advice on best or preferred access routes
- suitable campsite locations
- permission for use of water and location of preferred sources
- the timing and nature of significant farm programs, for example, cropping, lambing, mustering
- updates on the explorer's map, i.e. tracks, fences, gates, bores, dams etc.

Agreements between the landholder and explorer should be simple, and clearly identify what has been agreed between the two parties. It is preferable that agreements are in writing, as verbal agreements can lead to misunderstandings. If agreements are made verbally, all parties should have a witness present.

Regular meetings between the liaison officer and landowner should be arranged to discuss progress, performance and agreements. The outcome of these discussions should be that the owner, occupier and exploration company understand each others needs, and how they can be fulfilled.

Where possible, allow the landholder the opportunity of quoting for any contract work that may become available. Try to employ local people wherever possible, but be aware of the need for all contractors to carry adequate public liability and third party insurance.

15.3 Management of exploration activities

It is the explorer's responsibility to:

- Keep the landholder fully informed of the progress of the exploration program.
- Find out where stock are located on a regular basis to avoid disturbance.

- Be mindful of the possibility of discovering sites of scientific or heritage significance. It is a requirement of the *Aboriginal Heritage Act 1988* that any new sites discovered are reported to the Aboriginal Affairs and Reconciliation Division (see the *Aboriginal Heritage Act*, sections 20 and 23).
- Reduce vehicle speeds when travelling along property tracks, particularly near homesteads, watering points and grazing stock, to reduce dust and disturbance.
- Observe an appropriate duty of care in relation to potential health and safety hazards to stock and people associated with cables, drill casing, excavations etc., and take actions to prevent potential hazards.
- Ensure that earthmoving equipment is used only under competent supervision. The supervisor must be fully aware of the company's environmental policies and obligations and should identify any site specific concerns and appropriate management practices in consultation with the landholder.

15.3.1 Property infrastructure

Disturbance to property infrastructure needs to be minimised. The explorer should:

- Report any damage of gates, fences, roads, crops etc. to the landholder (even if the explorer is not responsible). Where the explorer was responsible, damage should be made good as soon as possible in consultation with the landholder.
- Consult with the landowner for alternatives before cutting a fence. If a fence is cut, stock-proof gates must be installed and removed if requested by the landowner. Permanent repairs must be effected as soon as practicable.
- Curtail vehicle movements when the ground is wet. Any track damage caused by vehicle movements in wet or dry conditions should be repaired as soon as practicable in consultation with the landholder.

15.3.2 Good housekeeping

Good housekeeping practice includes the following:

- Have crews carry rubbish containers to ensure that littering does not occur.
- Where several days are to elapse between the various operational phases of the survey, have any temporary gates checked for stock security.
- Minimise fire risk:
 - carry appropriate fire suppression equipment in vehicles at all times
 - site fuel stores, generators and similar equipment on suitably cleared areas
 - adhere to regulations pursuant to appropriate fire legislation; talk to the local Country Fire Service officers if in any doubt
 - have a fire fighting plan or procedures
 - have fire fighting equipment supplied, installed and properly maintained in the camp
 - train personnel and carry out fire drills.

15.3.3 Landcare

In addition to agreed arrangements with the landholder, the explorer has legal obligations to avoid, minimise and rehabilitate environmental disturbance in line with state government requirements and industry standards. The planning and conduct of operations should be based on the *Statement of environmental objectives and environmental guidelines for mineral exploration activities in South Australia*, Earth Resources Information Sheet M33, which includes the following minimum requirements:

- Reduce any vegetation clearance to the absolute minimum. Unavoidable track clearing and construction should be undertaken in a manner acceptable to the landholder and in line with PIRSA environmental guidelines.
- Be mindful of initiating weed infestations and outbreaks of disease. Thoroughly clean vehicles before moving into new areas.
- No pets or firearms are to be taken onto the property without the express permission of the landholder.
- If a campsite is required, prior agreement with the landholder on preferred locations should be reached. The campsite should be positioned at least 400 m away from watering points, drainage lines and homesteads, and not be positioned over stock pads leading to watering points.
- Under no circumstances should there be contamination of surface or groundwater systems.
- All rubbish must be contained, managed and disposed of in accordance with the terms of the exploration work approval and exploration licence conditions.
- Fuel stores and vehicle servicing areas must be located and used in a manner which does not contaminate soil or pollute water.

15.4 Reinstatement of disturbed areas

The company is required to implement a program which complies with tenement and works approval conditions. The program should apply current best practice methods, and meet the reasonable needs of the landholder. In particular:

- Where soil compaction has occurred, offer to rehabilitate the site in line with current best practice, and to the landholder's satisfaction.
- Permanent survey markers should be placed in consultation with the landholder so that they do not hinder farm management. Temporary markers, pegs, tags and flagging tape should be made from biodegradable materials or removed if requested by the landholder.
- Drillholes must be made safe immediately on completion and the site rehabilitated as soon as practicable following the works. Groundwater conditions must be reinstated in line with *Mineral exploration drillholes — general specifications for construction and backfilling*, Earth Resources Information Sheet M21. If drillholes are required to remain open temporarily, install casing to prevent injury to stock and small animals from falling in.
- Backfill costeans and other excavations as soon as they are no longer required. If excavations are required to be left open for extended periods, then ramping and visibility fencing should be installed to ensure safety of people, stock and native fauna.
- Approval to leave constructed tracks for the landowner's use must be obtained from PIRSA. All requests should be accompanied by a letter from the landowner to the company nominating tracks to be retained, and a map showing the location of these tracks.

