

House of Assembly—No 95

As laid on the table and read a first time, 31 July 2019

South Australia

Commission of Inquiry (Land Access in the Mining Industry) Bill 2019

A BILL FOR

An Act to provide for a commission of inquiry into land access regimes under the *Mining Act 1971* and the *Opal Mining Act 1995*, the operation of the Department of Energy and Mining in relation to such land access regimes, and for other purposes.

Contents

1	Short title
2	Interpretation
3	Constitution of commission—land access in the mining industry
4	Terms of reference
5	Procedure
6	Power to require attendance of witnesses etc
7	Supreme Court may compel attendance etc
8	Offences relating to Inquiry
9	Provision of support to Inquiry
10	Confidentiality and disclosure of information
11	Completion of Inquiry and presentation of report
12	Report of Minister in response to Commissioner's report
13	Privileges and immunities
14	Self-incrimination
15	Regulations

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Commission of Inquiry (Land Access in the Mining Industry) Act 2019*.

2—Interpretation

In this Act—

authorised person means—

- (a) the Commissioner; or
- (b) any person appointed under section 9 to assist in the conduct of the Inquiry;

Commissioner means the person appointed to conduct the commission of inquiry under section 3;

Crown land has the same meaning as in the *Crown Land Management Act 2009*;

evidentiary material means any document, object or substance of evidentiary value or possible evidentiary value to the Inquiry;

Inquiry means the commission of inquiry established under this Act;

land means —

- (a) land (not being Crown land) in which the fee simple has been granted to a person; or
- (b) such Crown land as may be prescribed by the regulations;

land access means a right of access to land (whether mineral land or otherwise) granted or created under the *Mining Act 1971* or the *Opal Mining Act 1995*;

land access regimes, under the *Mining Act 1971* or the *Opal Mining Act 1995*, means such provisions of those Acts that relate to land access for persons or bodies exercising rights conferred by or under those Acts;

mineral land has the same meaning as in the *Mining Act 1971*;

5 *Minister* means the Minister to whom the administration of the *Mining Act 1971* is committed.

3—Constitution of commission—land access in the mining industry

- (1) A commission of inquiry is established with the terms of reference set out in section 4.
- 10 (2) The commission of inquiry is to be constituted by a person (being a retired Justice of the Supreme Court or Federal Court) appointed by the Attorney-General with the approval of both Houses of Parliament.
- (3) An appointment made under subsection (2) will be for a term, and on conditions, determined by the Attorney-General.

4—Terms of reference

- 15 (1) The terms of reference for the Inquiry are as follows:
 - (a) to inquire into land access regimes;
 - (b) to inquire into such operations of the Department of Energy and Mining as may relate to, or be affected by, land access regimes;
 - 20 (c) to inquire into the practices of interstate and overseas jurisdictions as they relate to balancing the rights of landowners and those seeking to access land in order to explore for or exploit mineral resources;
 - (d) to inquire into administrative and legislative options that may help achieve a best practice model in South Australia that balances the rights of landowners and those seeking to access land to explore for or exploit mineral resources.
- 25 (2) The purposes of the Inquiry are—
 - (a) to examine and report on (including by making recommendations) land access regimes under the *Mining Act 1971* and the *Opal Mining Act 1995*; and
 - 30 (b) to report on and make recommendations as to measures that should be implemented to achieve a best practice model in South Australia that balances the rights of landowners and those seeking to access land to explore for or exploit mineral resources (to the extent that such measures are not being addressed through existing programs or initiatives).
- (3) However, the Commissioner must not purport to make a finding of criminal or civil liability.

35 5—Procedure

- (1) In conducting the Inquiry, the Commissioner—
 - (a) is not bound by any rules or practices as to procedure or evidence, and may inform themselves in such a manner as the Commissioner thinks fit; and
 - 40 (b) must seek to adopt procedures that will facilitate a prompt, cost-effective and thorough investigation of any matter relevant to the Inquiry; and

- (c) may refer any matter to an expert for advice, investigation or report; and
- (d) may refer any matter that may come to the attention of the Commissioner but that is not directly relevant to the Inquiry to any other person or agency (as the Commissioner thinks fit).

- 5 (2) Subject to subsection (3), the Commissioner must, in conducting the Inquiry, take evidence in public.
- (3) The Commissioner may conduct any part of the proceedings (including the taking of evidence) in private if the Commissioner considers it in the public interest to do so.
- (4) Subject to this Act, the Commissioner may determine the procedures of the Inquiry.

10 **6—Power to require attendance of witnesses etc**

- (1) An authorised person may issue a summons requiring a person to appear before the Inquiry at a specified time and place to give evidence or to produce evidentiary material (or both).
- 15 (2) A summons to produce evidentiary material may, instead of providing for production of evidentiary material before the Inquiry, provide for production of the evidentiary material to an authorised person nominated in the summons.
- (3) An authorised person may administer an oath or affirmation to a person appearing before the Inquiry.

7—Supreme Court may compel attendance etc

20 If a person refuses or fails—

- (a) to comply with a summons issued under this Act; or
- (b) to make an oath or affirmation when required to do so by an authorised person; or

25 (c) to answer a question on a subject relevant to the Inquiry to the best of the person's knowledge, information and belief,

the Supreme Court may, on application by an authorised person, compel the attendance of the person before the Court to give evidence or to produce evidentiary material for the purposes of the Inquiry.

