

South Australia

Resource Operations Ombudsman Bill 2015

A BILL FOR

An Act to establish the office of the Resource Operations Ombudsman; to provide for the making and resolution of complaints regarding issues related to the conduct of resource operations; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Resource Operations Ombudsman Act 2015*.

2—Commencement

This Act will come into operation 3 months after the date of assent.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

5 **fracturing operations** means any operations that involve the recovery (or potential or enhanced recovery) of a form of gas by the high-pressure injection of water (including water containing a chemical or any other substance) or any other substance into a wellbore so as to create fractures in rocks or rock formations, other than operations for the production of geothermal energy;

10 **geothermal energy** has the same meaning as in the *Petroleum and Geothermal Energy Act 2000*;

Ombudsman means the Resource Operations Ombudsman appointed under Part 2 (and includes a person acting in the office of the Resource Operations Ombudsman from time to time);

15 **resource operations** means any of the following operations:

- (a) mining operations within the meaning of the *Mining Act 1971*;
- (b) operations involving a regulated activity within the meaning of the *Petroleum and Geothermal Energy Act 2000*;
- (c) fracturing operations.

20 (2) For the purposes of this Act, a reference to **issues related to the conduct of resource operations** includes issues related to—

- (a) entry to land in connection with resource operations; and
- (b) compliance with the requirements of any lease, licence or other authority under which resource operations are conducted; and
- 25 (c) the degradation of, and other impacts on, land or waterways arising out of resource operations; and
- (d) operations for the rehabilitation of land or waterways.

Part 2—Resource Operations Ombudsman

Division 1—Appointment and conditions of office

4—Appointment

- 30 (1) There is to be a *Resource Operations Ombudsman*.
- (2) The Ombudsman is appointed by the Governor.

5—Term of office and conditions of appointment

- 35 (1) The Ombudsman is appointed on conditions determined by the Governor and for a term of 7 years (which may be renewed from time to time).
- (2) The office of Ombudsman becomes vacant if the Ombudsman—
- (a) dies; or

- (b) resigns by written notice given to the Minister; or
 - (c) completes a term of office and is not reappointed; or
 - (d) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
 - 5 (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
 - 10 (g) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office; or
 - (h) is removed from office by the Governor on presentation of an address from both Houses of Parliament asking for the removal of the Ombudsman from office
- (3) Except as is provided by this section, the Ombudsman may not be removed from office, nor will the office of the Ombudsman become vacant.
- (4) The Ombudsman is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

6—Remuneration

20 The Ombudsman is entitled to remuneration, allowances and expenses determined by the Governor.

7—Temporary appointments

The Minister may appoint a person (who may but need not be an employee in the Public Service) to act as the Ombudsman—

- 25 (a) during a vacancy in the office of Ombudsman; or
- (b) when the Ombudsman is absent from, or unable to discharge, official duties.

Division 2—Functions and powers

8—Functions

The Ombudsman has the following functions:

- 30 (a) to assist owners and occupiers of land in negotiating with persons involved in the conduct of resource operations on the land in relation to those operations, including in relation to access to the land (whether under a lease, licence or some other authority or arrangement);
- 35 (b) to provide an independent complaint handling process and investigate and resolve complaints relating to the conduct of resource operations;
- (c) to identify and review issues arising out of complaints and to make recommendations for improving compliance with legislative, regulatory and other requirements relating to the conduct of resource operations and preserving and increasing the rights of persons affected by the conduct of
- 40 resource operations;

(d) to monitor compliance with orders made by the Ombudsman associated with the provision of an independent complaint handling process;

(e) to provide information, education and advice in relation to—

(i) the rights and responsibilities of those conducting resource operations and persons affected by the conduct of resource operations; and

(ii) procedures for resolving complaints; and

(iii) other matters (if any) determined to be appropriate by the Ombudsman;

(f) to prepare and publish standards relating to the conduct of resource operations and to promote the adoption of such standards;

(g) to perform other functions conferred on the Ombudsman by or under this or any other Act.

9—Powers

Subject to this Act, the Ombudsman has the powers necessary or expedient for, or incidental to, the performance of the Ombudsman's functions.

10—Independence

The Ombudsman is not subject to control or direction by the Minister.

Division 3—Other matters

11—Delegation

(1) The Ombudsman may delegate to a person (including a person for the time being performing particular duties or holding or acting in a specified position) a function or power conferred on the Ombudsman by this or any other Act.

(2) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be conditional or unconditional; and

(c) is revocable at will; and

(d) does not derogate from the power of the Ombudsman to act in any matter.

12—Employees

(1) The Ombudsman may engage employees on terms and conditions determined by the Ombudsman.

