QUEENSLAND
LAW REFORM
COMMISSION

Conscious consistency: mining and other resource production tenures

Review of mining lease objections processes

Consultation paper – November 2024

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Queensland Law Reform Commission ('QLRC')

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The QLRC is an independent Queensland Government statutory body constituted under the Law Reform Commission Act 1968.

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, What we heard: Summary of consultation feedback, Background paper 4, November 2024.

Legislation:

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

This paper reflects the law as at 23 October 2024.

Contents

Introduction

We are reviewing the processes for deciding applications for mining leases and associated environmental authorities in Queensland (the 'mining lease processes').

In July 2024, we released two consultation papers that discussed and asked for feedback on six proposals for reform of the mining lease processes:

- Reimagining decision-making processes for Queensland mining
- Valuing the perspectives of Aboriginal peoples and Torres Strait Islander peoples.

The second part of our review is to consider whether any recommended changes to the mining lease processes should apply to applications for resource production tenures under the following Acts ('other resource production tenures'), including their associated environmental authorities (collectively, 'other resource proposals'):

- Greenhouse Gas Storage Act 2009
- Geothermal Energy Act 2010
- Petroleum and Gas (Production and Safety) Act 2004.

This consultation paper focusses on this second part of our review and:

- examines the current processes for deciding other resource proposals
- explores the relevant context for this consideration
- outlines our approach to reform
- considers key differences between the processes
- discusses specific considerations for these frameworks
- invites your views and feedback.

A threshold question for this part of the review is whether consistency across the processes for resource production proposals is advantageous and whether recommendations for consistent processes would be fair, efficient, effective and contemporary.

You can share your views with us in any way, including by making a submission through our website or emailing or writing to us. Submissions close on **31 January 2025**.

There will also be opportunities to attend meetings and forums to share your views. Details about these meetings will be shared on our website and through our newsletters and LinkedIn page.

Our review

1. Appendix A contains an extract of the terms of reference. The full terms of reference are available on our website.[1]

Making a submission

2. You are invited to give us your views on the consultation proposals and questions, as well as any other issues relevant to our review. Appendix B contains our consultation proposals and questions. Your submissions are important and will help us to develop our recommendations. The closing date for submissions is **31 January 2025**.

3. You do not have to follow a specific format in making your submission. Submissions can be made in writing, as an audio or visual recording or in other formats such as artwork. You can upload them to our website or send them to us by email or post.

4. There will also be opportunities to attend meetings and forums to share your views in November 2024 and January 2025, including on Country. Details about these meetings will be shared on our website and through our newsletters and LinkedIn page.

5. We prefer to receive public submissions as they provide important evidence in our review. Our submissions policy explains how we may use and publish submissions we receive.[2] We treat all submissions as public unless you clearly indicate it is confidential.

You can send us your written submissions through our website.

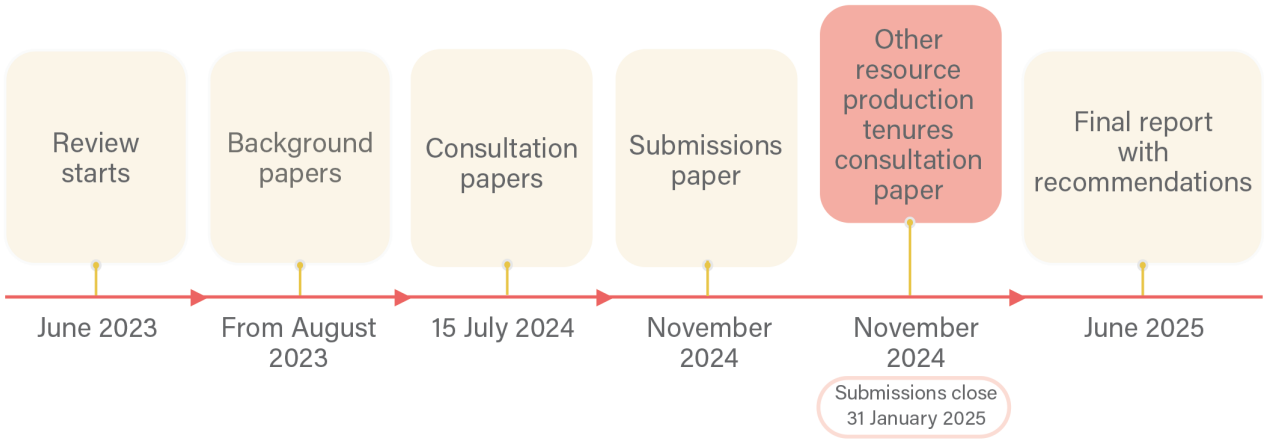
Please tell us clearly on your submission if you do not want us to refer to it in our report.

