QUEENSLAND LAW REFORM COMMISSION

Mining lease objections review

Your thoughts on a reimagined process

Background paper 4

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Postal address: PO Box 13312, George Street Post Shop, Brisbane, QLD 4003

Telephone: (07) 3564 7777

Email: LawReform.Commission@justice.qld.gov.au

Website: www.qlrc.qld.gov.au

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Publications in this reference:

QLRC, Introducing our review, Background paper 1, August 2023.

QLRC, Scanning the horizon: Queensland mining in the future, Background paper 2, October 2023.

QLRC, Other Jurisdictions, Background paper 3, February 2024.

QLRC, Reimagining decision-making processes for Queensland mining, Consultation paper 1, July 2024.

QLRC, Valuing the perspectives of Aboriginal peoples and Torres Strait Islander peoples, Consultation paper 2, July 2024.

QLRC, Conscious consistency, Consultation paper 3, November 2024.

Legislation:

All legislation referred to applies to Queensland, unless otherwise indicated.

This paper reflects the law and information available to us as at 23 October 2024.

Contents

Introduction

1. We are reviewing the current processes for deciding applications for mining leases under the Mineral Resources Act 1989 and associated environmental authorities under the Environmental Protection Act 1994 (the 'current processes').

2. Our review started on 5 June 2023. Our terms of reference, available on our website, ask us to consider the views expressed to us during stakeholder consultations.[1] Feedback from stakeholders is critical and will inform development of our recommendations for reform.

3. At this stage of our review, we have not developed any recommendations. Our consultation papers, available on our website, provide a summary of our understanding of strengths and problems with the current processes, discuss six proposals for reform of the current processes and ask questions designed to prompt relevant feedback. Also available on our website are resources developed to support engagement, including by Aboriginal peoples and Torres Strait Islander peoples. **Appendix A** lists our consultation proposals and questions.

4. This paper summarises what we have heard so far in our review. It reflects feedback provided to us during consultations, through written submissions and informal interactive polls. It:

   - outlines our approach to obtaining and presenting feedback
   - presents the key themes identified from the feedback we received
   - provides an overview of feedback on our guiding principles and strengths and challenges of the current processes
   - summarises feedback on the key topics of:
     - the Land Court's role
     - a non-adversarial participation process
     - notification and information sharing
     - Aboriginal and Torres Strait Islander rights and interests
     - evidence-based decision-making
     - building on the statutory criteria for decision-making
     - interacting laws and processes.

5. We are grateful to all who have shared their views. We encourage you to continue to share your feedback with us throughout our review.

Our approach to obtaining feedback

6. Our approach to gathering the information discussed in this background paper included three key research methods (in addition to legal research):

   - **consultations**: holding in person and online meetings, workshops and events, including public information sessions
   - **submissions**: inviting submissions in a range of formats including written submissions, audio and visual recordings and artwork
   - **polls**: asking questions using interactive presentation software during consultations, conferences and information sessions.[2]

7. We received feedback during 128 consultations (111 meetings, 3 workshops and 14 events) held throughout metropolitan, regional and remote areas of Queensland with a broad range

of stakeholders, including industry bodies, Aboriginal peoples, Aboriginal and Torres Strait Islander organisations, landholder organisations, environmental organisations, lawyers and legal professional bodies and community members. **Appendix B** lists our consultations.

8. We ran consultations under Chatham House Rules to encourage free and open exchange of ideas. We are not attributing specific statements to individual consultees for this reason.[3] Where consultees wanted their views directly attributed to them, we prepared a meeting summary that attendees reviewed and approved as a written record of their views.

9. We have also had ongoing consultations with relevant local, State and federal Government departments and statutory authorities. These consultations have enhanced our understanding of operational factors relevant to our review and provided us with insight into implementation considerations. Given the nature of these consultations and their focus on operational matters, we have not reflected the content of these discussions in this paper.

10. We received 39 written submissions from a range of stakeholders including:

- 7 submissions from industry bodies
- 3 submissions from Aboriginal and Torres Strait Islander organisations
- 2 submissions from landholder organisations
- 10 submissions from environmental organisations
- 7 submissions from legal professional bodies and the judiciary
- 3 submissions from local government bodies
- 1 submission from an independent statutory body
- 6 submissions from individuals.

11. All submissions are published on our website.

12. We have grouped the submissions in stakeholder groups to thematically represent views on issues and proposals. We have assigned these categories based on the organisations' stated mission and values, often noted in their submission, and by reference to the inclusive list of stakeholders in the terms of reference for our review.[4] We recognise that many organisations perform multiple functions and represent multiple interests.

13. Many of the individuals who made submissions identified themselves as a member of a stakeholder group or by reference to relevant experience or qualifications. While representing these submissions in a separate 'individuals' category, we have reflected their experience or qualifications in the paper when discussing relevant submissions.

14. Many submissions were made by peak bodies representing the views of a significant membership base. For example:

- AgForce is a peak organisation representing Queensland's rural producers with over 6,000 members[5]
- the Association of Mining and Exploration Companies is a peak industry association representing 580 member companies in Australia[6]
- the Bar Association of Queensland is the professional body representing the interests of members of the Bar practising in Queensland with 1,455 members[7]
- the Hopevale Congress Aboriginal Corporation is a Prescribed Body Corporate and trustee of Deed of Grant in Trust land under the Aboriginal Land Act 1991 with 250 members[8]

- the Local Government Association of Queensland is the peak body for Queensland local government, representing 77 local councils[9]
- the Queensland Conservation Council is a peak environmental organisation in Queensland, working alongside 9 regional conservation councils and representing 58 member organisations[10]
- the Queensland Law Society is the peak representative body for the Queensland legal profession with 12,741 members[11]
- the Queensland Resources Council is the peak representative organisation for the Queensland minerals and energy sector with 205 members including full, service and associate members.[12]

15. **Appendix C** lists the submissions we received, including approved summaries of meetings.

16. During some consultations we also received data through interactive Mentimeter polls. **Appendix D** lists the polls we conducted.

Figure 1: Map of stakeholder consultations held in Queensland

* The map reflects the locations of our consultations in Queensland. As reflected in Appendix B, 26 of our consultations were held with stakeholders in other jurisdictions.

Our approach to presenting feedback

17. This paper provides a summary of the feedback we received and does not reflect all individual views.

18. It includes direct quotations from submissions that provide a sample of the many different views expressed to us.

19. Our analysis of our records of consultations and written submissions reveals general consensus by a large majority of stakeholders on some issues and options and divergence on others.

Our next steps

20. We have released a third consultation paper, available on our website, about whether any changes we recommend for mining should apply to resource production tenures under the Greenhouse Gas Storage Act 2009, the Geothermal Energy Act 2010 and the Petroleum and Gas (Production and Safety) Act 2004. As we have not yet developed our recommendations for reforming the current processes, our focus is on the purpose and intended outcomes of the proposals, rather than their implementation. We are seeking feedback through stakeholder consultations and written submissions about whether there should be consistent processes across the different regulatory frameworks and whether recommendations for a consistent process would be fair, effective, efficient and contemporary. We will reflect this feedback in a separate submissions paper.

21. All feedback received in response to our three consultation papers will inform the development of our final report and recommendations, which we will give to the Attorney-General by 30 June 2025.

22. Where there is consensus or strong support for proposals, our focus will be on developing the necessary details to support effective implementation of proposed reforms. Where there is contest about the appropriateness of proposals, we will undertake further work to decide whether to progress those options. We will engage with a broad range of stakeholders to inform this process.

Overview of feedback

23. Some strong themes emerged from the feedback we received.

24. Legal professionals and environmental organisations generally support both the underlying rationales for the proposals and the mechanisms proposed to achieve them. They strongly support a process that includes early and ongoing non-adversarial participation, transparent, accountable and evidence-based decision-making and a streamlined review mechanism. They express support for reforms to recognise and protect the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in the decision-making process.

25. Landholder organisations generally support the proposals, although they consider that other laws and processes already recognise and protect the rights of Aboriginal peoples and Torres Strait Islander peoples, notably native title and cultural heritage. They emphasise the need to ensure that any reforms appropriately protect the rights of landholders and are concerned that the removal of the objections process may weaken landholders' fragile position relative to mining companies in compensation negotiations.

26. Industry bodies hold significant concerns about the proposals, except for the proposal to improve notification and information sharing through a centralised online portal. They express a strong desire to limit public participation in court processes and concern that these processes can be abused, resulting in inefficiencies and uncertainty.

27. Aboriginal peoples and Torres Strait Islander peoples and organisations express a lack of trust and confidence in the current processes and reservations about the potential for legislative reforms to meaningfully protect their rights and interests. They note their strong and unique connection with their Country and interest in engaging in decision-making processes that affect it. They generally support proposals that will support transparent, evidence-based decision-making informed by the right people for Country. There is concern about how the proposed process would effectively identify the right people for Country, in the context of noted deficits with the interacting native title and cultural heritage processes.

Our guiding principles

28. We identified four principles to guide our consideration of the key issues and help develop recommendations for reform. These principles are fair, efficient, effective and contemporary.

29. A range of stakeholders expressed support for the guiding principles, noting they provide an appropriate basis for reform.[13] For example, the Environmental Defenders Office noted in their submission:

> EDO agrees that the guiding principles of 'fair, efficient, effective and contemporary' are appropriate for reform of the current mining objection hearing processes. Fairness and efficiency in particular are key principles underpinning administrative law, and therefore paramount considerations for the reform. Effectiveness and contemporary considerations are key to ensuring that reform is suitable and beneficial in meeting the objectives of the relevant Acts and addressing concerns of all stakeholders.[14]

30. The Queensland Human Rights Commission, in expressing support for the guiding principles, expanded on the meaning of 'fair'. They submitted that the following principles, drawn from the factors set out in section 13 of the Human Rights Act 2019, are relevant:[15]

- lawful and non-discriminatory
- evidence-based
- ensures participation
- transparent and accountable.

31. Some stakeholders noted that there is an inherent tension between the principles and highlighted the importance of ensuring that our recommendations achieve the appropriate balance. For example, Australian Energy Producers stated:

> … a review process creates an inherent tension between the principles of fairness and the principle of efficiency. In reforming the mining lease objections processes, the consultation paper should also discuss how to best strike the right balance between these two principles, rather than assuming that merits review intrinsically adds value to the subsequent decision. For example, a merits review which makes a recommendation that aligns with, or confirms, the decision maker's inclination may involve considerable expense, time and not substantially change the quality of the decision or the availability of information. In that case, the principle of efficiency would seem to have been sacrificed in the interests of the principle of fairness.[16]

32. Energy Resources Law, while supporting the identified principles, expressed concern about the prospect of realising these principles through the proposed process.[17]

33. Parallax Legal noted the importance of ensuring that the principles translate into treatment of the rights and interests of Aboriginal and Torres Strait Islander peoples, communities and nations in a way that is no less favourable than those of non-Indigenous persons.[18]

34. During consultations, some community members expressed concern about the potential for the guiding principle of 'fair' to be skewed to a particular stakeholder group.

35. As outlined below, there was a diversity of views on how to reflect the guiding principles in a reformed process.

Strengths and problems with the current processes

36. In our consultation papers, we summarised our understanding of key strengths and problems with the current processes. We invited feedback on whether we had correctly identified the strengths and problems of the current processes and whether there are others that we should consider.