The liaison officer should visit sites of major disturbance with the landholder after reinstatement has been completed and attend to any reasonable requests for further work.

15.5 Actions to be undertaken upon program completion

Upon program completion the liaison officer should:

- Invite the landholder to inspect the work area when the project is complete and carry out any reasonable requests for reinstatement of the land.
- Undertake any agreed restoration without undue delay and promptly pay in full any agreed compensation which is due to the landholder.

- Make a final inspection of all roads, gates, fence lines, campsites, drillsites, trenches etc. to ensure that all areas are left in a condition that meets the rehabilitation requirements of the works approval and licence conditions.

16 PIRSA contacts and advice

For further assistance and advice on rights and obligations in regards to exploration or mining on private land, please contact the appropriate PIRSA group as per below.

General inquiries

PIRSA Customer Services Centre

Phone +61 8 8463 3000

Fax +61 8 8463 6518

Email pirsa.customerservices@sa.gov.au

Mineral tenement administration and Court processes

Land Access Branch – Mineral Tenements

Phone +61 8 8463 3103

Email: pirsa.tenements@sa.gov.au

Mineral exploration and mining operations/approvals

Mine Regulation and Rehabilitation Branch

Phone +61 8 8463 3112

Email: miningregrehab@sa.gov.au

17 Further information

17.1 Legislation

www.legislation.sa.gov.au

Copies of the Mining Act and Regulations and other legislation are available at cost from ServiceSA, EDS Centre, 108 North Terrace, Adelaide SA 5000, phone 13 23 24, or for free download from the South Australian Legislation website (Attorney-General's Department).

17.2 PIRSA guidelines

www.minerals.pir.sa.gov.au/

PIRSA's Minerals Regulatory Guidelines (MG numbers) and Earth Resources Information Sheets (M numbers) can be obtained from the PIRSA Customer Services Centre or from the PIRSA Minerals website. Related ones are listed below.

Mineral exploration licences — general conditions, procedures and information, M5

Statement of environmental objectives and environmental guidelines for mineral exploration activities in South Australia, M33

Mineral exploration drillholes — general specifications for construction and backfilling, M21.

17.3 Ministerial Council on Minerals and Petroleum Resources

Department of Resources, Energy and Tourism (Cwth)

www.ret.gov.au

Principles for engagement with communities and stakeholders (2005)

17.4 Leading Practice Sustainable Development Program for the Mining Industry

Department of Resources, Energy and Tourism (Cwth)

www.ret.gov.au

Community engagement and development (2006)

17.5 Minerals Council of Australia

www.minerals.org.au/

Enduring value: the Australian minerals industry framework for sustainable development. (2005)

17.6 South Australian Chamber of Mines and Energy

www.resourcessa.org.au/

A code of conduct for mineral and energy explorers – a framework for access to rural land (In preparation with the South Australian Farmers Federation.)

Appendix A1 LANDHOLDER — questions to ask a mineral explorer when contacted regarding access to your property

General project information. Exploration licence number, licence holder name, company/contractor conducting the work, how many people, how many and what sort of vehicles?

Main contact. Who is the main contact person (liaison officer) for the exploration program, and what is their name, position, contact details and best means of communication (phone/email/fax)?

Notice of entry. Is a current Form 21, Notice of entry, in place? If not, has one been served at least 21 days prior to entry as required under the Mining Act?

Waivers. Are any activities planned on exempt land? (e.g. within 400 m of a residence, 150 m of a water supply, or in a cultivated field). If so, the Mining Act requires that Form 23A is served on the landholder and an agreement entered into to waive the exemption before this work can take place. The waiver agreement must be signed by both the landholder and company.

Staff/contractor induction. Have all project personnel been briefed on their responsibilities and are they aware of the terms of any agreements with me?

Wet weather/track damage. What procedures will take place if the ground is wet, i.e. will vehicle movements be temporarily stopped? Within what timeframe will any track damage caused by vehicle movements be repaired?

Low-level flying. Are you planning the use of helicopters or low-flying aircraft? If so, we will need to discuss how any potential impact on our stock programs, such as lambing and mustering, can be minimised.

Rubbish. How will crews contain their rubbish and where will this be disposed of?

Fire (fire danger season). Are field crews aware of fire restrictions for the area? How will the risk of fire be minimised? (e.g. access to fire suppression equipment).

Pets, firearms. Are any pets or firearms to be brought onto the property?