View our submissions policy and our right to information policy on our website[3]

Our next steps

6. By 30 June 2025, we will make our recommendations in a final report to the Attorney-General.

Figure 1: Timeline of our review



Current regulatory frameworks for other resource proposals

7. Resource projects are generally long-term projects that include different stages, from exploration through to production, rehabilitation and closure. The focus of our review is on the processes for deciding applications for the approvals required to commence production.

8. In Queensland, each type of resource activity is regulated under its own laws and regulations (the resources Acts). Relevant laws are the:

- Mineral Resources Act 1989
- Petroleum and Gas (Production and Safety) Act 2004
- Greenhouse Gas Storage Act 2009
- Geothermal Energy Act 2010.

9. This paper considers the processes for deciding other resource proposals and does not consider the processes that apply to non-production tenures, such as exploration permits. The Government will separately consider the processes for non-production resource authorities.[4]

Petroleum leases

10. The Petroleum and Gas (Production and Safety) Act 2004 is the primary Act governing onshore gas in Queensland.

11. A petroleum lease gives the right to produce petroleum within the area of the lease.[5]

12. There are two ways a proponent can obtain a petroleum lease:

    - the holder of an existing authority to prospect (ATP), which is a type of exploration permit, applies for a petroleum lease over all or part of the area of the authority (ATP-related application)[6]
    - by competitive tender.[7]

13. An application for a petroleum lease must be accompanied by a proposed initial development plan.[8] The plan provides details of the nature and extent of the proposed activities and allows an assessment of the development and whether it is appropriate, considering the area, resource and the public interest.[9] The lease cannot be granted without an approved initial development plan.[10]

14. There are no notification requirements for petroleum lease applications and no ability for any person to make a submission on the application. Applications are not published and are not on a public register.

15. For an ATP-related application, the Minister must grant the petroleum lease if satisfied that the statutory criteria have been met,[11] including:[12]

    - that the proposed area contains commercial quantities of petroleum
    - the proponent satisfies the 'capability criteria' having regard to their financial and technical resources and ability to manage the proposed activities
    - a relevant environmental authority for the lease has been issued
    - the production requirements are satisfied.

16. There is no internal review or appeal of a decision to grant a petroleum lease.

17. The proponent can appeal a decision to refuse an ATP-related application to the Land Court.[13] In deciding an appeal, the Land Court:[14]

    - has the same powers as the original decision-maker and can:[15]
        - confirm the decision
        - set aside the decision and substitute another decision
        - set aside the decision and return it to the original decision-maker with appropriate directions
    - is not bound by the rules of evidence
    - must comply with natural justice
    - may hear the appeal in court or in chambers.

GHG leases

18. In Queensland, greenhouse gas ('GHG') storage refers to the geological storage of captured carbon dioxide ('CO_2'). CO_2 is typically produced from fossil fuels in electricity generation and industrial processes. This activity is also referred to as carbon capture and storage.[16]

19. The Greenhouse Gas Storage Act 2009 is the primary Act governing GHG storage activities in Queensland.

20. The GHG lease is the relevant production tenure and allows for operational GHG stream injection and storage.[17]

21. There are two ways a proponent may obtain a GHG lease in Queensland:

    - permit-related application, to transition from exploration activities to a GHG lease[18]
    - competitive tender.[19]

22. An application for a GHG lease must be accompanied by a proposed initial development plan.[20] The plan provides details of the nature and extent of the proposed activities and allows an assessment of the development and whether it is appropriate, considering the area, resource and the public interest.[21] The lease cannot be granted without an approved initial development plan.[22]

23. There is no requirement to publicly notify an application for a GHG lease and no ability for any person to make a submission on the application. Applications are not published and are not on the public register.