37. The feedback we received generally resonated with our identification of the key strengths and problems of the current processes.[19]

38. Stakeholders identified the following additional strengths of the current processes:

- the deep specialist expertise of not only the Land Court but also the Department administering the Mineral Resources Act 1989[20]
- key features of the current Land Court objections hearing process, including:[21]
  - the general rule that each party bear their own costs during an objections hearing, which ensures that fear of an adverse costs order does not hinder public interest litigation
  - the lack of discretion to limit the scope or refuse to hear an objection.[22]

39. Stakeholders reiterated the following problems that we identified with the current processes:

- the fragmentation of legal frameworks dealing with aspects of Aboriginal peoples' and Torres Strait Islander peoples' rights and interests in lands and waters, which operate at cross-purposes to achieving adequate recognition and protection of these rights and interests[23]
- complexities and inconsistencies in the current processes, for example, submission and objection rights and requirements, which can create confusion, impact resulting rights and affect community participation[24]
- inefficiencies caused by exceedingly long timeframes and unnecessary delays in the current processes, which negatively affect all stakeholders.[25]

40. The Environmental Defenders Office agreed that a problem created by the current processes is that it allows industry to 'game the system', for example by tailoring applications to sit just below a set threshold for an environmental impact statement. They further noted that this weakness of the environmental impact statement process can affect the whole process.[26]

41. Stakeholders identified the following additional problems with the current processes:

- the failure to treat Aboriginal landholders and Torres Strait Islander landholders as an equal stakeholder from the start of the process and to take account of both their interests and the value they can contribute to a project[27]
- the failure to resource participation by Aboriginal peoples and Torres Strait Islander peoples in processes that would enable the giving of free, prior and informed consent[28]
- under-utilisation of alternative dispute resolution processes.[29]

Feedback on key topics

The Land Court's role

42. Our consultation papers propose changing the role of the Land Court by:

- removing the Land Court objections hearing pre-decision and
- introducing combined merits and judicial review of Government decisions.

43. There was general support for this from most stakeholders except industry bodies.

Removing the Land Court objections hearing

44. Most stakeholders expressed concerns with the current Land Court objections process because it is complex, restrictive, adversarial, costly, hostile and lengthy.[30] The Hopevale Congress Aboriginal Corporation submitted that the process 'is very complex and it is not efficient, either for the miner or the landholder who are the most affected parties'.[31]

45. The Queensland Resources Council expressed a similar sentiment, stating:

> Lengthy and complex objection cases create ongoing uncertainty and high costs, with projects taking on average, between 12 and 15 years from discovery of a mineral to the development of a mine site. This delays progress and runs contrary to the interests of industry, landholders, community, government and the public.[32]

46. Legal professionals, Aboriginal organisations, landholder organisations, environmental organisations, local government bodies and community members generally agreed with removing the current objections hearing because it:

- simplifies and streamlines the Land Court's role and procedure in contested applications[33]
- enhances and clarifies the Court's function under the separation of powers, through undertaking merits assessment post-Government decision[34]
- is more uniform with decision-making processes in other jurisdictions[35]
- supports meaningful participation[36]
- will improve access to justice.[37]

47. Some industry bodies expressed support for the current Land Court objections process, while recognising there is scope for improvement. Glencore submitted that the preferable approach would be to retain the current process, where the objections hearing precedes the final Ministerial decision, but remove the ability for parties to judicially review the Land Court's recommendation to the Minister.[38]

48. The Queensland Small Miners Council stated:

> … the QSMC do not support changes to the existing objection process for Mining Leases…
>
> Whilst the current system is not perfect, current laws provide avenues for the public and interested parties to participate in the objection process.
>
> … there is no need to fix what's not broken.'[39]

49. The Queensland Resources Council expressed doubts about whether removing the Land Court objections hearing pre-decision would bring about any substantive improvements to the process. They said:

> While the proposals to reform participation processes and dispense with pre-decision objections hearings by the Land Court go some way towards addressing this issue, the QRC believes more is needed to reduce the significant burden imposed on the system and on all stakeholders by vexatious objections and legal processes.[40]

50. The Queensland Resources Council maintained that key issues of lawfare and standing must be prioritised, rather than the timing and procedural role of the Land Court.[41]

Introducing Land Court review

51. There was general support for the proposal to introduce a combined merits and judicial review process in the Land Court from those who addressed this point.[42] While most stakeholders favoured a combined review process for efficiency, several emphasised the need for clarity and

certainty. For example, most environmental organisations and individuals proposed defining the process as an appeal with stated appeal rights.[43]

52. The Bar Association of Queensland also raised concerns about procedural challenges, the scope of participation and maintaining the distinction between judicial and merits reviews:

> While the Planning and Environment Court has a kind of concurrent jurisdiction which contemplates both "merits" appeals relating to development applications, and the making of declarations, the Planning and Environment Court does not concurrently act as both an administrative body and a judicial body.
>
> ...
>
> The utility in the process of determining whether a primary decision should be set aside on judicial review grounds would likely be usurped if, simultaneously, the primary decision were to be subject to a review on the merits and either affirmed or substituted with the correct and preferable decision (despite any legal error affecting the decision).[44]

53. The Queensland Human Rights Commission noted that human rights apply differently in judicial review and merits review proceedings but identified no concerns with the Land Court having a combined jurisdiction. They highlighted implications of a combined review process:

> On one hand, a decision on the merits to affirm, vary or substitute the original decision will render a determination of judicial review proceedings unnecessary. On the other hand, the Land Court's consideration of human rights on the merits, and its evaluation of the original decision-maker's approach to human rights in judicial review, would both be of value if the matter is remitted to the original decision-maker for their reconsideration.[45]

54. The Environmental Defenders Office suggested that a combined Land Court review process could have significant procedural implications under sections 49 and 58 of the Human Rights Act 2019:

> If undertaking a combined review, the Land Court member should not be able to consider whether the primary decision-maker's determination was unlawful for the purposes of s 58(1) of the HR Act because, in determining the merits of the applications, the Court would be a public entity for the purposes of the HR Act and therefore, have an independent duty to discharge its obligations under the HR Act. In the circumstances of combined review, it would be more appropriate for the Supreme Court to determine any lawfulness of the decision made under the HR Act.
>
> There is a mechanism under s 49 of the HR Act which allows:
>
> (a) a question of law relating to the application of the HR Act; or
>
> (b) a question regarding the interpretation of a statutory provision in accordance with the HR Act
>
> to be referred to the Supreme Court if a party or the Land Court considers the question is appropriate to be decided by the Supreme Court.
>
> Although, this may become procedurally messy if the usual appeal process is to the Land Appeal Court or the Queensland Court of Appeal. The parties could request the Supreme Court to have the matter referred under s 49 of the HR Act to the Court of Appeal if an appeal is later commenced.[46]

55. John Haydon, a legal professional, supported a combined review process but raised concerns that having environmental authority and mining lease application reviews heard together in all cases would be onerous and costly.[47]

56. Some stakeholders raised the potential need for an automatic stay to be imposed when an application for review is made or until the time within which to seek review has ended.[48] The Environmental Defenders Office submitted that this would prevent objectors from wasting resources to seek a ruling on the stay application and ensure the utility of the Land Court process.

Evidence

57. Many stakeholders considered the circumstances in which fresh evidence should be able to be introduced for merits review hearings. Environmental organisations and legal professionals generally considered that rigid adherence to the original record of evidence can lead to unfair outcomes or decisions made on outdated or incomplete information.[49] For example, the Queensland Environmental Law Association stated:

> The nature of the appeal being in essence a rehearing on the record unless exceptional circumstances are established recognises the quality of the application material necessary at first instance for mining lease applications. However, there may be occasions where the interests of justice favour fresh evidence being admitted which do not reach the relatively high threshold of "exceptional circumstances". That would be consistent with ensuring decisions are made on the most current and best evidence available at the time of the decision. This will be more important if the Court is to have a power to substitute its own decision for that of the original decision-maker.[50]

58. John Haydon, a legal professional, submitted that the term 'exceptional circumstances' is problematic because it lacks a clear definition and could result in further costs, as parties may expend significant resources trying to prove that their case qualifies for the exception.[51]

59. Some submissions highlighted the need for discrete approaches to the introduction of fresh evidence.[52] For example, Lock the Gate Alliance Ltd and the Environmental Defenders Office proposed that proponents should be limited to the evidence they originally submitted because this would encourage high-quality, comprehensive application materials from the outset. Both submitted that objectors should not be limited to the contents of their submission, so they are afforded the opportunity to bring expert critique to the application material during the appeal.

60. Parallax Legal submitted that fresh evidence relating to Aboriginal and Torres Strait Islander cultural heritage should be admissible, even if it was not available to the original decision-maker because such information may surface during or after the initial decision. They also suggested that rights and interests arising from subsequent native title determination outcomes or the joinder of Indigenous respondents to native title proceedings could warrant the introduction of fresh evidence.[53]

61. The Queensland Human Rights Commission highlighted the need to admit fresh evidence to consider human rights if there are gaps in the evidence available to the original decision-maker or if new evidence arises. They submitted that the Land Court should have the power to seek out such evidence if it is not led by the parties.[54]

Standing

62. Industry bodies were united in their view that standing should be limited to increase efficiency, effectiveness and certainty in the processes.

63. Some industry bodies suggested restricting standing to limit participation to individuals and groups with direct and legitimate interests and to prevent frivolous or vexatious objections.[55] For example, the North Queensland Miners' Association submitted that only those directly affected by the tenure should be able to object to an application.[56]

64. Similarly, the concept of lawfare was central to the Queensland Resources Council's position that standing should be restricted. They defined lawfare as the manifestation of lengthy and complex objections cases and judicial reviews, leading to ongoing uncertainty, higher costs, delays and inefficiencies.[57] They stated:

> There is a long list of cases initiated and run, in substance, by organisations whose personal interests are not directly affected by the specific project or decision. These organisations are rarely the party on record, and some have been found by Courts to act unethically in the way they present evidence or coach witnesses.[58]

65. Dale Forrester, a mining and exploration consultant, submitted:

> Standing to engage in the combined review process should be granted only to those who have formally participated in the decision-making process before a decision is made. This ensures that all parties involved have a genuine interest in the matter and have contributed to the discourse surrounding the application.[59]

66. Legal professionals generally considered that, while open standing in the current processes increases public participation, a balance must be struck to ensure efficiency and fairness in decision-making and to avoid unnecessary delays.[60]

67. The Queensland Law Society considered that standing to appeal should be limited to those who engaged in the participation process, to prevent parties from objecting to a proposal out of self-interest, rather than on a bona fide basis.[61] They submitted that the Court should have a discretion to extend standing where a party establishes an appropriate connection to the decision, when it is in the public interest or if there was a reasonable excuse for not participating.[62]

68. Energy Resources Law considered that standing should be limited to those who engaged in the participation process or any other party whose interests would be adversely affected by the decision.[63]

69. The Queensland Human Rights Commission stressed that standing to seek review is essential for participation in decision-making, particularly to protect human rights. They submitted that anyone who can establish that their rights will be limited or affected by decisions relating to the grant of a mining lease should have the opportunity to engage in the decision-making process and seek review. In particular, the Queensland Human Rights Commission noted:

> Environmental groups and other civil society organisations are often active parties to Land Court objection hearings, having the ability to represent common interests, pool resources, and shoulder risk which may deter people from individually participating. There is no apparent reason why standing for environmental groups should be narrowed; the need for such groups to focus scant resources on meritorious and public interest matters addresses any concerns about 'lawfare' and increased litigation.[64]

70. The Environmental Defenders Office and Parallax Legal submitted that open standing should be maintained.[65] The Environmental Defenders Office noted that decisions on mining applications affect the rights of broad classes of Queenslanders and therefore they proposed that:[66]

- at minimum, open standing for third party appeal rights should remain
- open standing should be extended to judicial review applications
- any submission on the mining lease and environmental authority applications or environmental impact statement should give rise to standing to object in the Land Court
- the Land Court should also have the discretion to allow standing where an objector has not complied with formal requirements.

