GRAIN PRODUCERS SA
The voice of South Australian growers

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Resource Policy and Engagement
Department for Energy and Mining
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To whom it may concern.

Thank you for the opportunity to make a submission on draft regulations required to support the *Statutes Amendment (Mineral Resources) Act 2019* (SA) ('the Act'), and for meeting with Grain Producers SA ('GPSA') on a number of separate occasions to help build our understanding of the draft regulations and underpinning policy intent.

GPSA's principal interest in this policy relates to South Australian grain producers dealing with resource entities seeking access to cultivated cropping land.

GPSA has a long history of policy advocacy in this area, including in relation to the *Leading Practice in Mining Review*. GPSA's Mining Act Review Taskforce has previously identified a number of areas for statutory reform, and have strongly advocated for an independent review of South Australia's resources law.

South Australia grows about four million hectares of grain crop each year, including wheat, barley, lentils and canola. Farmgate value totals $1.7 billion. Yields continue to grow whilst maintaining minimal impact on South Australia's clean soils and water resources, with the grain industry set to contribute $6 billion to gross food revenue by 2030.

Attached for your consideration is a response to draft regulations that GPSA has identified as of concern to our industry. On behalf of South Australian grain producers, GPSA will continue to advocate for the need to balance primary industries with competing land uses such as mining, to protect the sustainability of primary production for future generations.

Please do not hesitate to contact GPSA's Leighton McDonald-Stuart should you have any further questions in relation to our submission.

Yours sincerely

Caroline Rhodes
Chief Executive Officer

1. BACKGROUND

GPSA first became involved with reform to SA's mining law through the consultation process associated with the *Leading Practice in Mining Review* which commenced upon its announcement on 27 September 2016.

GPSA convened a Mining Act Review Taskforce that included representatives from across the primary industries sector including GPSA, Livestock SA, South Australian Dairyfarmers' Association, and the Winegrapes Council.

In its 2018 election policy statement, GPSA identified the need to balance primary industries with competing land uses. This statement was released to all major political parties for response. In the document, GPSA also advocated for an independent review of the Act.

GPSA's advocacy on this issue continued throughout the parliamentary process. Our Mining Act Review Taskforce has previously identified several areas for statutory reform which were provided to the Minister for consideration.

GPSA expressed its disappointment upon passage of the of the *Statutes Amendment (Mineral Resources) Bill*, noting in a media release at the time that:

a. the passage of the Bill means Minister for Mining Dan van Holst Pellekaan has failed to follow through on the State Liberals' 2018 election commitment to thorough and meaningful consultation with primary industries;
b. the Bill failed to meaningfully address the imbalance between primary industries and competing land uses; and
c. South Australian landholders will be saddled with a legal framework which will put prime primary production land at risk.

Together with other peak bodies, the farm sector called for a dedicated, government-funded resource to be situated in Primary Producers SA to help farmers access information on their rights when faced with a resources entity wanting access to land. We are pleased that this resource has been delivered through the Landowner Information Service under Rural Business Support Inc.

We thank the Department for Energy and Mining for their outreach in relation to the draft regulations. GPSA staff and the Mining Act Review Taskforce have met with key personnel from the Department on several separate occasions. We welcome their engagement, openness, and accessibility as part of this process.

As noted in the Terms of Reference for the Productivity Commission Study into Resources Sector Regulation ('the Productivity Commission's Draft Report'), regulation plays a critical role in ensuring that resources projects across Australia meet community and environmental management expectations.[1] It is not unreasonable to suggest that, in cultivated cropping areas, South Australia's mining law has fallen short of those expectations.

[1] Productivity Commission, *Resources Sector Regulation, Draft Report* (2020) https://www.pc.gov.au/inquiries/current/resources/draft/resources-draft.pdf, iv.

In this submission, GPSA has outlined a range of improvements for the Department to consider as part of the draft regulations consultation process. This feedback is limited to draft regulations that GPSA considers relevant to the interests of our members. In conjunction with the *Statutes Amendment (Mineral Resources) Bill 2019,* the draft regulations provide incremental improvement for landowners, while other aspects require further refinement. Despite this overdue reform, a meaningful structural imbalance between the primary industries and resources sector remains. We believe this imbalance will only be properly and fully resolved through a whole-of government independent review process.

