

# Land Access, Approvals, Native Title and Community Engagement

Dr Paul Heithersay

Deputy Chief Executive Resources and Infrastructure,  
Department of Primary Industries and Resources,  
South Australia



# The Future Challenge

- The most significant current and future challenges facing minerals and energy resources industry stem from social rather than technical issues.
- Exploration management increasingly needs to address a broad range of social issues as well as compliance requirements.
- Government is increasingly showing signs of legislating in this area



# Council of Australian Governments

- The Council of Australian Governments (COAG) is the peak intergovernmental forum in Australia, formed in 1992
- The Prime Minister chairs COAG meetings
- Role of COAG: to initiate, develop and monitor the implementation of policy reforms that are of national significance and which require cooperative action by all Australian governments



# Ministerial Councils

- Ministerial Councils, includes States, Territories and Commonwealth Ministers to facilitate consultation and cooperation
- (New Zealand Ministers have full membership in councils when matters affect NZ interests)
- Ministerial Councils report to COAG
- Ministerial Council on Mineral and Petroleum Resources (MCMPR) has a mandate to promote the benefits of a long term sustainable mining industry in Australia



# Mining and Energy Jurisdictions

- Minerals and Onshore Energy Laws and Regulation are controlled by State and Territories.
- Royalties are collected by the States and Territories. Different rates across jurisdictions.
- Offshore Petroleum and Gas Laws controlled by the Federal Government.



# Trusted Efficient Multiple-Use Land Access

“High-trust societies fare better than low-trust societies” - F. Fukuyama

- Trust is the most valuable lead factor and lag outcome
- Best practice legal frameworks:
  - ✓ elicit community trust and investor confidence;
  - ✓ are transparent, flexible, efficient & practical;
  - ✓ entail robust consultation;
  - ✓ provide certainty;
  - ✓ focus on outcomes.



# Process to Apply for Exploration Tenements ( Example of South Australia)

- Minerals are the property of the Crown in South Australia.
- An Exploration Licence (EL) is the principal title issued for exploration in the state.
- An EL authorizes the applicant to explore for all minerals and/or opal
- A company must have a registered office in Australia.
- An applicant for an EL is required to:
  - Submit the application online , in person or by fax .
  - A plan must be attached defining the area sought.
  - The area should not exceed 1000 km<sup>2</sup>.
  - The applicant must submit a proposed scheme of exploration with a statement of the proposed expenditure;
  - The minimum expenditure requirement for a licence is nominally \$30 000 plus \$97/km<sup>2</sup> per year.