24. The Minister may only decide to grant the application if satisfied that the statutory criteria have been met,[23] including:[24]

    - that the proposed area is appropriate and adequate
    - a relevant environmental authority has been issued
    - the production requirements are satisfied
    - the proponent satisfies the 'capability criteria' having regard to their financial and technical resources and ability to undertake the proposed activities.

25. For competitive tenders, the Minister has discretion to set 'special criteria' for deciding the GHG lease application.[25]

26. The Minister must also consider the public interest.[26]

27. There is no internal review or appeal of the decision to grant a GHG lease.

28. The proponent can appeal a decision to refuse a permit-related application to the Land Court.[27] In deciding an appeal, the Land Court:[28]

    - has the same powers as the original decision-maker and can:[29]
        - confirm the original decision
        - set the decision aside and substitute another decision
        - set the decision aside and return it to the original decision-maker with appropriate directions
    - is not bound by the rules of evidence
    - must comply with natural justice
    - may hear the appeal in court or in chambers.

Geothermal leases

29. Geothermal energy is a renewable resource that uses natural heat from the Earth to generate electricity or other power.[30] Queensland has the potential to develop type 1 (hot water) and type 2 (hot dry rock) geothermal energy resources, with significant resources of hot dry rock.[31]

30. The Geothermal Energy Act 2010 is the primary Act governing the production of geothermal energy in Queensland.

31. A geothermal lease gives the right to produce geothermal energy.[32]

32. The application for a geothermal lease must include a proposed initial development plan.[33] The plan provides details of the nature and extent of the proposed activities and allows an assessment of the development and whether it is appropriate, considering the area, resource and the public interest.[34] The lease cannot be granted without an approved initial development plan.[35]

33. There are no notification requirements for geothermal lease applications and no ability for any person to make a submission on the application. Applications are not published and are not on the public register.

34. The Minister may only grant a geothermal lease if satisfied the statutory criteria have been met,[36] including:[37]

    - the proposed area is appropriate and contains adequate geothermal resources
    - the relevant environmental authority has been issued
    - any relevant Water Act authorisation has been issued
    - the production requirements are satisfied
    - the proponent satisfies the 'capability criteria' having regard to their financial and technical resources and ability to undertake the proposed activities.

35. In deciding whether to grant the geothermal lease the Minister must also consider the public interest.[38]

36. There is no internal review or appeal of the decision to grant a geothermal lease.

37. The proponent can appeal a decision not to grant the geothermal lease to the Land Court.[39] In deciding an appeal, the Land Court:[40]

    - has the same powers as the original decision-maker and can:[41]
        - confirm the decision
        - set aside the decision and substitute another decision
        - set aside the decision and return it to the Minister with appropriate directions.
    - is not bound by the rules of evidence
    - must comply with natural justice
    - may hear the appeal in court or in chambers.

Associated environmental authorities

38. A resource production tenure cannot be granted unless an associated environmental authority has been granted. The chief executive of the Department of Environment, Science and Innovation decides environmental authority applications under the Environmental Protection Act 1994.

39. Currently, all environmental authority applications associated with applications for other resource production tenures must be:

- new site-specific application[42] or
- major amendment application,[43] if there is an existing environmental authority.

40. The proponent must publicly notify all environmental authority applications associated with resource production tenures.[44] Any person can make a written submission, unless there is a current and complete environmental impact statement ('EIS') at the time of application.[45] The EIS process includes public notification and the opportunity to make submissions, which supplant those of the environmental authority application. The proponent must also keep copies of the notice and all application documents on their website.[46]

41. In deciding the application, the chief executive must consider:[47]

- all properly made submissions
- any standard conditions for the activity
- any responses to information requests
- the 'standard criteria', which includes the public interest.

42. If the chief executive decides to grant an environmental authority, the Department will issue the environmental authority and include a copy on the public register.[48]

43. The proponent can seek internal review and appeal to the Land Court a decision to refuse an application relating to any other resource production tenure.[49]

44. A person who made a submission can seek internal review and appeal to the Land Court a decision to grant an application relating to a petroleum activity.[50] There is no right for a person who made a submission on an application relating to a GHG or geothermal lease to seek internal review or appeal.

45. The Land Court appeal is a rehearing, unaffected by the review decision.[51] The Land Court may:[52]

- confirm the review decision
- set aside the decision and substitute another decision
- set aside the decision and return it to the original decision-maker with appropriate directions.