71. The Bar Association of Queensland took a more restrictive approach, suggesting that a person should fall into one of the following categories to have standing to initiate a review in the Land Court:

> (a) a natural person who has been formally engaged in the decision-making process before the original decision was made;
>
> (b) an incorporated entity which has been formally engaged in the decision-making process before the original decision was made; and

> (c) possibly, an incorporated entity which meets standing requirements of the kind set out in s 487 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) or other criteria more apt to apply to associations representing Aboriginal peoples and Torres Strait Islander peoples potentially affected by the project – but it is questionable whether such bodies should be permitted to seek merits review of any kind if they have not participated in the process – it may be preferable that bodies of this kind be permitted only to seek review for legal errors (whether formally having recognised title or not).[67]

72. Many environmental organisations noted the need for clearly defined and consistent standing rules.[68]

Powers of the Court

73. Most stakeholders agreed that the powers of the Land Court on merits review should be limited to affirm the decision, affirm with varied conditions, or send the matter back to the original decision-maker to decide again.[69] The Bar Association of Queensland cautioned that this may result in a 'feedback loop' of decisions being made, reviewed, quashed and remitted to be remade, from which the process is repeated.[70]

74. Concerns about the Land Court's potential powers on review largely centred around the appropriateness of the court conducting merits review of ministerial decisions involving public interest considerations. For example, Energy and Resources Law stated:

> A decision to exploit or sterilise a particular mineral resource, or decide what is best for the 'public interest' of the people of Queensland, should not be made by the courts, as that is ultimately not a legal question. It should be made by an elected government/Minister who will be answerable for such decisions at State elections.[71]

75. The Isaac Regional Council submitted that, if the Land Court has power to substitute a mining lease decision, the process should adopt a similar approach to the Planning and Environment Court, where the Minister can appeal or call in the decision. In this scenario, the Minister retains ultimate control over the final decision on the tenure.[72] The Bar Association of Queensland stated:

> In the experience of the Association's members, it is relatively uncommon for ministerial decisions at State and Federal level, which involve an assessment of public interest, to be subject to a merits review which extends to the policy of the original decision. Indeed, the Planning Act has express provisions permitting a Minister to "call-in" decisions where there is a State interest involved so that it is the Minister rather than the Planning & Environment Court who makes the final decision.[73]

Costs

76. Consultation meetings and submissions established that the rules for allocating costs following Land Court review are a significant issue. Most stakeholders favoured maintaining the current approach, where each party pays their own costs, with discretion for the Land Court to order otherwise.[74] This rule was considered the fairest, allowing access to justice while deterring some frivolous review applications.

77. Some stakeholders considered minor modifications to the rule may improve outcomes. For example, environmental organisations generally advocated for the public interest to be considered when the Land Court decides a cost order.[75] Lock the Gate Alliance Ltd commented:

> It is important to retain rules around each party paying their own costs with respect to merits review matters. However, we submit that the current cost rules be expand to ensure consideration of the public interest if any potential cost orders are awarded.[76]

78. Ultimately, there was limited support from stakeholders for an alternative model, such as costs following the event[77] or an asymmetrical costs model.[78]

A non-adversarial participation process

79. Our proposal to establish an integrated, non-adversarial participation process was generally supported by all stakeholders except industry bodies. Submissions that addressed this proposal gave the following reasons in support:[79]

- the value of improved community understanding and opportunities for public input at an early stage in the project's design
- the potential efficiencies created by early participation
- supporting community access and meaningful participation in decision-making processes about public interest matters.

Models of participation

80. Our consultation papers discuss a range of different models that we are considering as part of a new participation process. Stakeholders expressed general support for including community information sessions or open houses as part of a reimagined participation process.[80] The Isaac Regional Council, expressing strong support for this model, stated:

> An Open House should be held at the earliest opportunity (even pre-lodgement) by both miner and government together. If a non-adversarial approach is being sought, then an opportunity to canvass ideas before an application is even made (noting public company obligations for notifying stock markets about plans) can set the tone for the subsequent process.[81]

81. Lock the Gate Alliance Ltd stated:

> [T]o ensure that participation is open to a wide sector of the public, and to ensure greater accessibility of information, we recommend information sessions on proposals both online and in person, to allow the public to attend in ways most accessible to them.[82]

82. AgForce expressed a different view:

> AgForce has excluded information sessions/open houses from the forms of participation that we believe should be included in the new participation process. From experience, there usually is not a lot of interest or attendance in information sessions and AgForce sees that the resources devoted to these sessions could be better utilised elsewhere.[83]

83. AgForce supported the community advisory group model, noting:

> The involvement of the community advisory committee being able to draft assessment reports and conditions of approval is ideal and keeps the process and concerns raised at a community level.[84]

84. Environmental organisations expressed reservations about the community advisory or reference group model for its potential to entrench community politics and silence particular views.[85]

85. The Environmental Defenders Office noted that, while this model could work well, it could create issues where the group filters or does not accurately reflect community perspectives. They concluded '[w]e consider allowing the community to speak for themselves without any filtration of their views is safer'.[86]

86. There were mixed views expressed about the community leader council model, with AgForce noting it could be helpful to provide input about large, high impact proposals, but not otherwise.[87]

87. There was general support for retaining the opportunity to make written submissions or comments as part of a reframed participation process. AgForce, in support of this model, described written submissions as 'an essential part of the process'.[88] The Isaac Regional Council described the right to make written submissions to a proposal as one that 'should

always be retained'.[89] The Environmental Defenders Office similarly endorsed written submissions or comments as 'a tried and true way that communities are familiar with in having their voices heard'.[90] They suggested that submissions should not be restricted in scope, to maximise valuable community input.[91]

88. The Bar Association of Queensland expressed general support for all models of public participation consulted on, provided 'they are genuinely open and consultative' and considered as part of the decision-making process.[92] They recommended that we consider how the applicant may respond to information generated in the new process, to support procedural fairness and the potential for 'practical solutions to be developed at an early stage which may address, at least in part, community concerns'.[93]

89. The Queensland Resources Council expressed in principle support for public consultation earlier in the assessment process, noting the potential for that to lead to streamlining and more timely and efficient decision-making in cases where there are no active objectors. They proposed that early consultation should be voluntary, limited and tailored to specific issues identified and should not duplicate existing requirements for later consultation.[94]

Tailoring participation

90. The potential for a tailored participation process was considered by a number of stakeholders. Those who supported a tailored approach noted advantages in:

- processes responding to the facts and circumstances of the proposal and community response and being place-based and fit-for-purpose[95]
- ensuring a fair and equitable process[96]
- efficient use of resources.[97]

91. Stakeholders who opposed a tailored approach cited:

- clarity and certainty, with Lock the Gate Alliance Ltd suggesting a minimum threshold standard for public participation processes and consultations, with tailoring only available when justified by the specific circumstances[98]
- fairness resulting from equal treatment of all projects.[99]

92. The Bar Association of Queensland expressed reservations about the potential to tailor projects based on the level of community concern, noting:

> This process has the potential to give rise to situations where, due to an apparent absence of community concern for a project, an important step in the process (i.e., community engagement) is usurped in situations where the scale, risk and impact of the project plainly categorise it as major and likely to impact upon the community. To this end, such a tailored participation process may give rise to situations where projects proceed without meaningful interrogation due to the absence of active community engagement. Further, benchmarking against community concern alone is inconsistent with intergenerational equity and the precautionary principle and is affected by the imposition of participation for many marginalised groups.[100]

93. Specific views were expressed in relation to the potential impacts of tailored participation processes for Aboriginal peoples and Torres Strait Islander peoples and their communities. The Hopevale Congress Aboriginal Corporation expressed the view that Aboriginal and Torres Strait Islander participation should always be available irrespective of the size or location of the proposed project.[101] The Bar Association of Queensland stated:

> An important matter to be addressed in any such tailored participation process is the extent to which it may exclude participation by Aboriginal Peoples and Torres Strait Islander Peoples who may be directly affected. Mining proposals, even those involving small areas of land or limited on-site activities, may have potential to significantly interfere with indigenous cultural heritage or other

> indigenous community interests. The involvement of the proposed Aboriginal and Torres Strait Islander Advisory Committee may be particularly important if a tailored participation process is to be adopted. Any potential tailoring of the participation process may need to consider, and address, potential indigenous community impacts (for example, by exclusion or modification of tailoring in particular circumstances relevant to indigenous cultural heritage or native title issues).[102]

94. Parallax Legal cited the difficulties that arise from 'tailored participation processes' under the native title and cultural heritage frameworks as the basis for their suggestion that a similar approach to mining proposals would be 'similarly fraught with challenges'.[103]

95. The Isaac Regional Council noted the merit in establishing a process for an applicant to qualify for an 'expedited' process when certain criteria, including voluntary public participation, are met.[104]

Notification and information sharing

An online portal

96. There was broad support from all stakeholder groups for the proposal to establish a central online Government portal to facilitate public notice and provide up-to-date information about mining proposals.

97. Legal professionals highlighted significant limitations with current processes and endorsed the proposal for its potential to improve access to information, transparency and support meaningful participation.[105] Energy Resources Law said:

> The current notification process is outdated and involves significant duplication. Providing a 'one stop shop' for notices and documentation associated with the mining lease application and the associated environmental authority will increase the efficiency and effectiveness of the process.[106]

98. The Bar Association of Queensland stated:

> ... meaningful participation also requires appropriate notification to be given to ensure that members of the community are aware of any proposed project and the opportunity (and ways) in which their views may be heard on that project. In this regard, as set out below, the Association endorses the establishment of a central online Governmental portal to assist with notification.[107]

99. Environmental organisations supported the proposal for similar reasons, noting the importance of transparency, certainty, clarity, consistency, efficiency and accessibility of information sharing and the potential for the proposal to improve current processes.[108] They expressed concerns that the complexity and lack of clarity of current notification and information sharing processes can result in community members missing the opportunity to put forward their views on a mining proposal, limiting legal rights.[109] Lock the Gate Alliance Ltd described the current notification and information sharing process as:

> ... spread out across multiple government websites. In some instances, public notification and consultation materials are only found on a proponent's website and that in itself could be buried within subpages on that site. We've found ourselves in the situation where we have missed consultation periods because they were only notified on a proponent's website. The current status quo for public notifications is confusing and inaccessible.[110]

100. Local government bodies supported the proposed portal as a publicly accessible way to remain informed. The Isaac Regional Council stated:

> A consolidated (single source of truth) online, central repository of application material and processing managed by government makes patent sense.[111]

101. Industry bodies generally supported the proposal and submitted that an online portal could:[112]

- improve transparency and accountability

- reduce the burden and confusion of accessing relevant material
- increase efficiency and reduce costs by streamlining administrative processes
- promote trust and confidence.