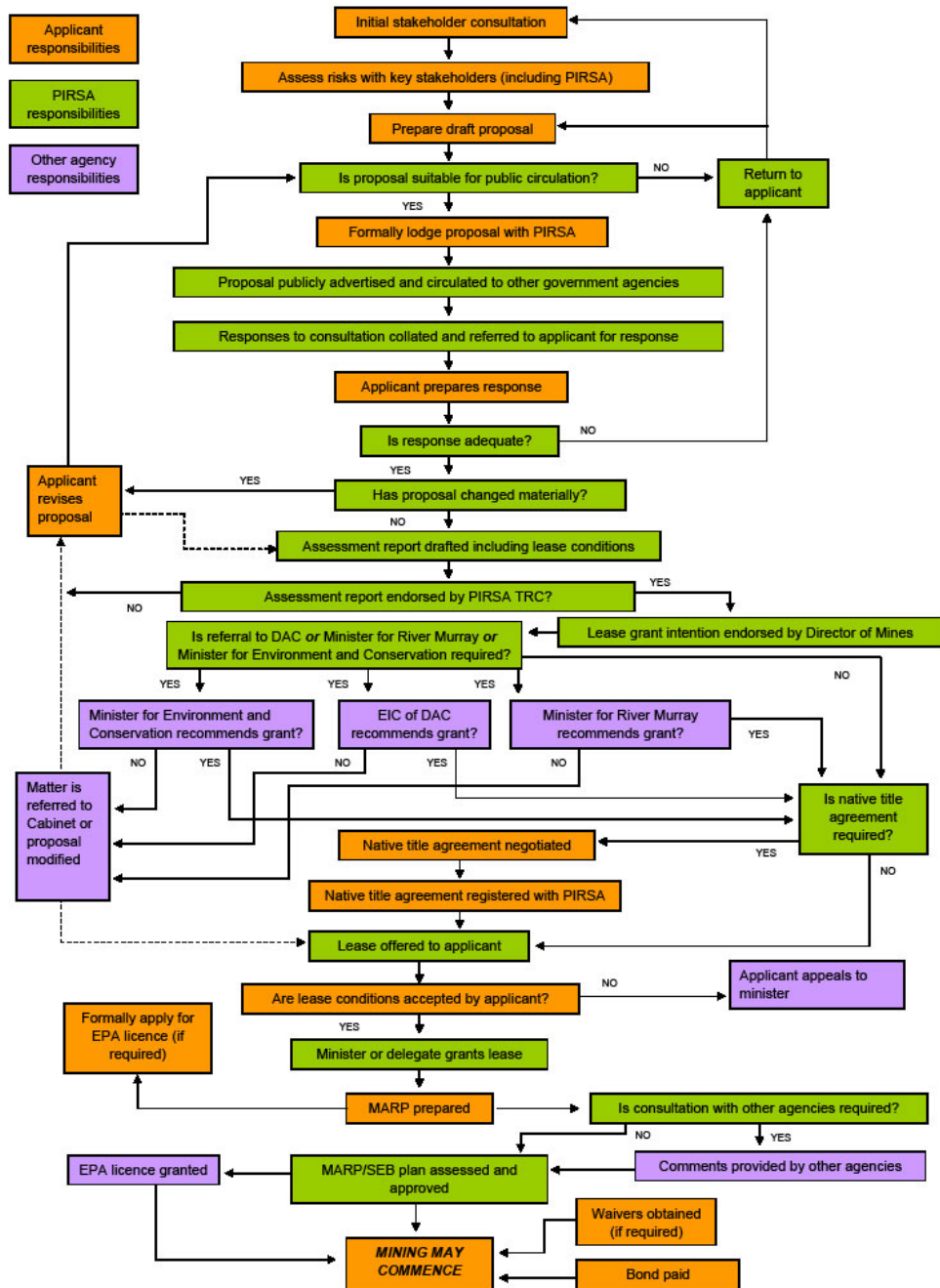


# Process to Apply for Mining Lease (Example of South Australia)

- Applications for a Mining Lease (Mineral (ML) Retention Lease (RL) or Miscellaneous Purposes Licence (MPL) must be supported by a 'Mining Lease Proposal'.
- Once a tenement is granted, a [Mining and Rehabilitation Program \(MARP\)](#) is required to be approved before mining may commence.
- The documentation provides a comprehensive review of environmental, social and economic risks and treatments of the proposed operation so that the Minister for Mineral Resources Development can make an informed, risk-based and balanced decision about the proposed operation.
- A Native Title Agreement also needs to be completed before a Mining Lease can be approved.