GPSA encourages the Department to adopt leading practice as identified by the Productivity Commission. We understand that the Productivity Commission's final report is set to be delivered in November 2020, providing further scope for statutory and regulatory reform.

GPSA will continue its advocacy on this issue, noting the Minister's commitment to further tranches of reform to SA's mining law, and the usual requirement that regulations be tabled before the Parliament.

2. TERMINOLOGY

For the avoidance of doubt, in this submission:

Cultivated cropping land means land used as a cultivated field.

The Department means the Department for Energy and Mining.

Landowners means the owners of land vested in fee simple.

Resources entity or **resources entities** means tenement holders.

Resources means mineral resources within the scope of the Act.

3. GPSA POLICY PRINCIPLES

GPSA Policy is determined by the GPSA Board after considering input from industry, through close involvement with grain producers, grain production groups, grains sector groups and the conduct of regular regional and state industry forums.

GPSA's Mining Act Review Taskforce has developed a range of principles which underpin GPSA's approach to the draft regulations. GPSA's advocacy will focus on ensuring that these principles are adapted and incorporated into the legal framework.

We understand and acknowledge that draft regulations must be consistent with the framework established by the Act. Given that we have identified an innate structural imbalance between the primary industries and resources sectors, GPSA has approached these regulations from the perspective of improvements to the process of land entry and use of cultivated cropping land, as well as building landholder understanding.

GPSA welcomes the Department's consideration of the below policy principles as the 'lens' through which GPSA views the draft regulations.

1. **Activity**

Regulations should ensure that:

1.1. Resources activity on primary production land is only undertaken by fit and proper operators, having regard to the technical, operational, financial, and resourcing capacity, and history of compliance and practices of the operator.

1.2. The rights and responsibilities of resource entities and landowners are clearly understood and provide assurance of permissible activity.

1.3. Full cost recovery of the Department is undertaken to ensure adequate resourcing.

2. **Information & Consultation**

Regulations should ensure that:

2.1. Information provided by Government and resource entities is timely, clear, accessible, in plain English, and relevant to actual or proposed operations on cultivated cropping land.

2.2. Landowners have priority access to information as to actual or proposed operations on their land, subject to market disclosure requirements.

2.3. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted before land access occurs.

2.4. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted on the proposed operations on their land, how the land will be used, when the operations will commence and cease, when the land will be rehabilitated, and the standard of rehabilitation.

2.5. Adjoining landowners are reasonably informed and respectfully, meaningfully, and properly consulted on relevant aspects of proposed operations where they might reasonably impact the use or enjoyment of their land.

2.6. Landowners are reasonably informed and respectfully, meaningfully, and properly consulted prior to the surrender of a tenement.

3. **Agreement making and disputes**

Regulations should ensure that:

3.1. All requests of landowners are made in writing and include clear information on their rights and responsibilities, including:

3.1.1. Mandatory dispute resolution, and

3.1.2. Advising landowners to seek legal advice and their right to compensation.

3.2. Landowners have clear and advance notification of a request for land entry.

4. **Compliance**

Regulations should ensure that:

4.1. The Department strongly enforces compliance, including by declining to grant licenses and leases where there is a history of non-compliance or where the resources entity does not possess the capability or capacity to ensure compliance.

4.2. The Department regularly, strongly, actively, and transparently monitors and reports against compliance to strengthen confidence of stakeholders, including by providing notice to landowners in any such failure to comply.

4.3. Risk-based audits and investigations are undertaken on a periodic basis.

5. **Operating approvals**

Regulations should ensure that:

5.1. Consideration be given to all the outcomes that are expected to occur in connection with proposed operations, including the impact on businesses, families, neighbours, and communities, local infrastructure (inc roads), and local government.

5.2. The Department has the power to vary, impose, or revoke conditions relating to operations on cultivated cropping land where circumstances change during the time-based period of authorised operations.