102. In expressing in principle support for the proposal, the Queensland Resources Council noted that it could enhance transparency and accountability in the mining sector, and foster trust and confidence among stakeholders. They stated:

> The QRC recognises the importance of providing accurate and timely information to the public and acknowledges the role of digital technology in facilitating this process. The QRC also considers that an online portal could streamline the administrative and procedural aspects of the consultation process and reduce the costs and burdens for both the applicants and the objectors.[113]

103. Glencore similarly noted:

> This proposal has the ability to enhance transparency, streamlines the dissemination of information, and potentially reduces the administrative burden by centralising notices and updates. It could lead to more efficient project management and improved stakeholder engagement, as the portal provides a clear and consistent method for keeping all interested parties informed. Glencore expects that any new process would provide for the upload of information to a single portal and eliminate duplication.[114]

104. Dale Forrester, a mining and exploration consultant, noted:

> [E]stablishing a central online portal to view and increase transparency regarding the current status of applications is a significant step forward. Such a portal would enhance accessibility for all interested parties, allowing them to easily track the progress of applications and stay informed.[115]

105. Aboriginal peoples and Torres Strait Islander peoples and organisations also generally agreed that an online portal would be a helpful tool for community members. A strong theme noted in consultations was the importance of having access to complete and comprehensive information about a proposed project to make informed decisions. This was noted as particularly important for Aboriginal peoples and Torres Strait Islander peoples without a positive native title determination, who can experience challenges accessing information about mining on their Country.[116]

106. The Queensland Small Miners Council did not support this proposal and expressed concerns that it would increase the number of objections and noted that there has been a history of poorly maintained government portals.[117]

Key features

107. Stakeholders suggested that an online portal should have the following features:

- subscriptions for project notifications[118]
- publishing:
  - all information before the relevant decision-maker[119]
  - key dates, to provide visibility of timeframes for the overall process[120]
  - project and region-specific updates[121]
  - material provided through the participation process, such as submissions[122]
  - technical information[123]
  - reasons for decision[124]
  - current and archived documentation[125]
- interactive mapping of projects[126]

- user-friendly interface, secure and reliable.[127]

108. The Environmental Defenders Office endorsed the 'push model' enshrined in the Right to Information Act 2009, which requires the proactive publication of key documents, as the best practice model of information sharing.[128] They noted the 'PD Online' platform, used by local governments to provide real-time information about development applications, as an example of effective implementation of the push model.[129]

109. The Hopevale Congress Aboriginal Corporation noted the need for caution in the type of material that is uploaded, as some relevant documents contain confidential and culturally sensitive information.[130] They noted the need for clear regulation of the process for uploading culturally sensitive or confidential information to the portal.[131]

Additional notice requirements

110. Stakeholders generally considered that an online portal should supplement, rather than supplant, traditional forms of direct and public notification.[132] Some identified additional weaknesses with current notification requirements and practices and barriers to notification. For example, North Queensland Land Council identified barriers to include limited resources, limited access to technology and geographical remoteness.[133]

111. In consultations and submissions, stakeholders offered suggestions to improve notification requirements. Some suggested that contemporary platforms, such as social media, could be used to notify applications.[134] Others identified tailored forms of notification that could enhance accessibility for Aboriginal peoples and Torres Strait Islander peoples and their communities, like information in local languages and advertisement in targeted newspapers such as the Koori Mail.[135] Queensland South Native Title Services submitted that early information should be provided to Traditional Owners during the 'concept' stage of a project, ideally at the pre-lodgement stage, to support free, prior and informed consent.[136]

112. Parallax Legal submitted that notices should include the following information about applications:[137]

- the nature, size, purpose, scope, pace, duration and reversibility of the activity
- a description of the areas that will be affected (by use of lot and plan details and maps)
- a preliminary assessment of potential economic, social, cultural and environmental impacts, risks and benefits.

113. Several stakeholders expressed views about who should be directly notified. AgForce noted the need to broaden direct notification to include:

> [N]eighbouring landholders who may not directly adjoin the land used for the proposed mining lease if they are within a reasonable proximity where it could be expected that their interests may be affected by the proposed mining lease eg, by dust or noise pollution. What constitutes 'reasonable proximity' would be dependent on the scale of the project, size of the host, distance to neighbouring properties and other factors.[138]

114. The Environmental Defenders Office proposed requiring direct notification for 'registered native title parties' and 'all landholders who may be affected in any way by the proposed development'.[139] The Australian Land Conservation Alliance suggested that notice should also be given to 'landowners with nature refuges and Special Wildlife Reserves that are within 5km, or within 20km downstream, of a mining application'.[140] Parallax Legal submitted that any relevant registered native title claimants, registered native title bodies corporate, Aboriginal parties, Torres Strait Islander parties and native title representative bodies should receive direct notice.[141]

Aboriginal and Torres Strait Islander rights and interests

115. Our consultation papers propose:

- requiring decision-makers to consider Aboriginal and Torres Strait Islander rights and interests in making decisions about mining proposals
- developing a mechanism to inform this decision-making.

116. Stakeholders expressed mixed views about these proposals.

Aboriginal and Torres Strait Islander Advisory Committee

117. There was general support from Aboriginal and Torres Strait Islander organisations, legal professional bodies and environmental organisations for the proposal to establish an Aboriginal and Torres Strait Islander Advisory Committee.[142] We heard in consultations and submissions that it would:

- enhance the evidentiary basis for decision-making, resulting in better decisions[143]
- support human rights[144]
- support free, prior and informed consent[145]
- enhance the participatory rights of Aboriginal and Torres Strait Islander peoples and communities who do not have native title.[146]

118. Industry bodies and landholder organisations did not support this proposal,[147] stating that it would:

- increase delay[148]
- create uncertainty[149]
- duplicate other processes that adequately safeguard Aboriginal and Torres Strait Islander rights[150]
- cause conflict and division between interested Aboriginal and Torres Strait Islander parties.[151]

119. The Queensland Small Miners Association stated:

> A troubling aspect about what is proposed by the QLRC is the lack of information regarding what weight the "advice" provided... would carry on the deliberations of objection outcomes, which could range from "who care's" to virtual "veto power" over all mining projects whether Cultural Heritage or Environmental issues are existing or not!
>
> Should these proposals be recommended to be legislated, protections and safeguards must be put in place to ensure that any advisory committee does not "weaponise" their advice to be obstructionist such as landholders have implemented utilising recent changes to the Bio security Act.[152]

120. Some stakeholders expressed reservations about the interaction of an Advisory Committee with existing frameworks. The Queensland Law Society stated:

> ... careful consideration will need to be given to how the role of an Aboriginal and Torres Strait Islander Advisory Committee interacts with other roles and rights of Aboriginal and Torres Strait Islander people and groups.[153]

121. In written submissions and in our consultations, Aboriginal peoples and Aboriginal and Torres Strait Islander organisations gave considerable thought to how to constitute Advisory Committees. Views expressed included:

- Advisory Committees should not be centralised and should be directly informed by local knowledge[154]
- only Traditional Owners have authority to speak for Country
- a co-design process should identify those with the right to speak for Country
- traditional lore provides a structure for identifying the right people for Country
- membership should not be linked to native title status.

122. The Queensland Law Society expressed the view, informed by their First Nations Legal Policy Committee members, that the model should not be limited to groups with formally recognised rights under the Native Title Act 1993 (Cth). Instead, a culturally appropriate approach should be adopted.[155] This view was also reflected in consultations with Traditional Owners.

123. Queensland South Native Title Services stated:

> Involving RNTBCs, claimants and Traditional Owners who may not have a claim on foot in decision-making (or consultation) is consistent with their existing status under the Native Title Act 1993 (Cth). QSNTS discloses that, in the context of the recent Lake Eyre Basin Regulatory Impact Statement process and negotiations regarding quarrying, RNTBC clients expressed frustration at the lack of integration between resource activity approvals, environmental authority approvals, and their exclusion from either process.[156]

124. They referred to the 'Traditional Owner Representative Institution Model' currently being considered in relation to consultation and consent for offshore energy projects as a model for consideration.[157]

125. Some stakeholders expressed reservations during our consultations that the Advisory Committee model has the potential to, and should not be established in a way that it can, detract from the recognised authority of native title holders.

126. The Hopevale Congress Aboriginal Corporation provided detailed guidance on how the Advisory Committee could operate:[158]

- identify the 'right native title holders' for the area by reference to the material contained in the native title determination or application in addition to liaising with the relevant registered native title body corporate
- review the list and identify those people that may have passed and have surviving family members
- provide notice to all people identified on this list
- hold a meeting to select representatives alongside other entities, where applicable
- ensure representative advice does not undermine the role of the registered native title body corporate, where there is one
- meetings should be held on Country
- consideration should be had to other natural resources, like water, and to cultural knowledge
- any records of outcomes should record minority views.

127. The importance of appropriately resourcing the Advisory Committee members and the burden on individuals contributing to an Advisory Committee were noted as important considerations.[159]

128. The importance of ensuring that the scope of the Advisory Committee's remit and representation supported identification and consideration of off-lease impacts on environment and culture was also noted.

Interactions with native title and cultural heritage laws

129. Some legal professional stakeholders described the current native title and cultural heritage laws as inadequately protecting the rights and interests of Aboriginal peoples and Torres Strait Islander peoples. They proposed that greater consideration of these impacts should occur as part of a new process.[160]

130. Other legal professional stakeholders submitted that consideration of native title and cultural heritage are best left to those Acts.[161] Energy Resources Law stated:

> … the relevant decision maker should be entitled to rely on the relevant Cultural Heritage Acts as sufficient consideration of Aboriginal or Torres Strait Islander interests in relation to Cultural Heritage. We agree there is widespread dissatisfaction of all stakeholders in relation to the outcomes under the Cultural Heritage Acts, but the process for addressing that dissatisfaction is the current review of the Cultural Heritage Acts and not this process.[162]

131. Some industry bodies considered that the existing agreement processes and other compliance mechanisms under the Native Title Act 1993 (Cth) and the cultural heritage Acts provide for sufficient engagement and protection.[163] The Queensland Small Miners Council submitted that the 'duty of care guidelines' developed under the cultural heritage Acts 'should be the prima facie means of identifying if there is any cultural heritage', at least for small-scale mining.[164] They further raised concern about any changes that may be inconsistent with the ongoing amendments arising from the cultural heritage Acts review.[165]

132. We heard starkly different views in our consultations with Aboriginal peoples and Aboriginal and Torres Strait Islander organisations. One Aboriginal organisation spoke of the division between native title and cultural heritage rights causing confusion and resulting in inadequate protections. Another Aboriginal consultee noted that, by considering Aboriginal rights in isolation, there is a lack of proper consideration of rights and interests in Country as part of mining lease processes. In another consultation with Aboriginal peoples, strong concerns were expressed about the lack of opportunities for Aboriginal peoples and Torres Strait Islander peoples who are not native title holders to participate in current processes, making participation 'relatively thin and not genuine'. In a further consultation, we heard that there should be opportunities for Traditional Owners to feed into decision-making processes, regardless of native title status.

133. Parallax Legal, a specialist Aboriginal and Torres Strait Islander law firm, noted the following restrictions with the native title framework:

> Although certain provisions of the MRA include registered native title claimants and bodies corporate in its use of the term 'the owner of land', we understand that such provisions do not extend to inter alia the requirement that compensation payable to landholders is to be determined before the granting or renewal of a mining lease. Conversely, the rights of registered native title claimants and RNTBCs under the NTA framework would be limited to the procedural rights to negotiate (provided the State considers that such a right applies) and to seek compensation, by way of application to the court. This is just one example of how the MRA disparately treats First Nations and non-Indigenous landholders.[166]

134. Parallax Legal further submitted that:

> … while amendment of the Cultural Heritage Acts is beyond the scope of this review, we consider that the adequacy of measures for the protection of cultural heritage should be among the matters considered when a decision is made about the granting or renewal of a mining lease…
>
> With respect, we consider that systemic failures to adequately recognise and protect the rights, interests and responsibilities of Aboriginal and Torres Strait Islander Peoples in connection with lands, waters, resources and heritage remain embedded in Queensland laws. We would welcome the reform of laws the subject of this review to the extent that such laws may adequately recognise and protect the rights and interests of First Nations Peoples.[167]

135. Similarly, one of the 'major issues' raised by the North Queensland Land Council in its submission about the interaction with these laws and the current mining lease objections process was 'inconsistency of processes'.[168] They recommended that the Land Court should consider impacts to cultural heritage when assessing objections to mining lease applications.[169]

A new statutory criterion

136. There was general support for the proposal to amend the statutory criteria to require relevant decision-makers to consider the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture cultural heritage.[170] Reasons given in support included:[171]

- signalling the importance of Aboriginal and Torres Strait Islander rights
- building on existing rights by making it a relevant consideration for decision-makers
- contextualising rights to mining-specific activity
- increasing transparency and consultation in decision-making.