# Statement of Environmental Objectives

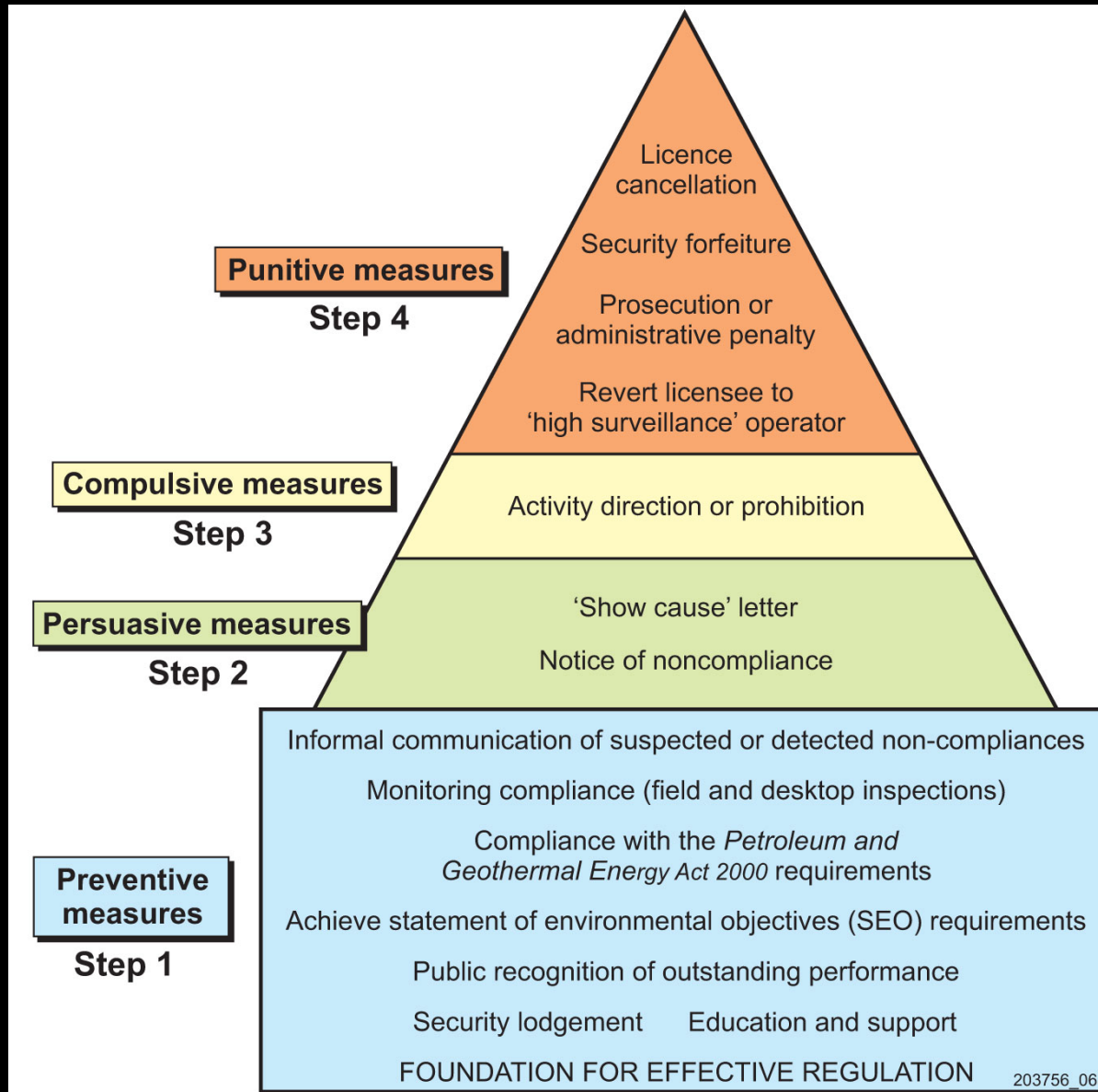
1. South Australia's Petroleum and Geothermal Energy Act 2000 defines the environment as: land, air, water, soil; plants & animals; social, cultural and heritage features; visual amenity; economic and other land uses.
2. Regulated Activities cannot be carried out unless there is an approved SEO in place.
3. SEO's set standards for outcomes from regulated activities e.g. seismic, well operations, production, processing, pipelines, gas storage, etc.
4. SEOs are objective-based, transparent drivers for risk management and the protection of environments.



# Statements of Environmental Objectives (SEOs) are fundamental to sustaining trust

1. SEOs are prepared on the basis of an Environmental Impact Report (EIRs list risks and risk mitigation strategies).
2. SEOs are prepared in consultation with landowners, land users, traditional land owners, community groups, government agencies, public, etc.
3. Each SEO is a public document and must include:
  - Environmental objectives to be achieved; and
  - Criteria to be used by stakeholders to assess achievement of objectives.
4. Licensees lodge annual report against SEO achievement, and annual reports are public documents.