4. COMPLIANCE AND ENFORCEMENT

HOW WE APPROACH THIS ASPECT: POLICY PRINCIPLES 4.1, 4.2, 4.3, 5.2

On behalf of our members, GPSA has previously raised concerns in relation to the enforcement of existing aspects of mining law, including regulations and operating approvals (including PEPRs). As with many aspects of the Draft Regulations, the prescribed requirements will only be effective if the regulator has the appropriate capacity, industry intelligence, and motivation to ensure adherence. GPSA has previously identified concerns with the Department's dual role as both proponent and regulator of SA's resources sector.

We note that other groups also share similar concerns with respect to enforcement. In its submission to the Productivity Commission, the Australian Environment and Planning Law Group claimed that: *"… there is anecdotally very little monitoring undertaken by regulatory authorities and similarly very little compliance action taken in respect of any breaches discovered."*[2]

Additionally, GPSA raised the transparency and accessibility of compliance and enforcement undertaken by the Department during the consultation process. GPSA notes the Productivity Commission's statements in regard to this aspect:

> *"…publication of information about resources monitoring and enforcement activity is limited. And few jurisdictions provide the public with meaningful information about whether resources activities, once operational, meet regulated requirements. While regulators in all jurisdictions provide reports summarising their monitoring and compliance activities, the format and content is not always accessible for a lay audience. It can be difficult for the public to get a picture of a regulator's most consequential activities and to assess the overall state of play with compliance."*[3]

We appreciate that the Department's openness and outreach, as well as the emphasis on transparency and compliance in the Draft Regulations is a genuine (and welcome) attempt to build confidence in the regulatory system.

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[2] Productivity Commission, *Resources Sector Regulation, Draft Report* (2020) https://www.pc.gov.au/inquiries/current/resources/draft/resources-draft.pdf, 194.

[3] Ibid, 197.

5. REGULATION 6 – WAIVER OF EXEMPTION

HOW WE APPROACH THIS REGULATION: POLICY PRINCIPLES 1.2, 2.1, 2.2, 2.3, 2.4, 3.1

S9AA of the Act establishes a process by which a tenement holder may seek access to cultivated cropping land through a waiver of the benefit of exemption. Access may be by agreement in writing with the landowner, or through an order of an appropriate court.

A Court may refuse an application for a waiver of the benefit of exemption if the information set out in Draft Regulation 6 is not provided to the landowner. Draft Regulation 6 establishes that this information includes:

1. a copy of an approved Program for Environment Protection and Rehabilitation;
2. a copy of the relevant proposal to conduct operations on the exempt land;
3. a copy of a response from the tenement holder to any submissions to the Minister in relation to an application to conduct mineral operations on the land; and
4. information sheets determined by the Minister.

By providing that a court may refuse an application for a waiver of the benefit of an exemption if the prescribed information is not provided, the Act in effect establishes a minimum standard for the provision of information to landowners.

Many (if not nearly all) cultivated cropping landowners will be unfamiliar with resource operations and mining law. The Productivity Commission's Draft Report notes that landowners often lack capacity and knowledge when engaging with resources entities.[4]

We consider it essential that the information sheets established by the Minister provide landowners with a clear, accessible, and plain English understanding of their rights. We also consider it essential that landowners are reasonably informed, through the provision of information, before land access occurs.

It is GPSA's position that the information required by Draft Regulation 6 is relevant to proposed operations on cultivated cropping land. The information in conjunction with other requirements under the Act in relation to entry to land under ss 58 & 58A ensures that landowners have sufficient time and information to consider the request and the exact nature of the operations as set out in the PEPR and the relevant proposal.

We note that the Draft Information Sheets provide a general overview of exempt land, rights of objection, agreement making, compensation generally, compensation for legal fees, mediation, the court process for a waiver of exemption, and the RBS Landholder Information Service.

It is the view of GPSA that, while the Draft Information Sheets generally meet the standard we seek under Policy Principle 2.1, small improvements can render this information much more useful to landowners and could help to relieve any angst that may exist and build social license. We believe that the Draft Information Sheets should explicitly:

[4] Productivity Commission, *Resources Sector Regulation, Draft Report Overview* (2020) https://www.pc.gov.au/inquiries/current/resources/draft/resources-draft-overview.pdf, 29.

