

13 September 2024



Queensland Environmental
Law Association

ABN 82 337 273 393

Ph 07 3832 4865

Email info@qela.com.au

Web www.qela.com.au

Dear Sir / Madam,

Please find attached a submission on the mining lease objections review on behalf of the Queensland Environmental Law Association.

QELA is generally supportive of the intent of the recommendations arising out of the review. In particular it is encouraging that the key proposal (P6) maintains the Court's specialist expertise in mining disputes and its established practices and procedures, with which QELA members are familiar.

The attached feedback provides QELA's views on each of the proposals identified in the consultation paper.

We are grateful for the opportunity to respond.

Yours sincerely,
QELA

QELA, a not for profit organisation, consults with and educates interested professionals and government representatives about planning, development and environmental laws that apply, or are proposed to apply, in Queensland.

QELA provides a collegiate forum for multi-disciplinary interaction and collaboration.



| Proposal | QELA Feedback |
|---|--|
| <p>P1 Participation in the current processes should be reframed by:</p> <ul style="list-style-type: none"> (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. | <p>QELA is supportive of this proposal.</p> |
| <p>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:</p> <ul style="list-style-type: none"> (a) notice of applications (b) notice of opportunities to participate (c) outcomes of participation processes (d) information requests (e) decisions. | <p>Improved transparency surrounding the application process arising from the use of a central online portal is welcome. QELA is supportive of the availability of technical information and the application material generally.</p> |
| <p>P3 An Independent Expert Advisory Panel should be established that is:</p> <ul style="list-style-type: none"> (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. | <p>It is recognised that the proposed panel (managed effectively) could enhance the evidence base for decisions.</p> <p>Further details regarding the management of the panel and the selection process for members (including necessary qualifications and experience) should be further considered in detail, so that all stakeholders can have input into the model. It is important to QELA that the panel as a whole is, and is seen to be, truly independent and that the ultimate model adopted will ensure quality, consistency and transparency of the decision-making process without sacrificing timeliness and efficiency.</p> |

| | |
|--|---|
| <p>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:</p> <p>(a) for decisions about mining lease and associated environmental authority applications – information generated through the new participation process</p> <p>(b) for decisions about environmental authority applications – any advice of the Independent Expert Advisory Committee.</p> | <p>QELA is supportive of this proposal to ensure that the above reforms have a substantive impact on decision-making.</p> |
| <p>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.</p> | <p>QELA is supportive of this proposal.</p> |

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.

QELA is supportive of the intention for greater efficiency in the review process by ensuring merits review is available only after both decisions are made, and agrees that introducing internal review would create unnecessary delays without necessarily improving outcomes.

As already noted, the existing practices and procedures of the Land Court remain supported.

In terms of the conduct of a combined merits and judicial review, it is noted that the intention of the proposal is that the Court would be acting administratively on a merits review.

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.

It is assumed that the proposal to substantively alter the nature of the review available by the Court is limited to mining objections hearings given the subject matter of the Consultation Paper. To the extent it seeks to alter the nature of an appeal to the Land Court and result in a broader change across the Court’s jurisdiction there may be difficulties reconciling the above approach with the enabling statutes. This is something that will require further consideration if that is the intention.