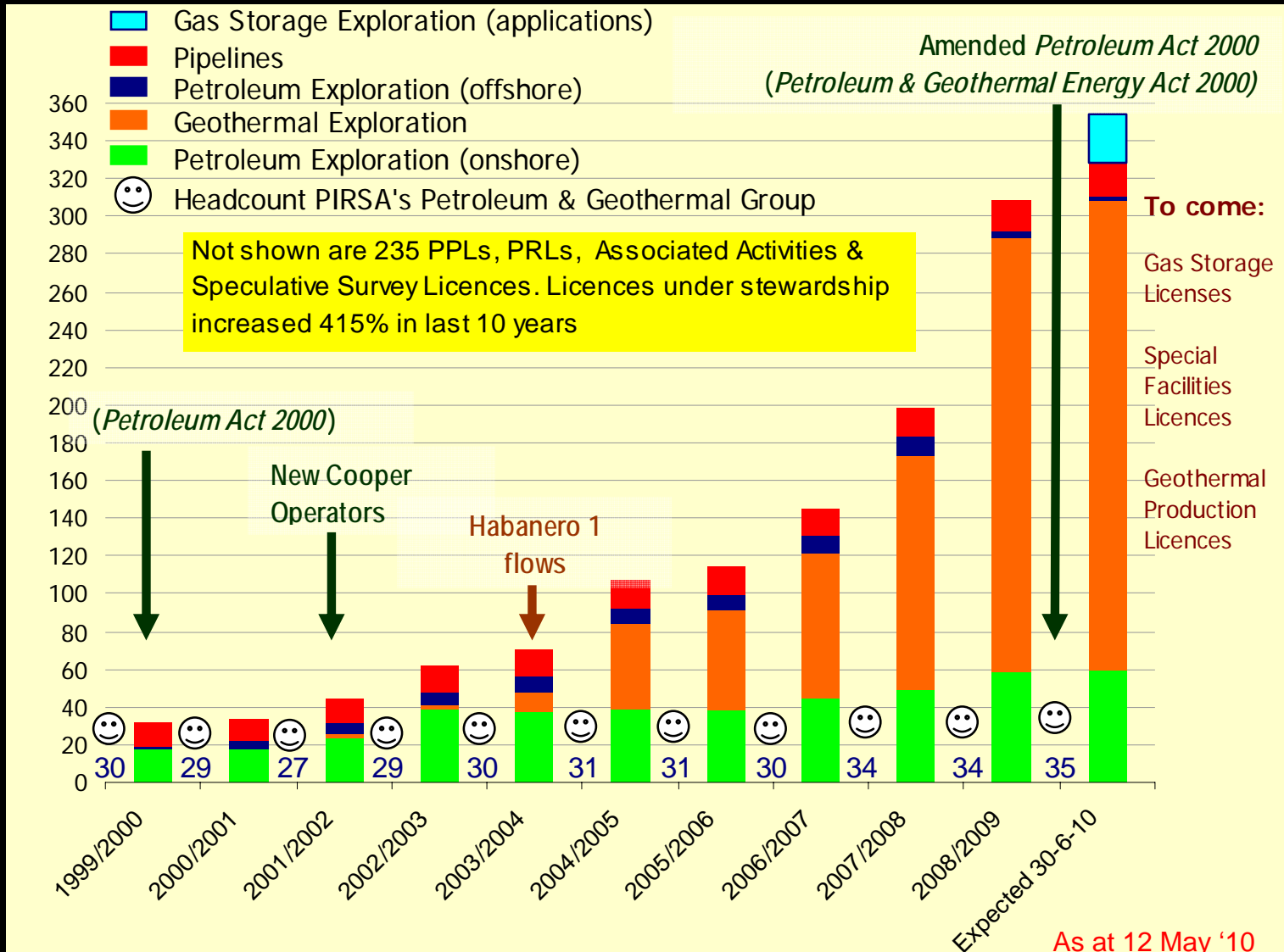




# Fit-for-Purpose People & Systems



- Trusted outcomes attained through a One-Stop-Shop
- Increasing complexity & volume managed efficiently



# Land Access Industry Forum April 2010

- Attended by industry experts and Government delegates
- unanimous agreement that land access issues are of strategic importance to all stakeholders in the resources sector
- 5 Priority Areas
  - community engagement
  - multiple land use
  - Native Title and Aboriginal Heritage
  - wealth creation
  - approvals and regulation



# Land Access Industry Forum April 2010

In summary, the Forum agreed that there is a need for:

- support of Governments for more seamless regulation
- a One-Stop-Shop to simplify compliance burdens
- agreed frameworks for policies on shared use of land
- strong and consistent messages by all stakeholders, especially Ministers, on the role of mining as the generator of wealth in the Australian economy
- industry to improve its capability in community engagement and consultation practices
- industry to take up an Industry Code of Conduct model with minimum standards agreed, to secure its social licence to operate



# Land Access Industry Forum April 2010

- The land access agenda offers the opportunity to build stronger partnerships between industry and government, including on matters relating to water reforms as part of the land access issues.
- The Forum encouraged Ministerial involvement as essential for advancing a deeper understanding of the role that the resources sector plays in national wealth creation, and the necessity for the Industry sector to build up its social credentials.





# Community Engagement

## Tasks for consideration

### Government

Establish framework/Voluntary Code of Practice for Community engagement with minimal standards

Protect and balance the rights of the industry and community in gaining access to mineral resources

Minimise gaps in policy where adversarial positions arise

Promote the use of partnerships to build community confidence and industry trustworthiness into the future

### Industry

Work with governments to develop infrastructure strategically

Promote itself appropriately

Build skills capacity to undertake community engagement



# Community Consultation

- We need to ensure that communities are appropriately engaged in the application for exploration and mining permits to ensure that due consideration is given to interests of all stakeholders, including environmental and socio-economic concerns.
  - Best practice in community engagement needs to be adopted and engaged over the life of exploration and mining operations, from planning to rehabilitation.
  - Example - SA Case Studies
    - **Mindarie HMS Mine – Poor communication with community by miner about major concerns: supply and quality of groundwater/crop capability/disruption to farming business and amenity.**
    - **Angus Zinc Mine – How to reassure downstream farmers about a tailings failure.**