137. The Queensland Human Rights Commission, in expressing support for the proposal, noted that while decision-makers are already bound to consider the rights and interests of Aboriginal peoples and Torres Strait Islander peoples under section 28 of the Human Rights Act 2019, inclusion of the proposed statutory criteria:[172]

- signals the commitment of Government to uphold and prioritise the rights of Aboriginal peoples and Torres Strait Islander peoples, whose rights will often be disproportionately affected by decisions to approve mining leases and associated environmental authorities
- provides an opportunity to articulate the requirement to consider cultural rights in a way that is meaningful for this context, potentially making it easier for government decision-makers to understand and apply
- Strengthens the enforceability of rights.

138. Queensland South Native Title Services stated:

> QSNTS believes that Traditional Owner groups are best placed to make decisions affecting their Country. If the legislation does not require Traditional Owners to make the decision, there must be a statutory requirement to involve them in applying any criteria imposed on decision-makers in the EA or lease process. Where criteria exist, they must be applied in consultation with the relevant Traditional Owner groups. Under their traditional laws and customs, Traditional Owners are uniquely qualified to either make decisions or, at a minimum, provide the advice necessary for decision-makers to apply the criteria appropriately.[173]

139. The Queensland Law Society submitted:

> The Society also supports the proposal that Aboriginal and Torres Strait Islander rights and interests should be considered as part of the mining lease process, provided the concept of interests is not given a narrow view so as to exclude relevant views or opinions. However, as noted earlier, there remains a concern that this results in duplication of process and these issues will need to be worked through.[174]

140. The Queensland Conservation Council[175] and Koala Action Inc similarly noted that an expansive view should be taken to the interpretation of the relevant rights and interests, with Koala Action Inc stating:

> KAI is pleased that new criteria will require consideration of the rights and interests of all affected First Nations people. This should seek to cover the rights and interests of all First Nations people, not just those who have been successful in obtaining Native Title.[176]

141. The Hopevale Congress Aboriginal Corporation supported the proposal but provided the following limitations around the proposed criteria:

> Congress endorses the insertion of the above statutory criteria provided that the rights and interests of ATSI people for P5 are correctly identified for the land and waters affected by the application and not generalised to just any ATSI view. The views of the landholders and native title holders of the particular country involved have primacy.[177]

142. Queensland South Native Title Services proposed development of statutory criteria in consultation with Traditional Owners, noting the importance of ensuring consideration of the cumulative impact of activities on Country.[178]

143. The Environmental Defenders Office suggested that the criterion be extended to require expressly seeking the views of Aboriginal peoples and Torres Strait Islander peoples, in accordance with the principle of free, prior and informed consent enshrined under international law. They stated:

> On the current drafting it may be possible that the rights and interests of First Nations peoples may be considered without direct consultation with First Nations peoples, which would be an illogical and inappropriate outcome. EDO suggests that this consultation could be facilitated by the proposed ATSIAC, and would ensure that any First Nations people who seek to be heard with respect to a project can have their views taken into consideration.[179]

144. Australian Energy Producers, expressing support for the proposal, said its implementation 'will need to be resourced with appropriate expertise and experience to allow transparent, high-quality and timely decision making'.[180]

145. The Bar Association of Queensland cautioned that reforms to statutory criteria must be carefully drafted to minimise inconsistencies with native title and cultural heritage laws. They stated:

> [T]he Association recommends that consideration be given to ensuring that any statutory criteria adopted for a particular topic or issue deal comprehensively and finally with all matters relevant to the particular topic or issue for the mining proposal, rather than leave particular matters to be later dealt with under other legislation. Any deferral of matters to a later time may result in matters being left unaddressed, involve duplication, or give rise to inconsistencies between obligations or between obligations and authorised activities.[181]

146. Stakeholders who did not support this proposal suggested that it would create duplication, delay projects and create an unfair and unbalanced assessment process.[182] Queensland Resources Council stated:

> The QRC respects the rights and interests of Indigenous peoples, and notes that such interests are supported by existing legislation and agreements that govern mining activities. The QRC considers that this proposal needs to consider the risks of creating an unfair and unbalanced assessment process that favours the interests of one stakeholder group over others.[183]

Evidence-based decision-making

147. Our consultation papers propose establishing an Independent Expert Advisory Panel to inform decision-makers on relevant environmental authority applications.

148. Stakeholders that provided feedback on this proposal were generally supportive.

149. Landholder organisations, environmental organisations, Aboriginal organisations, lawyers and legal professional bodies, local government bodies and community members generally expressed in principle support for increasing the quality, consistency, rigour and transparency of decision-making about environmental authority applications.

150. Aboriginal organisations, legal professional bodies and environmental organisations were also supportive of the proposed inclusion of cultural expertise on the Panel, noting the importance

of local knowledge of Country.[184] Aboriginal peoples we spoke to emphasised that relevant Country includes lands, waters and resources impacted by mining, regardless of whether it is within the bounds of the mining lease. Another strong theme of our consultations was the importance of ensuring local knowledge and expertise informs decision-making, including knowledge of the environmental impacts of proposed mining activities on cultural values and impacts on intangible cultural heritage, including song lines.

151. Queensland South Native Title Services, in expressing support for a proposed Panel that would include expert input from Traditional Owners with knowledge of Country, stated:

> [D]ecision-makers responsible for resource-related permits, acting on the environmental approval process (e.g., in quarrying or the expedited procedure), are not and cannot be fully aware of the cumulative impact such activities have on Country. The relevant Traditional Owner groups, with cultural responsibilities to care for Country (for example, RNTBCs), are the only parties capable of comprehensively assessing those cumulative impacts. Traditional Owners witness the damage, and understand the impact, caused by multiple quarries or drill sites on their land, while government staff, assessing applications in isolation and in the abstract, cannot. In the case of RNTBCs, they are already involved "on the ground", via the future acts regime under the NTA. It follows that the relevant Traditional Owners are best placed to make decisions—or at the very least, provide mandated input—on these application processes.[185]

152. The Queensland Conservation Council and North Queensland Land Council expressed similar sentiments, with North Queensland Land Council stating:

> It is recommended that the Independent Expert Advisory Panel for each mining project include Traditional Owners with cultural knowledge of the Country impacted by the proposed mining. There was general concern expressed about decision making occurring in Brisbane, by those with no knowledge or connection to the country of a proposed mine. It is not culturally appropriate for Traditional Owners to comment on others country.[186]

153. The Bar Association of Queensland, in recommending that the Panel include expertise in cultural heritage and Aboriginal and Torres Strait Islander environmental and social knowledge, stated:

> [T]he inclusion of an expert in cultural heritage and Aboriginal and Torres Strait Islander environmental and social knowledge will assist the decision-maker in understanding any issues raised either by the Aboriginal and Torres Strait Islander Peoples Committee or any other participant regarding impacts of a proposed project on Aboriginal and Torres Strait Islander peoples.[187]

154. AgForce proposed that the remit of the Panel should encompass providing advice on land use considerations to inform decisions about mining lease applications, noting:

> AgForce supports the establishment of an Independent Expert Advisory Panel, but feels the limited scope of its role as presently proposed is a missed opportunity... [its] role should not be limited to the environmental authority application and should instead also extend to matters relevant to the mining lease application.[188]

155. Some stakeholders proposed that the Independent Expert Advisory Committee should be constituted and engaged early in the process, with findings available to inform early identification and resolution of key concerns and promote inclusive participation by those lacking the resources to engage their own experts.[189] The Queensland Law Society noted that key benefits of the Independent Expert Advisory Committee having an early role in the process include:[190]

- earlier detailed analysis of the material facts and issues, before significant project decisions or recommendations are made
- opportunity for the initial expert findings to inform public consideration and submission

- opportunity for earlier expert consultation with relevant stakeholders in response to any initial conclusions or recommendations.

156. Legal professionals were generally supportive of the proposal as an opportunity to increase the quality and integrity of evidence to inform decisions in the absence of the Land Court objections hearing. The Queensland Environmental Law Association noted the importance of the Panel's independence to ensure quality, consistency and transparency of the decision-making process.[191] While expressing cautious support for the proposal for its potential to increase efficiencies and the capacity for evidence-based decision making, the Queensland Law Society flagged the following key issues for consideration:[192]

- how the Panel will gather evidence
- consultation and engagement with stakeholders
- resolution of disagreements between members
- policies, procedures and training
- publication of advice
- funding.

157. Energy Resources Law, while noting some positive elements to the proposal, raised the potential for a panel to increase uncertainty, cause amendments later in the process and derogate from the authority of the Government decision-makers.[193]

158. John Haydon, a legal professional, raised concerns that the establishment of a panel would not ameliorate the disadvantage associated with the inequity in resources between parties, with parties with sufficient funds able to engage their own experts to challenge the Panel.[194]

159. The Australian Land Conservation Alliance expressed concerns that a panel 'simply cannot provide the depth and breadth of ecological or cultural expertise that is required to be highly specific to each location and matter'.[195]

160. Industry bodies generally opposed this proposal, expressing concerns about the potential for a panel to decrease efficiency and extend assessment timeframes, to duplicate existing processes and to undermine the expertise of industry consultants.[196] Industry bodies also voiced concerns about cost, including the potential for retainer fees to be imposed, and practical limitations, including availability of skilled subject matter experts with the necessary expertise and the potential for conflicts of interest.[197] The Queensland Resources Council stated:

> There is a risk that the independent expert panel could increase the potential for dissent among experts, leading to further delays, higher costs, and potentially more litigation and appeals. Some members have observed that expert panels in other jurisdictions have not effectively improved efficiencies... Members have noted that expert panels, particularly those involving academic participants, sometimes request additional data that is not relevant, let alone essential, to a project's assessment. The purpose of such panels should not be to fulfil the academic interests of their members.[198]

161. Dale Forrester, a mining and exploration consultant, expressed support for the proposal, noting:

> Establishing the IEAP would provide valuable expertise and guidance in the decision-making process for environmental authority applications. By bringing together a diverse range of experts, the panel can ensure that decisions are informed by the best available scientific, technical, and cultural knowledge. This initiative would not only enhance the quality and transparency of the assessments but also foster greater trust among stakeholders, including Indigenous communities, industry, and the state. An independent panel would play a crucial role in addressing concerns and ensuring that all relevant factors are considered before decisions are made.[199]

Thresholds for establishing an Independent Expert Advisory Committee

162. Stakeholders expressed diverse views about appropriate thresholds or criteria to trigger formation of an Independent Expert Advisory Committee. For example, they proposed the following potential criteria:

- the scale, risk and impact of the project[200]
- whether the project is a coordinated project[201]
- whether the application is a site-specific application[202]
- whether, in the case of amendments to environmental authority applications, the application is a major or minor change[203]
- whether the proposed project is a greenfield or brownfield site[204]
- the level of community concern[205]
- the existence of cultural heritage (including declarations made or sought under the relevant Acts)[206]
- a reasonable request for an Independent Expert Advisory Committee to be formed by a person or group whose rights and interests may be affected by the proposed activities.[207]

163. The Bar Association of Queensland proposed that, in addition to identified criteria, the Government could be vested with discretion to refer an application to the Independent Expert Advisory Committee.[208]

Implementation considerations

164. Some stakeholders offered valuable insights into implementation considerations for establishing the Independent Expert Advisory Panel.