- Include a standard template agreement between landowners and resources entities to provide a comprehensive starting point for agreement making. We note that the "*Engagement, negotiating, and agreement making - A guideline for explorers, miners and landowners*" resource only includes an agreement making checklist. We do not consider this to be sufficient to meet the needs of landowners with substantial unfamiliarity with mining law and practice.

  The Productivity Commission's Draft Report identified that providing a standard template for land access agreements is a leading practice and is an area for regulatory improvement which "*can help to set expectations for landowners and resources entities, and improve confidence in the regulatory system*."[5]

  The Draft Report also identified the Queensland Land Access Code as a leading practice model. According to the Draft Report, that Code provides a combination of mandatory conditions as well as guidelines for land access.[6] GPSA has previously identified the development of a mandatory code of conduct for tenement holders as a key policy outcome.[7]

- Explicitly encourage landowners to seek legal advice on the terms of access and compensation offered by a resources entity. Landowners should also be explicitly encouraged to seek professional assistance with the drafting or negotiation of a land access agreement. We believe that this will provide all parties with clarity on the terms of access, and will promote greater understanding and cooperation between landowners and resources entities.

  We further note that s9AA(14) of the Act provides for the Regulations to prescribe a maximum amount of compensation that a landowner is able to claim from a resources entity for the reasonable costs of obtaining legal assistance in relation to a notice of entry. In the absence of any prescription, that amount is set at $2,500. We understand that there is an entitlement to up to $10,000 for professional costs under the *Land Acquisition Act 1969* and corresponding regulations.

  In light of our above recommendation, we believe that it is entirely reasonable for this amount to be set by regulation at $10,000, noting the complexity that comes with a notice seeking a waiver of exemption to a premise that serves as a home, business, and source of equity for reinvestment, and the inherent requirement that legal costs be reasonably incurred.

RECOMMENDATION:

- Draft Information Sheets to explicitly include a standard template agreement between landowners and resources entities.
- Draft Information Sheets to explicitly encourage landowners to seek legal advice on the terms of access and compensation offered by a resources entity. Landowners to also be explicitly encouraged to seek professional assistance with the drafting or negotiation of a land access agreement.

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[5] Ibid.
[6] Ibid, 36.
[7] Grain Producers SA, Proposed Legislative Amendments to the Mining Act 1971 (2019) <http://grainproducerssa.com.au/uploads/media/190724_GPSA_proposed_legislative_amendments_(No2).pdf>.

- Draft Regulations to prescribe a $10,000 maximum for compensation that a landowner is able to claim from a resources entity for the reasonable costs of obtaining legal assistance in relation to a notice of entry.

6. REGULATION 14 – OTHER MATTERS TO BE PLACED ON REGISTER

HOW WE APPROACH THIS REGULATION: POLICY PRINCIPLES 2.1, 2.2

S15AA of the Act establishes the new Mining Register and significantly expands its scope. This reflects the welcome focus on transparency and compliance within the Act. The draft regulations prescribe, in Draft Regulation 14 and Draft Regulation Schedule 1, a significant range of items which must be registered on the Register.

GPSA's policy principles clearly set out our belief that landowners have a right to receive information and be aware of the resource interests and activities in their land. Like any business, primary production businesses require certainty to carry out their operations and utilise the equity in their assets for further reinvestment.

We welcome the establishment of the Mining Register and scope of the matters listed in Schedule 2. This will provide landowners with a clear and accessible resource which will aid their understanding and enhance their ability to make business decisions, including those relating to land access and agreement making between landowners and resource entities. We note that, given the information gap that exists between landowners and mining law, the Landholder Information Service will play a key role in assisting landowners with the use of the Mining Register and understanding any technical jargon.

While out of scope of the Draft Regulations, we strongly recommend that the Department fund the Landholder Information Service on an ongoing basis.

RECOMMENDATION:

- The Department fund the Landholder Information Service on an ongoing basis.