Relevant context for our review

46. In Scanning the horizon: Queensland mining in the future, we identify three key global trends impacting the Queensland resources industry that are particularly relevant for our review.[53] These trends are:

- decarbonisation and the demand for critical minerals
- the rising focus on environmental, social and governance ('ESG') principles
- increasing recognition and respect for Aboriginal and Torres Strait Islander rights.

47. We recognise the dynamic context in which this review is taking place and the need to identify and consider the impact of key trends in developing our recommendations for reform.

48. Our consideration of anticipated future developments is directly informed by Government commitments. We are yet to see which of these commitments are implemented. We identify potential future trends based on the information available to us without favouring a particular

approach, making any predictions or drawing any conclusions in relation to these commitments.

Changing landscape of the resources industry

49. Increasing concerns about climate change have seen an uptake in clean energy technology as part of a global shift away from the use of fossil fuels to limit the global temperature rise and meet international commitments.[54] This shift has driven a surge in renewable energy projects, increased demand for minerals, particularly 'critical minerals', and increased demand for gas.[55] This changing context is increasing land use conflict.

50. Below, we discuss the implications and relevant industry outlooks associated with this transition.

Petroleum and gas

51. Queensland has a long history with natural gas, which was discovered in Roma in 1900.[56] CSG production, primarily from the Surat and Bowen basins, has been supplying the East Coast gas market for years, but recently the intensity of development increased dramatically to meet export demands.[57]

52. In 2014, the industry underwent a period of rapid change and growth when Queensland achieved a world first by converting coal seam gas (CSG) to liquefied natural gas (LNG), allowing for international export from the Curtis Island LNG facilities in Gladstone. The previously small industry transformed enormously, generating more than $80 billion in export earnings and making Australia one of the largest exporters of LNG in the world.[58]

53. In line with global efforts to decarbonise, it is expected that Queensland's gas will continue to be in demand to support greater renewable energy generation, both in Australia and internationally.[59]

54. The rapid development of the CSG industry, and the uncertainty around LNG processes, raised community concerns about the impact on farming operations, groundwater aquifers and social and economic conditions, particularly among agricultural producers in the Surat and Bowen basins.[60] The regulatory framework was rapidly developed in response. This resulted in a complex framework that contained unnecessary duplication, was confusing for Government, industry and the community and lacked clarity and accountability, affecting community confidence in decision-making.[61]

55. Over the past decade, Government reviews and reforms have aimed to modernise the regulatory framework and address stakeholder concerns,[62] with increasing focus on the Government's commitments to optimise Queensland's gas resources.[63] For example:

- The Mineral and Energy Resources and Other Legislation Amendment Act 2024 (MEROLA Act) expanded the roles of the former Gasfields Commission Queensland (now Coexistence Queensland), the Office of Groundwater Impact Assessment and the Land Access Ombudsman and introduced reforms designed to improve regulatory efficiency.[64]
- Following its removal from the MEROLA Act, the Government carried out additional consultation about the proposed CSG-induced subsidence framework. The framework is intended to manage the impacts, or predicted impacts, of CSG-induced subsidence on agricultural land, to support coexistence between the resources and agricultural sectors.[65]
- The Regional Planning Interests Act 2014 has recently been subject to review. The review was in response to stakeholder concerns about the complexities of

Queensland's planning framework and the role of the Act in managing the relationship between resource activities, particularly CSG, and agricultural interests.[66]

56. Our research and initial consultations indicate that, notwithstanding the reforms to date, there are opportunities to continue to improve and ensure sustainable coexistence between the gas industry and local communities, particularly in affected agricultural areas.[67]

Greenhouse gas injection and storage

57. The Queensland GHG storage industry is immature. While there have been some exploration activities, there are no active GHG leases.