Drilling, earthmoving activities. Are these activities planned? If so:

- Has the prescribed Form 22, Notice of use of declared equipment, been served at least 21 days prior to entry?
- Have you got PIRSA written approval to do the work?
- Where and when will these activities happen?
- Is the site supervisor fully aware of any site specific issues raised, or agreements made with the landholder?
- Will drilling and earthmoving equipment be thoroughly cleaned prior to entry to prevent the spread of weeds?
- Within what timeframe will drillholes/excavations be rehabilitated?
- Please let us know of any useful groundwater discovered during drilling.

Follow-up meeting. When can we meet to discuss the program details including:

- location of proposed fieldwork (include a map)
- extent and type of activities
- likely duration of the program
- description of vehicles/equipment to be used
- names of personnel involved, including contractors who will do the work
- living arrangements, particularly if a campsite is required
- whether a written access/compensation agreement is required (if any agreements are made it is preferable that these are in writing, as verbal agreements can lead to misunderstandings).

Periodic meetings. When can further meetings be held between us to discuss program progress and performance against agreements?

Rehabilitation inspection. Please let us know when you have completed rehabilitation so that we can inspect the main areas of disturbance with you.

Appendix A2 EXPLORER — questions to ask a landholder before entering their property to conduct mineral exploration

Main contact. Who is the best person to deal with regarding access to the property, and to liaise with regarding ongoing progress updates on the program? What are their contact details (phone/email/fax)? Are there preferred times to make contact?

Special requirements. Do you have any specific issues of concern, or special management requirements for the property?

Special features. Are there any special features on the property such as known Aboriginal or European heritage sites, native vegetation heritage agreement areas or other areas of particular environmental sensitivity?

Farm programs. What is the timing and nature of significant farm programs? (so that exploration can be planned to minimise disturbance to these activities). Such programs may include sowing, harvesting, lambing and mustering.

Groundwater information. If drilling methods are suitable, are you interested in us providing you with information about useable groundwater found during exploration drilling? (e.g. location, depth, flow estimate and salinity).

Possible site works. Are you interested in quoting for any contract or site preparation/restoration work that may take place during the program? What equipment do you have that could do this work?

Follow-up meeting. When can we meet so that I can outline plans for our exploration program and discuss property specific issues with you, including:

- location of special property features (mark on a map)
- any special management requirements for the property
- suitable campsite locations (mark on a map)
- best or preferred access routes (mark on a map)
- permission for use of water and location of preferred sources (mark on a map)
- other updates on the explorer's map, i.e. fences, gates, disused tracks etc.
- whether a written access/compensation agreement is required (if any agreements are made it is preferable that these be in writing, as verbal agreements can lead to misunderstandings).

Periodic meetings. When can further meetings be held between us to discuss program progress and performance against agreements?

Rehabilitation inspection. I will invite you to inspect the main areas of disturbance when the project is complete and promptly carry out any reasonable requests for reinstatement of the land.

Note:

Local advice to inform project planning. Landholders and property managers often have extensive local knowledge from many years of experience in working on the land. The knowledge that they have in relation to their property and the local area/issues can be of huge benefit when planning exploration field programs, and should be utilised as much as possible to ensure that programs are implemented effectively and in a manner that does not unduly disturb farming activities.

Appendix A3 Typical mineral exploration processes and their environmental management

Replace with 200256-001

Replace with 201715-002

Appendix A4 Checklist for compensation issues

The following issues could be considered for compensation (depending on individual circumstances):

- loss of productive land (consider different land types, potential crop loss for coming season)
- intensive use of existing property tracks
- use of water for drilling or other exploratory operations
- loss of existing livestock/crop
- management time, including
 - negotiating initial agreement
 - operational supervision (e.g. shepherding)
 - unplanned disturbances (e.g. assistance provided for bogged vehicles)
- legal advice
- unplanned damage to land or infrastructure.

'In kind' offsets are often used for compensation in lieu of direct financial compensation, for example:

- track maintenance work (when equipment is brought into the area as part of exploration)
- new bores
- gates, grids, fences
- water tanks
- other infrastructure installation, maintenance or repair (e.g. shed, dam)
- excess materials or materials no longer needed (e.g. polypipe)
- First-hand/detailed information on groundwater intersected during drilling.

Feedback form

PIRSA aims to continuously improve this document to ensure that it meets the needs of landholders. Your comments and suggestions for improvement would be much appreciated. Please send completed forms to:

Mineral Resources Group

Division of Minerals and Energy Resources
Primary Industries and Resources South Australia
GPO Box 1671, Adelaide 5001
Fax: +61 8 8463 6518
Email: pirsa.customerservices@sa.gov.au

What did you use this document for?

- Landholder information Mineral tenement administration Mining and exploration operations
 Programs for Environmental Protection and Rehabilitation (PEPR) review General information

Other (please specify):.....
.....

Which parts of this document did you find *most* useful?
.....

Which parts of this document did you find *least* useful?
.....

Do you have any suggestions for improvement? Yes No

If yes, please reference the section number, and summarise your suggestion for improvement:
.....
.....
.....
.....

Optional

We appreciate your time in completing this form. So that we may better understand your suggestions, it would be helpful if you could include contact information:

Name

Position

Company

Address.....

Phone..... Email.....