8—Offences relating to Inquiry

- 30 (1) A person who, without reasonable excuse, refuses or fails—
- (a) to comply with a summons issued under this Act; or
 - (b) to make an oath or affirmation when required to do so by an authorised person; or

35 (c) to answer a question on a subject relevant to the Inquiry to the best of the person's knowledge, information and belief,

is guilty of an offence.

Maximum penalty: \$10 000.

- (2) A person who knowingly makes a false or misleading statement in, or in relation to, information or other material provided to the Inquiry is guilty of an offence.

Maximum penalty: \$10 000.

- (3) A person who—

- (a) misbehaves before the Inquiry; or
(b) interrupts the proceedings of the Inquiry,

is guilty of an offence.

Maximum penalty: \$5 000.

9—Provision of support to Inquiry

- (1) The Minister must ensure that the Commissioner is provided with sufficient resources, facilities and staff to conduct the Inquiry (including, to avoid doubt, sufficient resources to undertake such travel as the Commissioner considers necessary for the purposes of the Inquiry).

- (2) The Attorney-General may, after consultation with the Commissioner, appoint such other persons to assist in the conduct of the Inquiry as the Attorney-General thinks appropriate.

- (3) The Minister may, after consultation with the Commissioner, engage or appoint a suitably qualified person or persons to provide support or assistance to any person who may wish to place evidence before the Inquiry.

- (4) The Commissioner may, by arrangement with the relevant body, make use of the services of the staff, equipment or facilities of any agency or instrumentality of the Crown (including an administrative unit in the Public Service).

10—Confidentiality and disclosure of information

- (1) A provision of any Act or law requiring a person to keep particular information confidential, or in any way restricting the disclosure or publication of information, does not prevent a person from providing information in the course of, or for the purposes of, the Inquiry.

- (2) The Commissioner must, in the conduct of the Inquiry and in the Commissioner's report on the outcome of the Inquiry, take reasonable steps to avoid the disclosure of information that is commercially sensitive, or the disclosure of information that may materially affect the rights of a person or body.

- (3) Without limiting this section, the Commissioner may use a code or other system of identification under which the Commissioner can separately identify any person or body, and may provide that identifying information, and any other information obtained during the course of the Inquiry, to the Minister or another public official, as the Commissioner thinks fit.

11—Completion of Inquiry and presentation of report

- (1) The Commissioner must complete the Inquiry, and prepare a report on its outcome, before 30 November 2021.

- (2) A copy of the report of the Commissioner under this section must be delivered to the Attorney-General and to the Minister.

- (3) The Attorney-General must, within 6 sitting days after receiving the report, cause a copy of the report from the Commissioner to be laid before each House of Parliament.

12—Report of Minister in response to Commissioner's report

The Minister must respond to the report of the Commissioner under section 11 as follows:

- (a) within 3 months after receipt of the report by the Attorney-General, the Minister must make a preliminary response indicating which (if any) of the recommendations of the Commissioner it is intended be carried out; and
- (b) within 6 months after receipt of the report by the Attorney-General, the Minister must make a full response stating—
 - (i) the recommendations of the Commissioner that will be carried out and the manner in which they will be carried out; and
 - (ii) the recommendations of the Commissioner that will not be carried out and the reasons for not carrying them out; and
- (c) for each year for 5 years following the making of the full response, the Minister must, within 3 months after the end of the year, make a further response stating—
 - (i) the recommendations of the Commissioner that have been wholly or partly carried out in the relevant year and the manner in which they have been carried out; and
 - (ii) if, during the relevant year, a decision has been made not to carry out a recommendation of the Commissioner that was to be carried out, the reasons for not carrying it out; and
 - (iii) if, during the relevant year, a decision has been made to carry out a recommendation of the Commissioner that was not to be carried out, the reasons for the decision and the manner in which the recommendation will be carried out; and
- (d) a copy of each response must be laid before each House of Parliament within 6 sitting days after it is made.

13—Privileges and immunities

- (1) An authorised person has, in connection with the conduct of the Inquiry, and in respect of any report prepared as part of the Inquiry, the same protection, privileges and immunities as a Judge of the Supreme Court.
- (2) No subpoena or other process may be issued by a court, tribunal or other authority—
 - (a) requiring a person who is or has been an authorised person, or appointed or engaged under section 9, to appear to give evidence of matters coming to the person's notice in the person's official capacity or former official capacity; or
 - (b) requiring the production of a document, object or substance—
 - (i) that was prepared or made in the course of, or for the purposes of, the Inquiry; or
 - (ii) that is in the possession of the Inquiry or that was in the possession of the Inquiry immediately before completion of the Inquiry,

and any such process issued before the commencement of this subsection will be of no force or effect.

- (3) A person who appears before the Inquiry, or who provides evidentiary material to the Inquiry, has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.
- (4) A legal practitioner who represents a person in connection with the Inquiry has the same protection, privileges, immunities and obligations as counsel involved in proceedings before the Supreme Court.

14—Self-incrimination

Despite a preceding section, if a person is required to provide information or answer a question under this Act and the information or answer would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or answer the question but the information or answer is not (except in proceedings for an offence against this Act) admissible in evidence against the person in any criminal or civil proceedings in any court.

15—Regulations

The Governor may make such regulations as are necessary or expedient for the purposes of this Act.