# Wealth Creation

## Tasks for consideration

### Government

At all levels of government Ministers must consistently and persistently acknowledge

- Australia is proud of the mining sector
- To retain this recognition mining sector must continue to apply sustainable mining principles
- In partnership with government and communities the mining sector has a vital role to play in delivering a wide range of social and economic benefits to Australia

### Industry

Continue to enhance its capacity to advance its **social licence to operate**

Undertake best practice regarding Indigenous employment and related programs



# Wealth Creation

- Sustainable mining can provide significant financial and social benefits to communities and governments
- Government Ministers and economic development and planning agencies should be involved in raising community awareness of the benefits of sustainable mining.

**South Australian Key Issues: The Social Dividend**

**South Australian Examples: PACE, SA Strategic Plan,  
30yr Greater Adelaide Plan**



# Social Licence to Operate

- A social licence exists when a project has the approval or broad acceptance of stakeholders to conduct its activities.
- First proposed in 1997 by Jim Cooney, then Director of International and Public Affairs, Placer Dome.
- Recognition that the State is not the only form of authority/social power that can influence an operation.
- In exploration a State may provide a formal licence but a social licence must also be sought.
- A **Social Licence to Operate** is informal and may change over time.



# Multiple Land Use

## Tasks for consideration

### Government

Develop a consistent multiple land use policy at the national level

### Industry

Acknowledge and address the collective risk to the industry of not consulting with and understanding other industries and land users with interests in land access



# Land Use Conflict

- Competition for, and identification of ownership and rights of, land should be regulated through a transparent and consultative process to achieve shared land use agreements

## South Australian Key Issues

### Defence Land (Woomera Prohibited Area)

### Northern Flinders Ranges 'Seeking a Balance' Project

uncertainty of access, continuation of operations and right to mine, sterilisation of land

### Farming versus mining



# Native Title and Aboriginal Heritage

## Tasks for consideration

### Government

Ensure there is consistency and transparency in the confidentiality of Aboriginal Heritage

Develop a standard document which incorporates the common elements of company agreements and ILUA's

### Industry

Continue to enhance its capacity to advance its social licence to operate

Undertake best practice regarding Indigenous employment and related programs

Build skills capacity to undertake community engagement





# Native Title and Aboriginal Heritage

- Numerous government departments have responsibility for Native Title and Aboriginal Heritage issues and applications. The industry needs to build trust and share expectations with Traditional Owners and Indigenous communities.

**South Australian Key Issues : Lake Torrens & Lake Gairdner – uncertainty of access, heritage surveys, who speaks for country, costs to industry**



# Approvals and Regulation

## Tasks for consideration

### Government

Develop a one-stop-shop – a lead agency for approvals, to work with other agencies supporting the lead agency

Provide industry with full and consistent information on required process and timeframes for process, to ensure that processing is within appropriate timeframes

Use an impact-based approach, focused on the level of impact or interference with other land uses, as opposed to the risk elimination/precautionary principle approach, in order to lessen approvals burdens. It needs to be clear why an approval is necessary and what the risks are if no approval process is undertaken

### Industry

Ensure appropriate community stakeholders engagement happens to secure the approvals process, including collaborative engagement by multiple industry groups at the one time

Develop a national approach to approvals through an industry code of conduct rather than fragmented regional processes



# Approvals Processes

- Processing of applications is a multi-stage decision with each jurisdiction having different legislative timeframes and requirements. The “one stop shop” is not easy.

## South Australian Key Issues

**Review of Mining Act (reduction of red tape), EPBC referrals, FIRB approvals on Commonwealth Land**



# Proposed outcomes

- Development of national sustainable multiple land use policy by MCMPR
- The development of a consistent approach by ministers to promote the benefits of a long term sustainable mining industry
- More effective coordination of indigenous heritage databases across jurisdictions
- Expansion of activities under the MOU between the MCA and the Commonwealth on indigenous employment and business facilitation
- A Handbook for the private sector, which will outline all permitting regimes and processes for land access across the States and Territories.



# Conclusions

- State and Territories regulate mining and inshore petroleum activities and collect royalties.
- Mining and Petroleum Acts are broadly similar in approach
- Regulation is moving to Risk based approaches and triple bottom line.
- Preserving land for exploration and development is becoming increasingly more difficult and now has national attention.