7. REGULATION 23 – APPLICATION FOR LICENCE

HOW WE APPROACH THIS REGULATION: POLICY PRINCIPLES 1.1, 4.1

S29A(1) of the Act establishes the manner and form of an application for an exploration licence. The Act allows the regulations to prescribe information that must be submitted as part of an application for an exploration licence. Draft Regulation 23(1) establishes that this information includes inter alia:

1. the exploration work that is intended to be carried out within a stated period;
2. a statement as to the technical, operational, and financial capabilities of the resources entity;
3. a statement as to the extra-judicial non-compliance history of the resources entity.

As we understand it, the Draft Regulations expand the information provided as part of an application for an Exploration License to include "operational" capabilities. The Act currently provides for information only relating to "technical" and "financial" capabilities.

The Draft Regulations further expand the required information provided to include a statement as to the extra-judicial non-compliance history of the resources entity.

The process of resources exploration and the issuing of exploration licenses are of critical interest to GPSA and its members. While exploration licenses are largely found in land that is outside the broadacre cropping area, a substantial number of licenses cover cultivated cropping land. Figure 1 displays South Australia's crop districts, while Figure 2 shows areas of South Australia subject to a mineral and opal exploration license.[8]

Figure 2: SA crop districts

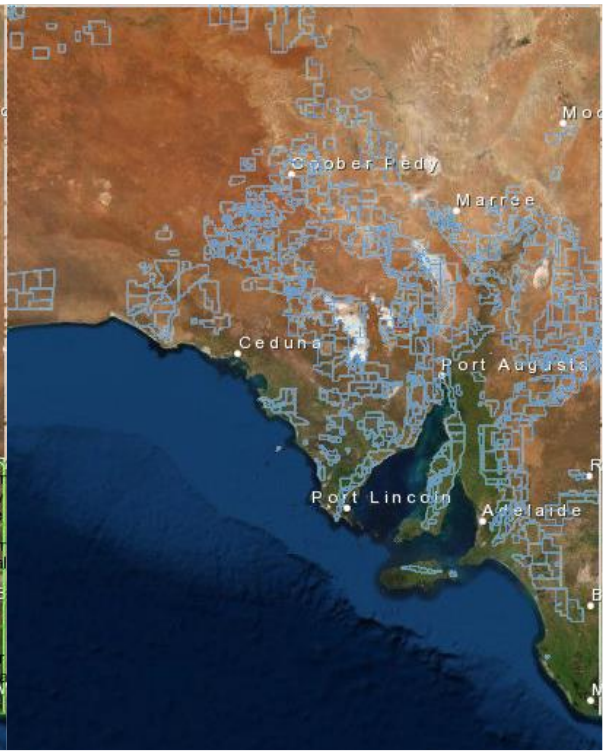

Figure 2: Mineral and Opal Exploration Licenses

By their very nature, cultivated cropping landowners are more likely to encounter explorers than they are to any other aspect of the resources sector. However, we note that Livestock SA has previously raised concerns in relation to resources activity in pastoral areas. We understand that there are no pastoral-specific concerns arising out of the Draft Regulations that are not addressed in the main by this submission.

As outlined in policy principle 1.1, we consider it essential that resources activity is only carried out by operators that are assessed as being fit and proper. This includes exploration.

GPSA members have previously reported a range of unsatisfactory engagements with explorers, including explorers failing to comply with their obligation to compensate landholders for drilling, and failing to remediate drill holes despite forming part of their land access conditions. This has contributed to both disputes and high levels of stress for many producers faced with these issues.

[8] "Location SA Viewer", SA Government (Webpage, 2020) <https://location.sa.gov.au/viewer/>.

We also note that no code of conduct (including a voluntary code) covers exploratory operations in South Australia. This is a serious grievance which, in our opinion, represents an abject failure of the resources sector's social license.

GPSA is keen to ensure that South Australia is seen as an attractive place for *responsible* resources entities to invest.