165. Stakeholders proposed that the Panel could be constituted by:

- generalised experts (consistent with the Australian Government model and New South Wales models)[209]
- members with knowledge and expertise in the following matters:
  - greenhouse gas emissions and climate change, for its relevance and the complexity and 'ever evolving' nature of scientific advice[210]
  - the relevant local environmental, social and cultural context[211]
  - human rights, including cultural rights[212]
  - practical, commercial experience in their field of expertise.[213]

166. The Environmental Defenders Office and the Bar Association of Queensland also noted the importance of transparent and public processes for the appointment of panel members.[214]

167. Submissions also noted the importance of the form and manner of publication of the Independent Expert Advisory Committee's advice.[215] The Bar Association of Queensland proposed clear legislative guidance to ensure the accessibility of expert reports and suggested that they should clearly identify the questions asked and the material on which the advice is based.[216]

Building on the statutory criteria for decision-makers

168. Our consultation papers propose requiring decision-makers to consider input provided through the new participation process, including:

- input from community and local government
- advice from Independent Expert Advisory Committees.

169. Stakeholders who addressed this proposal were strongly supportive.[217] Key reasons given in support of this proposal were:

- ensuring the proposed reforms have a substantive impact on decision-making[218]
- improving the transparency and scientific basis of evidence available to all parties in the decision-making process[219]
- ensuring the statutory criteria reflect contemporary standards and adequately address the complexity of modern mining projects[220]
- promoting better decision-making[221]
- enhancing environmental protection[222]
- aligning the regulatory framework with community expectations.[223]

170. The Queensland Law Society expressed broad support for the proposal, noting the need for detailed mapping of the proposals and their impacts to minimise duplication with other processes.[224] Energy Resources Law did not oppose the proposal but noted that statutory criteria should not duplicate processes provided for under other Queensland or Commonwealth Acts.[225]

171. The Bar Association of Queensland suggested the need for legislative guidance for recording participation in meetings or information sessions. They endorsed the option identified in our consultation paper of requiring development of consultation or summary reports.[226]

172. Industry bodies did not support the proposal, citing:

- the duplicative nature of the proposed reforms[227]
- the adequacy of existing criteria[228]
- that the focus of reforms should be on requiring Government decision-making in specific timeframes, rather than changing the criteria.[229]

173. Some stakeholders proposed additional statutory criteria for consideration. For example, the Hopevale Congress Aboriginal Corporation suggested:[230]

- compliance with Code of Conduct/Negotiation Standards/Indigenous engagement standards[231]
- requiring the applicant to provide evidence of free, prior and informed consent.

174. The Mount Isa City Council suggested inclusion of a location-based environmental criteria that is responsive to the characteristics and environmental sensitivity of the region.[232]

175. The Environmental Defenders Office noted that consideration of adverse environmental impacts is essential and recommended that it should be expanded to include reference to 'scope 3 emissions' and 'greenhouse gases'.[233]

176. There was support for the option identified in our consultation paper that departmental public interest guidelines are developed, to ensure clarity of what is to be considered.[234]

Interacting laws and processes

177. Some stakeholders provided feedback on the interaction of mining lease processes with decisions made under other Acts.

178. General concerns raised by stakeholders resulting from interacting laws and processes were:

- duplication
- complexity
- the opportunity for lawfare.

179. Australian Energy Producers noted:

> Australian Energy Producers endorses the sentiment of paragraph 43 (page 11). "The complexity, duplication and costs of the current process may be exacerbated by interactions with other approval processes, such as those for water, regional planning and federal native title and environmental approvals." While the overlaps, inconsistency and uncertainty associated with national assessments are very difficult, we would also highlight that all this cost, delay and uncertainty occurs in a world of 'lawfare'... where key stakeholders will deliberately instigate legal actions to "disrupt and delay key projects and infrastructure while gradually eroding public and political support for the industry.[235]

180. The Bar Association of Queensland noted the importance of ensuring mining lease and environmental authority application decisions 'appropriately deal comprehensively and finally with all relevant and significant matters'. They noted that deferral of relevant and significant matters can result in inconsistencies or certain matters not being addressed.[236]

181. John Crosby, a legal professional, submitted that the Mineral Resources Act 1989 should prevail over other interacting laws.[237]

182. In our consultations with Aboriginal peoples and Aboriginal and Torres Strait Islander organisations, a recurring theme was the fragmentation of mining project regulation. We heard that this renders participation in the different processes meaningless, as laws override each other. Instead, a holistic consideration of the issues was sought.

The role of the Coordinator-General

183. A number of stakeholders considered the Coordinator-General's role and powers under the State Development and Public Works Organisation Act 1971. Some environmental organisations and legal professional bodies expressed the view that the Coordinator-General's powers unnecessarily restrict the other decision-makers' powers.[238] The Environmental Defenders Office also noted that the limitations of a coordinated project are particularly problematic where more contemporary information becomes available on appeal.[239]

184. On the other hand, local government and industry bodies considered the Coordinator-General's role and functions necessary and sufficient and recommended that they should be retained.[240]

185. The Bar Association of Queensland noted that clarity is needed in these interactions, particularly where conditions are imposed that are 'over and above' those imposed by the Coordinator-General:

> The Association recommends that greater legislative guidance be given to the meaning of an inconsistent condition and the paramountcy of Coordinator General's conditions over other conditions that may be imposed for a project.[241]

Regional Planning and Sustainable Communities

186. Some stakeholders noted concerns with duplication and inefficiencies resulting from the interaction of the current processes with the processes under the Regional Planning Interests Act 2014 and the Strong and Sustainable Resource Communities Act 2017.

187. The Isaac Regional Council submitted that the Regional Planning Interests Act 2014 and the Strong and Sustainable Resource Communities Act 2017 should be amended to better align with the Mineral Resources Act 1989 and the Environmental Protection Act 1994.[242]

188. Energy Resources Law submitted that the Regional Planning Interests Act 2014 and Strong and Sustainable Resource Communities Act 2017 should be repealed if the recommended process is to be 'fair, efficient, effective and contemporary'.[243]

189. Glencore identified the following challenges resulting from the interaction of the current processes with the Regional Planning Interests Act 2014 processes:

> The [Regional Planning Interests Act 2014] and the associated regulations require a mining company to obtain a "regional interest development approval" (RIDA) when undertaking mining activities on land used for certain purposes - such as when the mining activities will take place on land regarded as 'strategic cropping land' or land being used for a 'priority agricultural land use'. The RIDA is required in addition to a mining lease and an environmental authority to undertake mining activities. It is currently an entirely separate approval process and is potentially subject to appeals that are heard by the Planning and Environment Court. It is possible that a person might be granted a mining lease and an environmental authority but not a RIDA, meaning that mining is not permitted, even though the government has granted the person a mining lease and is authorised to undertake activities under the environmental authority.[244]

Water

190. In our consultations, significant concerns were expressed with the siloing of mining and water approvals. Some stakeholders viewed the separation of these approvals as leading to unnecessary duplication of process. Aboriginal peoples and organisations were particularly concerned that the current mining lease process does not identify holistic impacts on water, and consequently does not adequately consider water rights, usage and impacts.

191. The Isaac Regional Council stated:

> The use by a miner of non-associated water should continue to be managed under the Water Act alongside other users. Likewise, the taking of "associated" groundwater should be managed … by the State's Water Department to ensure the sustainability of the supply.[245]

Other interactions

192. In addition to the above interactions, the Bar Association Queensland identified the following additional opportunity for reform:

> The Association points to the consolidated development assessment process provided for under the Planning Act and Planning Regulation 2017 (Qld). The Association is of the view that there is an opportunity to reform the mining lease objections process such that other acts could defer to the MRA and the EPA. This would streamline the complexity of the interaction of such acts.[246]

Private interests

193. Dale Forrester, a mining and exploration consultant, described the current Land Court objections process as playing a 'critical role in ensuring fair compensation agreements are reached'.[247] He noted that without 'proper safeguards' there is a possibility parties could use compensation negotiations 'as a way to hinder application processes and demand excessive, unjustified compensation'.[248]

194. Property Rights Australia stated:

> There also needs to be a way of enforcing compensation and conditions when miners play fast and loose with landowners which is a not infrequent occurrence. Only a court process can do this. Removal of that process will only encourage bad behaviour.[249]

195. The Bar Association of Queensland noted that, in practice, the concerns of private interest holders and native title holders are often raised in objections hearings, notwithstanding separate processes for consideration of those rights.[250] They acknowledged the impact on compensation by the way a mine is operated, with the manner, timing and staging of construction often informing compensation, such that it is not unusual for compensation to be determined after an objections hearing. Consequently, the Bar Association of Queensland saw private and communal rights as potentially affected by the removal of the Land Court hearing. To address this, they proposed legislative amendments allowing compensation to be revisited following the decision.[251]

Appendix A: Consultation proposals and questions

Our guiding principles

Q1 Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for reform of the current processes?

The current processes

Q2 Do you agree these are the strengths and problems of the current processes? Are there others not mentioned here which are appropriate to be considered for reform of the current processes?

Participating in the Government's decision-making processes

P1 Participation in the current processes should be reframed by:

(a) removing the Land Court objections hearing pre-decision

(b) including an integrated, non-adversarial participation process

(c) establishing an Aboriginal and Torres Strait Islander Advisory Committee for relevant mining proposals to facilitate Aboriginal and Torres Strait Islander input as part of the new participation process.

Q3 What are your views on proposal 1?

Q4 What forms of participation should be included in the new participation process?

Q5 How would removing the objections hearing affect private interests?

Q6 Should there be tailored participation processes depending on the nature of the project? If so:

(a) what criteria should be used to determine different requirements for participation (for example, size, nature of risk, interest or other factors)?

(b) what should be the forms of participation?

Q7 How can we ensure the new participation process is accessible and responsive to the diverse needs of communities?

P2 A central online Government portal should be established to facilitate public notice and give up-to-date information about mining proposals. The Mineral Resources Act 1989 and the Environmental Protection Act 1994 should be amended to require material to be published on the online portal, including:

(a) notice of applications

(b) notice of opportunities to participate

(c) outcomes of participation processes

(d) information requests

(e) decisions.

Q8 What are your views on proposal 2?

Q9 What additional notice and information-sharing requirements should be included in legislation as part of the new participation process?

Q10 What direct notice requirements should be included for applications for:

(a) mining leases?

(b) associated environmental authorities?

Q11 What else is required to notify Aboriginal peoples and Torres Strait Islander peoples who may have an interest in the mining proposal?

Deciding each application

P3 An Independent Expert Advisory Panel should be established that is:

(a) comprised of people with recognised expertise in matters relevant to the assessment of environmental authority applications

(b) formed as project-specific committees to give independent expert advice to inform decisions on environmental authority applications that meet specified criteria.

Q12 What are your views on proposal 3?

Q13 What should be the criteria to form an Independent Expert Advisory Committee for an environmental authority application?

P4 The statutory criteria in the Mineral Resources Act 1989 and the Environmental Protection Act 1994 should be amended to require the relevant decision-maker to consider:

(a) for decisions about mining lease and associated environmental authority applications – information generated through the new participation process

(b) for decisions about environmental authority applications – any advice of the Independent Expert Advisory Committee.

P5 The statutory criteria in the Mineral Resources Act 1989 and the Environmental Protection Act 1994 for decisions about mining lease and associated environmental authority applications should be amended to require each decision-maker to consider the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage.

Q14 What are your views on proposal 4?

Q15 What are your views on proposal 5?

Q16 Should the decision-maker for the mining lease application be required to consider the decision (and reasons for decision) of the decision-maker for the environmental authority application in reaching their decision on the statutory criteria for:

(a) public interest?

(b) adverse environmental impacts?

(c) the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage (see proposal 5)?

(d) any other criteria?

Q17 Are there additional reforms to the statutory criteria under the Mineral Resources Act 1989 and the Environmental Protection Act 1994 you would like us to consider?

Reviewing the Government's decision

P6 Review by the Land Court should be available after the Government has decided the mining lease and environmental authority applications. Decisions of the Land Court should be appealable to the Court of Appeal on the grounds of errors of law or jurisdictional error. The Land Court should:

(a) conduct proceedings after decisions on both applications are made

(b) conduct combined (merits and judicial) review

(c) conduct the review on the evidence before the primary decision-makers, unless exceptional circumstances are established

(d) apply existing practices and procedures.