(2) The employees are not Public Service employees but are to be taken to be public sector employees, employed by the Ombudsman, for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* and section 74 of the *Public Sector Act 2009*.

13—Use of services or staff of other government agencies

The Ombudsman may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

14—Budget

The Ombudsman's proposed budget for a particular financial year is to be submitted for examination by the Economic and Finance Committee of the Parliament by the end of the preceding calendar year.

5 15—Annual report

The Ombudsman must, before 30 September in each year, prepare a report on the Ombudsman's activities during the financial year that ended on the preceding 30 June and forward copies of the report to the Presiding Members of both Houses of Parliament to be laid before their respective Houses at the earliest opportunity.

10 16—Immunity

No liability attaches to the Ombudsman or any member of the Ombudsman's staff for any act or omission in good faith in the exercise or purported exercise of powers or functions under this or any other Act.

Part 3—Complaints, investigations etc

15 17—Complaints

A person affected by the conduct of resource operations may make a complaint, in a manner determined by the Ombudsman, in respect of any issue related to the conduct of the resource operations.

18—Investigation and referral of issues

- 20** (1) Subject to this Part, the Ombudsman may investigate an issue related to the conduct of resource operations if satisfied that the issue should be investigated (whether as a result of a complaint under this Part or otherwise).
- (2) Subject to this Part, the procedure to be adopted in relation to an investigation will be as determined by the Ombudsman.
- 25** (3) If an issue referred to in subsection (1) is assessed as raising an issue that should be dealt with by another person or body, the Ombudsman may refer the issue to that person or body.
- (4) If a complaint is assessed as trivial, vexatious or frivolous, the complaint has
- 30** previously been dealt with by an appropriate person or body and there is no reason to reexamine the matter or there is other good reason why no action should be taken in respect of the complaint, no action need be taken in respect of the complaint.

19—Conciliation

- (1) The Ombudsman may, at any time, decide to attempt to deal with a complaint by conciliation.
- 35** (2) The Ombudsman may, in attempting conciliation under this section, act personally or through some other person.
- (3) The Ombudsman may, if satisfied that the subject of a complaint has been properly resolved by conciliation under this section, determine that the complaint should not be investigated or further investigated under this Act.

20—Ombudsman to have powers of Royal Commission

For the purposes of an investigation the Ombudsman has the powers of a commission as defined in the *Royal Commissions Act 1917* and that Act applies as if—

- (a) the Ombudsman were a commission as so defined; and
- (b) the subject matter of the investigation were set out in a commission of inquiry issued by the Governor under that Act.

21—Ombudsman may take action

(1) The Ombudsman may act under this section in relation to a person engaged in the conduct of the resource operations if—

- (a) an investigation has been carried out under this Part in respect of an issue related to the conduct of the resource operations; and
- (b) the Ombudsman is satisfied that the conduct of the resource operations—
 - (i) has been carried out in contravention of—
 - (A) an Act or law; or
 - (B) a condition of a lease, licence or other authority under which the operations are conducted; or
 - (C) any other requirements applying to the conduct of the operations; or
 - (ii) has failed to comply with standards published by the Ombudsman relating to the conduct of resource operations.

(2) The Ombudsman may, in acting under this section, do any 1 more of the following:

- (a) the Ombudsman may make an order imposing such conditions or restrictions as the Ombudsman considers appropriate on the carrying out of resource operations, or specified resource operations, by the person for a specified period, or indefinitely;
- (b) the Ombudsman may publish a report of the Ombudsman's findings relating to the conduct of the resource operations;
- (c) the Ombudsman may make such recommendations as the Ombudsman thinks fit, in a manner determined by the Ombudsman, relating to the conduct of the resource operations by the person.

(3) The Ombudsman must send a copy of any report or recommendation made under this section to the Minister responsible for the administration of the *Mining Act 1971* and to any other person or body the Ombudsman considers appropriate.

(4) If it appears to the Ombudsman that appropriate steps have not been taken to give effect to a recommendation made under this section, the Ombudsman may make a report on the matter (containing a copy of the earlier report and the recommendation) to the Premier.

(5) A person who contravenes an order made under this section is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 2 years or both.

Part 4—Miscellaneous

22—Confidentiality

A person must not record, disclose or use information gained by the person in connection with the administration of this Act, except—

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- (a) as required or authorised by or under this Act or any other Act or law; or
 - (b) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or
 - (c) with the consent of the person the subject of the information; or
 - 10 (d) for the purposes of legal proceedings arising out of the administration or enforcement of this Act.

Maximum penalty: \$10 000.

23—Regulations

- (1) The Governor may make regulations as contemplated by this Act, or as necessary or expedient for the purposes of this Act.
- 15 (2) The regulations may—
 - (a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
 - 20 (b) be of general or limited application; and
 - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or the Ombudsman.