GPSA strongly supports greater focus on an applicant's capabilities and their history of non-compliance. The Productivity Commission's Draft Report identifies a thorough assessment of potential license holders as a leading practice. The Draft Report notes that no jurisdiction fully follows leading practice in this area.[9]

GPSA would also welcome further public guidance and/or assurance from the Department as to the internal assessments undertaken and thresholds when an application for an exploration license is received. GPSA raised this issue with personnel from the Department during the consultation process, but further detail as to when the threshold of past non-compliance or lack of capabilities would be met such that an application for an exploration licence would be denied was not available.

RECOMMENDATION:

- The Department to publicly provide further guidance and/or assurance as to the internal assessments undertaken and thresholds when an application for an exploration license is received. GPSA also makes this recommendation in relation to Draft Regulations 30, 31, and 37.
- The Department to establish a risk-based audit and investigation framework.

8. REGULATION 24 – NOTIFICATION OF GRANT OF LICENCE

HOW WE APPROACH THIS REGULATION: POLICY PRINCIPLE 2.2

S29B of the Act provides for the granting of an exploration license, including the commencement and notification of an exploration licence. Draft Regulation 24 establishes that the Minister must give notice of the granting of an exploration licence by proper service under Draft Regulation 85.

GPSA believes that Draft Regulation 24 provides scope for increasing transparency in the regulatory system and ensuring that landowners are better able to participate in discussions with resources entities through greater awareness and understanding of legal rights.

We note that the Act requires an exploration licence to be registered on the Mining Register, however GPSA strongly encourages the Department to either:

1. directly notify landowners covered by the exploration license that an exploration licence has been granted and the terms on which it has been granted; or
2. require the holder of an exploration licence to notify landowners covered by the exploration license that an exploration licence has been granted and the terms on which it has been granted.

[9] Productivity Commission, *Resources Sector Regulation, Draft Report* (2020) https://www.pc.gov.au/inquiries/current/resources/draft/resources-draft-overview.pdf, 29.

As stated in Policy Principle 2.2, we believe that landowners should have priority access to information on operations on their land. This includes informing landowners of all relevant mineral interests in their land such as the granting of an exploration licence or a mining lease.

Notifying landowners would not present a particularly onerous cost to the resource entity and would promote transparency.

In addition, notification would alert landowners that there may be a potential mineral interest in their land which would ensure that a notice under s58A of the Act would not come as a surprise. GPSA would also suggest that the Department prepare an information sheet on exploration licenses to accompany the notification.

RECOMMENDATION:

- The Department to either:
    - directly notify landowners covered by the exploration license that an exploration licence has been granted and the terms on which it has been granted; or
    - require the holder of an exploration licence to notify landowners covered by the exploration license that an exploration licence has been granted and the terms on which it has been granted.
- The Department to prepare an information sheet concerning exploration licenses.

9. REGULATION 47 – CONSULTATION ON PROPOSED TENEMENT

HOW WE APPROACH THIS REGULATION: POLICY PRINCIPLES 2.5, 5.1

Draft Regulation 47 relates to consultation undertaken in relation to a mining proposal, a retention proposal, or a proposal accompanying an application for a miscellaneous purposes licence. The Regulation inter alia requires that reasonable steps be taken to consult with the owner of the land, and that consultation should have an express focus on environmental outcomes.

GPSA notes that one aspect of the Draft Regulations differs in substance to the *Mining Regulations 2011.* Those regulations require that consultation also occur with any other person who, in the opinion of the applicant, may be directly affected by the proposed operations. This aspect is not carried over in the Draft Regulations. We note that, aside from this change, Draft Regulation 47 substantively replicates the existing requirements.

Resources activities can have a significant effect on the environment of a community, locality, and neighbouring properties. Given the potential impact and community concern that may exist, GPSA considers it reasonable that the regulations require that any person who might be affected by the proposed operations be consulted by the resources entity, and the issues raised by those persons be reported against.

It is wholly conceivable that a proposed operation may have an adverse impact on a person which would not be identified or reported against in the absence of a regulatory requirement to consult persons who might be directly affected.

RECOMMENDATION

- Draft Regulations to reinstate the requirement that consultation also occur with any other person who, in the opinion of the applicant, may be directly affected by the proposed operations. GPSA also makes this recommendation in relation to Draft Regulations 54, 62, 71, and 72.