Q18 What are your views on proposal 6?

Q19 What preconditions, if any, should there be to commence combined review?

Q20 Should the Land Court have the power to substitute its own decision on the application or should it be required to send it back to the decision-maker?

Q21 Should each party pay their own costs of the merits review or should a different rule apply?

Interactions with other laws

Q22 Are there any issues arising from interactions with decisions made under other Acts that we should consider?

Q23 What opportunities are there, if any, to integrate interacting Queensland Acts with the processes to decide mining lease and associated environmental authority applications?

Other matters

Q24 Should there be a legislated pre-lodgement process?

Q25 Is there anything else you would like to tell us about the current processes?

Q26 Are there any additional options for reform of the current processes you would like us to consider?

Appendix B: List of consultations

Location*	Meetings	Workshops	Events	Total
Brisbane	44	3	4	**40**
Burketown			2	**2**
Cairns	4			**4**
Camooweal	2			**2**
Cloncurry	2		1	**3**
Darwin (NT)	1			**1**
Emerald	7		3	**10**
Gold Coast			2	**2**
Hope Vale	3			**3**
Mareeba	1			**1**
Moranbah	2			**2**
Mount Isa	7		1	**8**
Perth (WA)	14			**14**
Rockhampton	10		1	**10**
Sydney (NSW)	11			**11**
Townsville	1			**1**
Woorabinda	2			**2**
Total	**111**	**3**	**14**	**128**

* Locations are cities in Queensland, unless otherwise indicated by brackets after the city name, and reflect the location of consultees.

Appendix C: List of submissions

Written submissions

1. Bar Association of Queensland
2. Queensland Small Miners Council (interim submission)
3. Queensland Small Miners Council (further submission)
4. Local Government Association of Queensland
5. Association of Mining and Exploration Companies
6. James Hill
7. Mount Isa City Council
8. AgForce
9. Property Rights Australia
10. Queensland Environmental Law Association
11. Australian Energy Producers
12. Energy Resources Law
13. John Haydon
14. District Court of Queensland
15. John Crosby
16. Australian Land Conservation Alliance
17. Darling Downs Environment Council
18. Mackay Conservation Group
19. Steve MacDonald
20. Koala Action Inc
21. Hopevale Congress Aboriginal Corporation
22. Gecko Environment Council
23. Bruce Currie
24. North Queensland Land Council
25. Environment Council of Central Queensland Inc
26. Oakey Coal Action Alliance
27. Queensland Human Rights Commission
28. Isaac Regional Council
29. Dale Forrester
30. Lock the Gate Alliance Ltd
31. Australian Marine Conservation Society
32. Queensland Conservation Council
33. Environmental Defenders Office

34. Parallax Legal
35. North Queensland Miners' Association
36. Queensland Resources Council
37. Glencore
38. Queensland Law Society
39. Queensland South Native Title Service

Meeting summaries

1. North Queensland Miners' Association
2. Hopevale Congress Aboriginal Corporation

Appendix D: List of polls

Location	Consultation type	Stakeholder group
Brisbane	Conference	Landholders
Brisbane	Roundtable	Industry
Emerald	Conference	Mixed
Mount Isa	Information session	Mixed

References

1 'Mining Lease Objections Review', Queensland Law Reform Commission (Web Page, 15 July 2024) <https://www.qlrc.qld.gov.au/reviews/mining-lease-objections-processes-review>.

2 Mentimeter interactive presentation software: mentimeter.com.

3 'Chatham House Rule', Chatham House (Web Page, 23 October 2024) < https://www.chathamhouse.org/about-us/chatham-house-rule>.

4 'Mining Lease Objections Review', Queensland Law Reform Commission (Web Page, 15 July 2024) <https://www.qlrc.qld.gov.au/reviews/mining-lease-objections-processes-review>.

5 AgForce, Submission 8.

6 Association of Mining and Exploration Companies, Annual Report 2023 (Report, 2023) 5.

7 As at 30 June 2023: Bar Association of Queensland, Annual Report 2022–2023 (Report, 27 October 2023) 10.

8 Hopevale Congress Aboriginal Corporation, General Report 2023 (Report, 20 February 2024) 7–11.

9 Local Government Association of Queensland, Annual Report 2022–2023, (Report, 27 October 2023) 7.

10 As at 30 June 2023: Queensland Conservation Council, Annual Report 2023 (Report, 2023) 8.

11 As at 30 June 2023: Queensland Law Society, Annual Report 2022–2023 (Report, 7 September 2023) 8.

12 'Our Members', Queensland Resources Council (Web Page, 16 October 2024) <https://www.qrc.org.au/membership/our-members>.

13 See, for example: Bar Association of Queensland, Submission 1; AgForce, Submission 8; John Haydon, Submission 13; Hopevale Congress Aboriginal Corporation, Submission 21; Queensland Resources Council, Submission 36.

14 Environmental Defenders Office, Submission 33.

15 Queensland Human Rights Commission, Submission 27.

16 Australian Energy Producers, Submission 11.

17 Energy Resources Law, Submission 12.

18 Parallax Legal, Submission 34.

19 AgForce, Submission 8; Isaac Regional Council, Submission 28; Dale Forrester, Submission 29; Environmental Defenders Office, Submission 33; Parallax Legal, Submission 34.

20 Australian Energy Producers, Submission 11.

21 Environmental Defenders Office, Submission 33.

22 Note that the Mineral Resources Act 1989 (Qld) s 276A gives the Land Court jurisdiction to strike out objections.

23 Parallax Legal, Submission 34.

24 Environmental Defenders Office, Submission 33.

25 Dale Forrester, Submission 29.

26 Environmental Defenders Office, Submission 33.

27 Hopevale Congress Aboriginal Corporation, Submission 21.

28 Hopevale Congress Aboriginal Corporation, Submission 21.

29 John Haydon, Submission 13.

30 Hopevale Congress Aboriginal Corporation, Submission 21; Bruce Currie, Submission 23; North Queensland Land Council, Submission 24; Oakey Coal Action Alliance, Submission 26.

31 Hopevale Congress Aboriginal Corporation, Submission 21.

32 Queensland Resources Council, Submission 36.

33 Lock the Gate Alliance Ltd, Submission 30; Environmental Defenders Office, Submission 33; Queensland Law Society, Submission 38.

[34] Darling Downs Environment Council, Submission 17; Mackay Conservation Group, Submission 18; Koala Action Inc, Submission 20; Gecko Environment Council, Submission 22; Environment Council of Central Queensland Inc, Submission 25; Lock the Gate Alliance Ltd, Submission 30; Australian Marine Conservation Society, Submission 31; Queensland Conservation Council, Submission 32; Environmental Defenders Office, Submission 33.

[35] Environmental Defenders Office, Submission 33; Lock the Gate Alliance Ltd, Submission 30; Queensland Law Society, Submission 38.

[36] Bar Association of Queensland, Submission 1; Environmental Defenders Office, Submission 33.

[37] Lock the Gate Alliance Ltd, Submission 30.

[38] Glencore, Submission 37.

[39] Queensland Small Miners Council (further submission), Submission 3.

[40] Queensland Resources Council, Submission 36.

[41] Queensland Resources Council, Submission 36.

[42] John Haydon, Submission 13; Darling Downs Environment Council, Submission 17; Mackay Conservation Group, Submission 18; Steve MacDonald, Submission 19; Gecko Environment Council, Submission 22; Environment Council of Central Queensland Inc, Submission 25; Queensland Conservation Council, Submission 32.

[43] Steve MacDonald, Submission 19; Darling Downs Environment Council, Submission 17; Mackay Conservation Group, Submission 18; Gecko Environment Council, Submission 22.

[44] Bar Association of Queensland, Submission 1.

[45] Queensland Human Rights Commission, Submission 27.

[46] Environmental Defenders Office, Submission 33.

[47] John Haydon, Submission 13.

[48] Darling Downs Environment Council, Submission 17; Mackay Conservation Group, Submission 18; Queensland Law Society, Submission 38; Gecko Environment Council, Submission 22; Environment Council of Central Queensland Inc, Submission 25; Australian Marine Conservation Society, Submission 31; Queensland Conservation Council, Submission 32; Environmental Defenders Office, Submission 33.

[49] See, for example: Queensland Environmental Law Association, Submission 10; Energy Resources Law, Submission 12; Queensland Human Rights Commission, Submission 27; Lock the Gate Alliance Ltd, Submission 30; Environmental Defenders Office, Submission 33; Parallax Legal, Submission 34.

[50] Queensland Environmental Law Association, Submission 10.

[51] John Haydon, Submission 13.

[52] Parallax Legal, Submission 34; Environmental Defenders Office, Submission 33; Lock the Gate Alliance Ltd, Submission 30.

[53] Parallax Legal, Submission 34.

[54] Queensland Human Rights Commission, Submission 27.

[55] North Queensland Miners' Association, Submission 35; Queensland Small Miners Council (interim submission), Submission 2; Association of Mining and Exploration Companies, Submission 5; Queensland Resources Council, Submission 36.

[56] North Queensland Miners' Association, Submission 35; Queensland Small Miners Council (interim submission), Submission 2.

[57] Queensland Resources Council, Submission 36, Appendix 1.

[58] Queensland Resources Council, Submission 36.

[59] Dale Forrester, Submission 29.

[60] Bar Association of Queensland, Submission 1.

[61] Queensland Law Society, Submission 38.

[62] Queensland Law Society, Submission 38.

63 Energy Resources Law, Submission 12.

64 Queensland Human Rights Commission, Submission 27.

65 Environmental Defenders Office, Submission 33; Parallax Legal, Submission 34. See also: AgForce, Submission 8.

66 Environmental Defenders Office, Submission 33.

67 Bar Association of Queensland, Submission 1.

68 See, for example: Koala Action Inc, Submission 20; Lock the Gate Alliance Ltd, Submission 30; Australian Marine Conservation Society, Submission 31; Queensland Conservation Council, Submission 32.

69 Isaac Regional Council, Submission 28; Bar Association of Queensland, Submission 1; Energy and Resources Law, Submission 12.

70 Bar Association of Queensland, Submission 1.

71 Energy Resources Law, Submission 12.

72 Isaac Regional Council, Submission 28.

73 Bar Association of Queensland, Submission 1.

74 Land Court Act 2000 (Qld) s 52C; Bar Association of Queensland, Submission 1; Dale Forrester, Submission 29; Glencore, Submission 37.

75 Gecko Environment Council, Submission 22; Queensland Conservation Council, Submission 32.

76 Lock the Gate Alliance Ltd, Submission 30.

77 This option was identified as a possibility (alongside each party bearing their own costs) by the Queensland Resource Council, Submission 36. For an explanation of this model, see: Queensland Law Reform Commission, Reimagining Decision-Making Processes for Queensland Mining (Consultation Paper, July 2024) 45 [243].

78 Isaac Regional Council, Submission 28; Parallax Legal, Submission 34. Note that Parallax Legal qualified their position on preferring the current costs model by stating that the asymmetrical costs model would be appropriate where a review application is brought by an Aboriginal or Torres Strait Islander applicant. For an explanation of this model, see: Queensland Law Reform Commission, Reimagining Decision-Making Processes for Queensland Mining (Consultation Paper, July 2024) 45 [243].

79 John Haydon, Submission 13; Darling Downs Environment Council, Submission 17; Mackay Conservation Group, Submission 18; Steve MacDonald, Submission 19; Gecko Environment Council, Submission 22; Environment Council of Central Queensland, Submission 25; Isaac Regional Council, Submission 28; Australian Marine Conservation Society, Submission 31.

80 Queensland Conservation Council, Submission 32; Environmental Defenders Office, Submission 33; Isaac Regional Council, Submission 28; Lock the Gate Alliance Ltd, Submission 30.