58. On 31 May 2024, the Queensland Government announced its intention to prohibit GHG storage in the Great Artesian Basin.[68] The ban is intended to further protect the unique environmental, agricultural, economic and cultural significance of the Basin.[69] After the passage of the MEROLA Act, the Basin was listed as 'unavailable land' for GHG permits or leases, prohibiting GHG activities.[70] CTS Co's GHG permit for the Basin was repealed.[71] Three pending applications for GHG permits were also legislatively withdrawn.[72]

59. Given the area of the Basin, while the ban remains in place, large-scale uptake of the industry is unlikely.

Geothermal energy

60. There is no geothermal energy production in Queensland.

61. A challenge for the Australian geothermal industry is that geothermal resources are generally located in central Australia, far from most energy users. The cost of transmission is very high.[73] The Australian geothermal sector is currently stalled with very little activity in Australia.[74]

Rising focus on ESG principles

62. Strong ESG performance is a focus of both the Australian Critical Minerals Strategy 2023–2030 and the Queensland Critical Minerals Strategy.[75] The Government is increasingly prioritising ESG criteria in law and policy development and tender processes, through its active role in the critical minerals and petroleum and gas sectors.[76]

63. With the rising focus on ESG principles is an increasing focus on independence, transparency and accountability in the assessment and decision-making processes for resource projects.[77]

Increasing recognition and respect for Aboriginal and Torres Strait Islander rights

64. The Queensland and Australian Governments have made a broad range of law and policy commitments to implement principles of international law and reframe the relationship with Aboriginal peoples and Torres Strait Islander peoples.[78]

65. This has led to a range of reforms and commitments in Queensland, including:

- the Human Rights Act 2019, which recognises the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, including the right to practise their beliefs and teachings, use their languages, protect and develop their kinship ties and maintain their relationship with the lands, seas and waterways, as well as the importance of the right to self-determination[79]
- the Path to Treaty Act 2023, which establishes the First Nations Treaty Institute and the Truth Telling and Healing Inquiry[80]

- the Queensland Resources Industry Development Plan ('QRIDP'), which identifies strong and genuine partnerships with Aboriginal peoples and Torres Strait Islander peoples as a key focus area[81]
- the Queensland Critical Minerals Strategy, which recognises the importance of genuine collaboration and partnership with Aboriginal peoples and Torres Strait Islander peoples.[82]

66. For these commitments to be implemented effectively, Government must embed them in decision-making for resource proposals. We recognise the special importance for Aboriginal peoples and Torres Strait Islander peoples of culture, the distinct and diverse connection to land, water and natural resources and the unique impacts of mining on these communities. We also recognise that resource activity is increasingly occurring on lands that engage the rights of Aboriginal peoples and Torres Strait Islander peoples.[83]

67. In Valuing the perspectives of Aboriginal peoples and Torres Strait Islander peoples, we explore the specific considerations, impacts and opportunities for people and communities in relation to mining projects.[84] We recognise that other resource projects also uniquely impact Aboriginal peoples and Torres Strait Islander peoples and their communities and that the interface of native title, cultural heritage, resource and environmental laws require specific consideration in this context. Below, we explore these specific considerations further.

Our approach to reform

68. Our terms of reference ask us to consider whether any recommended changes to the mining lease processes should apply to the processes for other resource production tenures. There is an inevitable tension in undertaking this second part of our review before we have finalised our recommendations for mining lease processes.

69. Our approach to this second part of our review is to decide whether the rationale for the changes we ultimately recommend for mining lease processes:

- is also appropriate and justifiable for the processes for other resource proposals
- should be reflected by appropriate and tailored reforms to those processes.

70. We do this by focusing on the purpose and intended outcomes of the proposals, rather than the mechanisms by which they may be implemented.