10. REGULATION 48 – SOCIAL IMPACT ASSESMENT

HOW WE APPROACH THIS REGULATION: POLICY PRINCIPLE 5.1

Draft Regulation 48 enables the Minister to require that a social impact assessment be undertaken in relation to a mining proposal, a retention proposal, or a proposal accompanying an application for a miscellaneous purposes licence. We understand that social impact assessments are a new feature to SA's mining law.

We also note in particular the corresponding inclusion of a requirement under Draft Regulation 53 that an application for a change in operations must set out any changes to the social impacts of the authorised operations, and the inclusion of social impact assessments under Draft Regulation 45

Many resource entities are conscious of their 'social license' and take measures to ensure that they address the social impacts of their operations. GPSA understands from member feedback that large resource projects in primary industries areas have, however, struggled to build social acceptance of their activities given their direct and indirect impact on primary industries.

The social impact of proposed operations is an important consideration for GPSA members and other primary production landowners. GPSA believes that Draft Regulation 48 adheres with policy principle 5.1. We welcome the Department's inclusion of social impact assessments in relation to proposed operations in the hope that, where resource projects do proceed, they do so with a full understanding of community concerns and sufficient measures in place to remedy those concerns.

We note that Draft Leading Practice 9.1 from the Productivity Commission's Draft Report is of relevance to this aspect. The Draft Report has noted that "*lack of guidance also impairs the quality of social impact assessments*."[10] GPSA would welcome the Department's consideration of guidance on the type of social impacts that should be considered as part of the approvals process on this basis.

The social impact of resources activity increases as that activity encroaches on arable cropping land and/or rural zones with higher density population and tourism activities. We believe that social impact assessments under Draft Regulation 48 should reflect the nature of the area in which resource activity is proposed.

RECOMMENDATION

- The Department to publicly provide further guidance as to the types of impacts that Draft Regulation 48 seeks to capture.

[10] Productivity Commission, *Resources Sector Regulation, Draft Report Overview* (2020) https://www.pc.gov.au/inquiries/current/resources/draft/resources-draft-overview.pdf, 19.

11. REGULATION 52 – SURRENDER ON APPLICATION

HOW WE APPROACH THIS REGULATION: POLICY PRINCIPLE 2.7, 4.2

s56X of the Act establishes a process for the surrender of a mineral tenement once authorised operations have ceased. Surrender may only occur following an application to the Minister. The Draft Regulation prescribes the information that must accompany an application to the Minister.

Draft Regulation 52, requires inter alia,

- a statement and supporting evidence that completion outcomes required by a PEPR have been achieved;
- that all required rehabilitation has been completed or is in place;
- a statutory declaration outlining legal proceedings in relation to the tenement; and
- an outline of consultation undertaken by the resource entity with the landowner about surrendering the tenement, rehabilitation, and any other work or activities to be carried out, including a response to any concerns raised by the landowner.

GPSA welcomes Draft Regulation 52 in line with policy principles 2.7 and 4.2.

We note that many of these requirements are a new feature to SA's mining law. It is GPSA's belief that Draft Regulation 52 provides an enhanced compliance mechanism at the conclusion of authorised operations.

During the consultation phase, GPSA's Mining Act Review Taskforce identified scope for improvement to this section through the direct involvement of the landowner. We believe that Draft Regulation 52 could be improved by requiring a statement from the landowner acknowledging that the required rehabilitation and any other work or activities relating to the surrender have been carried out.

Further, we believe that the scope of Draft Regulation 52 could be expanded to incorporate any financial or contractual obligations the resource entity has with respect to the landowner.

RECOMMENDATION:

- Draft Regulation 52 to require a statement from the landowner acknowledging that the required rehabilitation, and any other work or activities relating to the surrender have been carried out.
- The scope of Draft Regulation 52 to be expanded to incorporate any financial or contractual obligations the resource entity has with the landowner in connection with the authorised operations.