81 Isaac Regional Council, Submission 28.

82 Lock the Gate Alliance Ltd, Submission 30.

83 AgForce, Submission 8.

84 AgForce, Submission 8.

85 Darling Downs Environment Council, Submission 17; Mackay Conservation Group, Submission 18; Koala Action Inc, Submission 20; Gecko Environment Council, Submission 22; Lock the Gate Alliance Ltd, Submission 30; Australian Marine Conservation Society, Submission 31.

86 Environmental Defenders Office, Submission 33.

87 AgForce, Submission 8.

88 AgForce, Submission 8.

89 Isaac Regional Council, Submission 28.

90 Environmental Defenders Office, Submission 33.

91 Environmental Defenders Office, Submission 33.

92 Bar Association of Queensland, Submission 1.

93 Bar Association of Queensland, Submission 1.

94 Queensland Resources Council, Submission 36.

95 Association of Mining and Exploration Companies, Submission 5; Mount Isa City Council, Submission 7; John Haydon, Submission 13.

96 Dale Forrester, Submission 29.

97 Dale Forrester, Submission 29.

98 Lock the Gate Alliance Ltd, Submission 30; Australian Marine Conservation Society, Submission 31; Queensland Conservation Council, Submission 32; Environmental Defenders Office, Submission 33.

99 Australian Marine Conservation Society, Submission 31.

100 Bar Association of Queensland, Submission 1. This option is discussed in QLRC, Reimagining decision-making processes for Queensland mining, Consultation paper 1, July 2024 at [118] – [119].

101 Hopevale Congress Aboriginal Corporation, Submission 21.

102 Bar Association of Queensland, Submission 1.

103 Parallax Legal, Submission 34.

104 Isaac Regional Council, Submission 28.

105 Bar Association of Queensland, Submission 1; Queensland Law Society, Submission 38.

106 Energy Resources Law, Submission 12.

107 Bar Association of Queensland, Submission 1.

108 Darling Downs Environmental Council, Submission 17; Mackay Conservation Group, Submission 18; Koala Action Inc, Submission 20; Gecko Environment Council, Submission No 22.

109 Lock the Gate Alliance Ltd, Submission 30.

110 Lock the Gate Alliance Ltd, Submission 30.

111 Isaac Regional Council, Submission 28.

112 Association of Mining and Exploration Companies, Submission 5; Queensland Resources Council, Submission 36; Glencore, Submission 37; Dale Forrester, Submission 29.

113 Queensland Resources Council, Submission 36.

114 Glencore, Submission 37.

115 Dale Forrester, Submission 29.

116 North Queensland Land Council, Submission 24.

117 Queensland Small Miners Council (interim submission), Submission 2.

118 AgForce, Submission 8; Mackay Conservation Group, Submission 18; Lock the Gate Alliance Ltd, Submission 30.

119 Darling Downs Environment Council, Submission 17; Mackay Conservation Group, Submission 18; Gecko Environment Council, Submission 22; Lock the Gate Alliance Ltd, Submission 30.

120 Energy Resources Law, Submission 12.

121 Parallax Legal, Submission 34.

122 Queensland Law Society, Submission 38.

123 Queensland Environmental Law Association, Submission 10.

124 Environmental Defenders Office, Submission 33.

125 Parallax Legal, Submission 34.

126 Parallax Legal, Submission 34.

127 Queensland Resources Council, Submission 36.

128 Environmental Defenders Office, Submission 33.

129 Environmental Defenders Office, Submission 33.

130 Hopevale Congress Aboriginal Corporation, Submission 21.

131 Hopevale Congress Aboriginal Corporation, Submission 21.

132 See, for example: Local Government Association of Queensland, Submission 4; AgForce, Submission 8; Koala Action Inc, Submission 20; Queensland Human Rights Commission, Submission 27; Dale Forrester, Submission 29.

133 North Queensland Land Council, Submission 24.

134 Hopevale Aboriginal Corporation, Submissions 21; Environmental Defenders Office, Submission 33.

135 See, for example: Parallax Legal, Submission 34; Koala Action Inc, Submission 20; Queensland Conservation Council, Submission 32.

136 Queensland South Native Title Services, Submission 39.

137 Parallax Legal, Submission 34.

138 AgForce, Submission 8.

139 Environmental Defenders Office, Submission 33.

140 Australian Land Conservation Alliance, Submission 16.

141 Parallax Legal, Submission 34.

142 Bar Association of Queensland, Submission 1; Darling Downs Environment Council, Submission 17; Steve MacDonald, Submission 19; Hopevale Congress Aboriginal Corporation, Submission 21; Lock the Gate Alliance Ltd, Submission 30; Queensland South Native Title Services, Submission 39. See also: Isaac Regional Council, Submission 28.

143 Darling Downs Environment Council, Submission 17; Mackay Conservation Group, Submission 18; Steve MacDonald, Submission 19; Gecko Environment Council, Submission 22; Australian Marine Conservation Society, Submission 31; Environmental Defenders Office, Submission 33; Queensland Law Society, Submission 38.

144 Environmental Defenders Office, Submission 33; Queensland Law Society, Submission 38.

145 Environmental Defenders Office, Submission 33; Queensland Law Society, Submission 38.

146 James Hill, Submission 6.

147 AgForce, Submission 8; Property Rights Australia, Submission 9; Glencore, Submission 37.

148 Queensland Small Miners Council (interim submission), Submission 2; Queensland Small Miners Council (further submission), Submission 3.

149 Glencore, Submission 37.

150 Queensland Small Miners Council (interim submission), Submission 2; AgForce, Submission 8; Glencore, Submission 37; Queensland Resources Council, Submission 38.

151 North Queensland Miners' Association, Submission 35; Queensland Resources Council, Submission 36.

152 Queensland Small Miners Association (further submission), Submission 3.

153 Queensland Law Society, submission 38.

154 Hopevale Congress Aboriginal Corporation, Submission 21; Queensland South Native Title Services, Submission 39.

155 Queensland Law Society, submission 38.

156 Queensland South Native Title Services, Submission 39.

157 Queensland South Native Title Services, Submission 39.

158 Hopevale Congress Aboriginal Corporation, Submission 21.

159 Queensland South Native Title Services, Submission 39.

160 Parallax Legal, Submission 34; North Queensland Land Council, Submission 24.

161 Energy Resources Law, Submission 12.

162 Energy Resources Law, Submission 12.

163 Queensland Small Mining Council (interim submission), Submission 2.

164 Queensland Small Mining Council (interim submission), Submission 2.

165 Queensland Small Mining Council (interim submission), Submission 2.

166 Parallax Legal, Submission 34.

167 Parallax Legal, Submission 34.

168 North Queensland Land Council, Submission 24.

169 North Queensland Land Council, Submission 24.

170 Bar Association of Queensland, Submission 1; Australian Energy Producers, Submission 11; Hopevale Congress Aboriginal Corporation, Submission 21; Queensland Human Rights Commission, Submission 27; Queensland Conservation Council, Submission 32.

171 Environmental Defenders Office, Submission 33; Queensland South Native Title Services, Submission 39.

172 Queensland Human Rights Commission, Submission 27.

173 Queensland South Native Title Services, Submission 39.

174 Queensland Law Society, Submission 38.

175 Queensland Conservation Council, Submission 32.

176 Koala Action Inc, Submission 20.

177 Hopevale Congress Aboriginal Corporation, Submission 21.

178 Queensland South Native Title Services, Submission 39.

179 Environmental Defenders Office, Submission 33.

180 Australian Energy Producers, Submission 11.

181 Bar Association of Queensland, Submission 1.

182 Association of Mining and Exploration Companies, Submission 5; Energy Resources Law, Submission 12; Queensland Resources Council, submission 36.

183 Queensland Resources Council, submission 36.

184 Hopevale Congress Aboriginal Corporation, Submission 21.

185 Queensland South Native Title Services, Submission 39.

186 North Queensland Land Council, Submission 24.

187 Bar Association of Queensland, Submission 1.

188 AgForce, Submission 8.

189 AgForce, Submission 8.

190 Queensland Law Society, Submission 38.

191 Queensland Environmental Law Association, Submission 10.

192 Queensland Law Society, Submission 38.

193 Energy Resources Law, Submission 12.

194 John Haydon, Submission 13.

195 Australian Land Conservation Alliance, Submission 16.

196 Queensland Resources Council, Submission 36; Association of Mining and Exploration Companies, Submission 5; Glencore, Submission 37.

197 Queensland Resources Council, Submission 36.

198 Queensland Resources Council, Submission 36.

199 Dale Forrester, Submission 29.

200 Bar Association of Queensland, Submission 1.

201 Bar Association of Queensland, Submission 1.

202 Bar Association of Queensland, Submission 1.

203 Bar Association of Queensland, Submission 1.

204 Bar Association of Queensland, Submission 1.

205 Bar Association of Queensland, Submission 1.

206 Parallax Legal, Submission 34.

207 Parallax Legal, Submission 34.

208 Bar Association of Queensland, Submission 1.

209 Bar Association of Queensland, Submission 1.

210 Bar Association of Queensland, Submission 1.

211 Bar Association of Queensland, Submission 1; Dale Forrester, Submission 29.

212 Parallax Legal, Submission 34.

213 Energy Resources Law, Submission 12.

214 Bar Association of Queensland, Submission 1; Environmental Defenders Office, Submission 33.

215 Environmental Defenders Office, Submission 33.

216 Bar Association of Queensland, Submission 1.

217 Bar Association of Queensland, Submission 1; Isaac Regional Council; Submission 28; Lock the Gate Alliance Ltd, Submission 30; Environmental Defenders Office, Submission 33.

218 Queensland Environmental Law Association, Submission 10; John Haydon, Submission 13.

219 Koala Action Inc, Submission 20; Queensland Conservation Council, Submission 32.

220 Dale Forrester, Submission 29.

221 Dale Forrester, Submission 29; Environmental Defenders Office, Submission 33.

222 Dale Forrester, Submission 29.

223 Dale Forrester, Submission 29.

224 Queensland Law Society, Submission 38.

225 Energy Resources Law, Submission 12.

226 As discussed in QLRC, Reimagining decision-making processes for Queensland mining, Consultation paper 1, July 2024 at [175].

227 Association of Mining and Exploration Companies, Submission 5; Queensland Resources Council, Submission 36.

228 Queensland Small Miners Council (further submission), Submission 2.

229 Queensland Resources Council, Submission 36.

230 Hopevale Congress Aboriginal Corporation, Submission 21.

231 They provided as an example the standards applied to renewable energy projects by Ymatji Marlpa Aboriginal Corporation (YMAC) in Western Australia, which they consider very thorough and comprehensive.

232 Mount Isa City Council, Submission 7.

233 Environmental Defenders Office, Submission 33.

234 AgForce, Submission 8; Environmental Defenders Office, Submission 33.

235 Australian Energy Producers, Submission 11.

236 Bar Association of Queensland, Submission 1.

237 John Crosby, Submission 15.

238 Mackay Conservation Group, Submission 18; Koala Action Inc, Submission 20; Environmental Defenders Office, Submission 33.

239 Environmental Defenders Office, Submission 33.

240 Isaac Regional Council, Submission 28; Queensland Resources Council, Submission 36.

241 Bar Association of Queensland, Submission 1.

242 Isaac Regional Council, Submission 28.

243 Energy Resources Law, Submission 12.

244 Glencore, Submission 37.

245 Isaac Regional Council, Submission 28.

246 Bar Association of Queensland, Submission 1.

247 Dale Forrester, Submission 29.

248 Dale Forrester, Submission 29.

249 Property Rights Australia, Submission 9.

250 Bar Association of Queensland, Submission 1.

251 Bar Association of Queensland, Submission 1.

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