12. DRAFT INFORMATION SHEET ON BIOSECURITY FOR EXPLORATION AND MINING OPERATIONS IN SOUTH AUSTRALIA

HOW WE APPROACH THIS ASPECT: POLICY PRINCIPLE 1.2, 5.1

GPSA understands that the Draft Information Sheet on Biosecurity is intended to be provided to resources entities to ensure they have a baseline understanding of biosecurity principles relevant to farm businesses.

As an export orientated industry, biosecurity is vitally important for SA's grain industry. It is critical to the future of our industry that we proactively manage and maintain Australia's plant health status. A biosecurity incursion, caused by insects, plant pathogens, weeds and other crop-damaging organisms, can have a major impact on grain production if not managed efficiently and effectively. Biosecurity is a shared responsibility between government and industry and all participants in the grain supply chain have a role to play.

Key export destinations have recently imposed restrictions on Australian exports due to perceived presence of pests. The primary industries sector has a complex framework in place for the prevention and management of pests, reflecting obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, export destination requirements, end user requirements, as well as Commonwealth and state law.

GPSA members have previously raised concerns that resources entities have failed to follow agreed biosecurity protocols leading to the introduction of weed species as a result of land access.

GPSA has previously identified concerns with the relevance of some aspects of the information contained in the Draft Information Sheet on Biosecurity. We note that the examples of biosecurity threats listed are not relevant to South Australian primary industries.

We also note that SA's biosecurity framework is undergoing review and consolidation into a singular Biosecurity Act. At this time, it is proposed that a general biosecurity duty be introduced as part of that Act, which will have severe implications for any resource entity that fails in its duty of care. We strongly encourage the Department to use the Draft Information Sheet on Biosecurity to raise awareness of the duty of care that will fall to resource entities, as well as the critical importance of biosecurity to our industry.

RECOMMENDATION

- Draft Information Sheet on Biosecurity to incorporate changes to South Australia's biosecurity law, including the introduction of a general biosecurity duty.
- Draft Information Sheet on Biosecurity to explicitly stress the critical importance of biosecurity to South Australia's primary industries sector and include relevant examples of biosecurity threats.

13. SUMMARY OF RECOMMENDATIONS

i. Draft Information Sheets to explicitly include a standard template agreement between landowners and resources entities
ii. Draft Information Sheets to explicitly encourage landowners to seek legal advice on the terms of access and compensation offered by a resources entity. Landowners to also be explicitly encouraged to seek professional assistance with the drafting or negotiation of a land access agreement.
iii. Draft Regulations to prescribe a $10,000 maximum for compensation that a landowner is able to claim from a resources entity for the reasonable costs of obtaining legal assistance in relation to a notice of entry.
iv. The Department fund the Landholder Information Service on an ongoing basis.

v. The Department to publicly provide further guidance and/or assurance as to the internal assessments undertaken and thresholds when an application for an exploration license is received.
vi. The Department to establish a risk-based audit and investigation framework.
vii. The Department to either:
    a. directly notify landowners covered by the exploration license that an exploration licence has been granted and the terms on which it has been granted; or
    b. require the holder of an exploration licence to notify landowners covered by the exploration license that an exploration licence has been granted and the terms on which it has been granted.
ii. The Department to prepare an information sheet concerning exploration licenses.
viii. Draft Regulations to reinstate the requirement that consultation also occur with any other person who, in the opinion of the applicant, may be directly affected by the proposed operations
ix. The Department to publicly provide further guidance as to the types of impacts that Draft Regulation 48 seeks to capture.
x. Draft Regulation 52 to require a statement from the landowner acknowledging that the required rehabilitation, and any other work or activities relating to the surrender have been carried out.
xi. The scope of Draft Regulation 52 to be expanded to incorporate any financial or contractual obligations the resource entity has with the landowner in connection with the authorised operations.
xii. Draft Information Sheet on Biosecurity to incorporate changes to South Australia's biosecurity law, including the introduction of a general biosecurity duty.
xiii. Draft Information Sheet on Biosecurity to explicitly stress the critical importance of biosecurity to South Australia's primary industries sector and include relevant examples of biosecurity threats.

ENDS