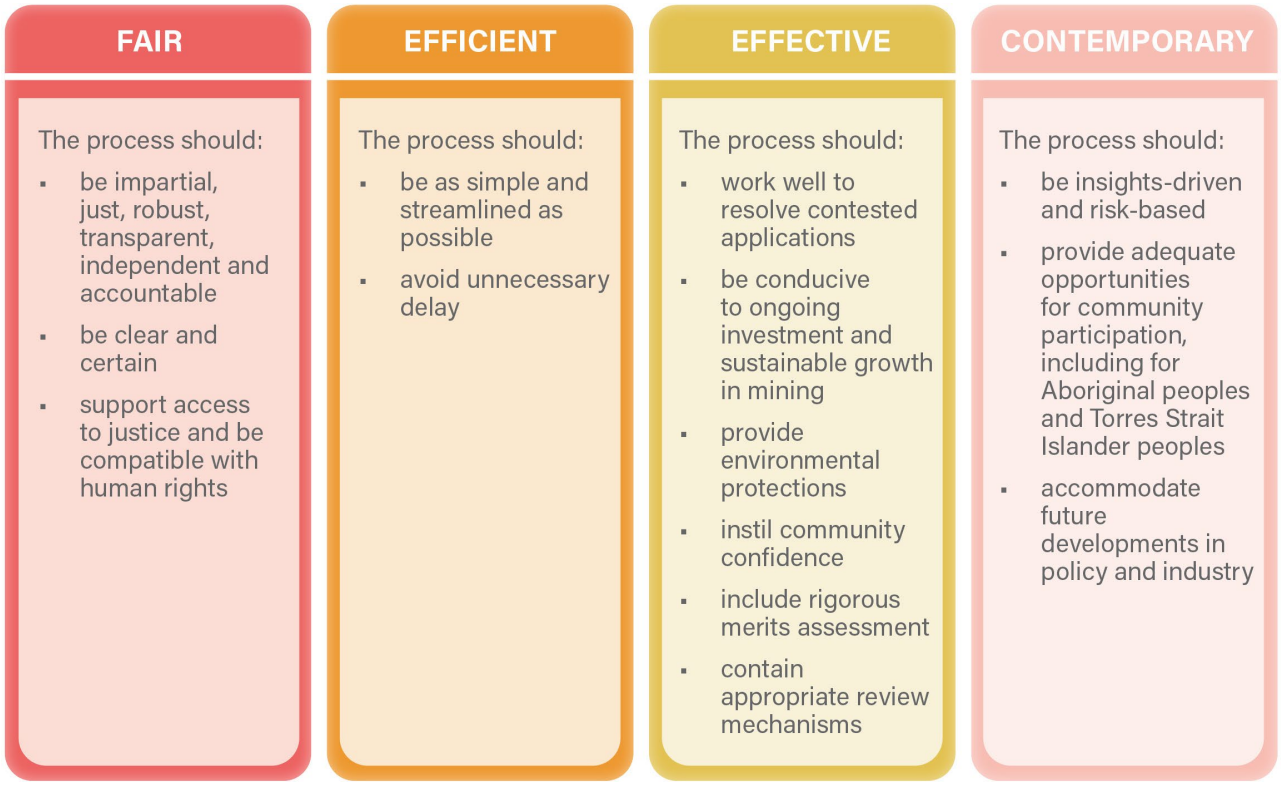
Guiding principles

71. Our guiding principles underpin our approach to reform and provide a basis for assessing whether any of our recommended changes should apply to applications for other resource proposals. We aim to develop recommendations for a process that is fair, efficient, effective and contemporary.

72. Our approach is consistent with the Queensland Government's commitment, set out in QRIDP, to ensure that the regulatory framework for the State's resources industry is 'risk-based, efficient, effective and transparent', with the aim of:[85]

- Queensland's resources being explored and developed in the public interest
- the community being confident that the resources industry is well regulated.

Figure 2: Our guiding principles



Question

Q1 Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for considering reforms to the processes for deciding other resource proposals?

Consistency in resource regulation

73. We have also identified consistency as a relevant principle to guide this second part of our review. A threshold question is whether consistency across the processes for resource proposals is advantageous and whether recommendations for consistent processes would be fair, efficient, effective and contemporary.

74. Below, we discuss key differences in the regulatory frameworks that apply to different resource production activities. Differences may also arise from the nature and scope of the activities and their impacts, which may have implications for our recommendations.

75. Our focus is whether there should be consistent processes across these different regulatory frameworks that include:

- clear and effective notification
- opportunities for early and ongoing participation
- transparent, accountable and open access to information
- best practice administrative decision-making
- streamlined review rights
- appropriate recognition of Aboriginal peoples' and Torres Strait Islander peoples' rights and interests.

76. Consistency is recognised as a 'key principle of good regulation'.[86] The objective of consistency or harmonisation has been a driver for the development of model regulatory frameworks in many areas, including work health and safety,[87] privacy and anti-discrimination laws.

77. In different but comparable contexts, the Australian Law Reform Commission has expressed the view that inconsistency and fragmentation of regulation causes problems including:[88]

- unjustified compliance burden and cost
- impediments to information sharing and national initiatives
- confusion for consumers.

78. Recognised benefits of consistency of regulatory frameworks include:[89]

- reduced complexity and duplication and increased clarity and comprehension by individuals engaging with the regulatory scheme or process
- certainty about rights and responsibilities
- uniformity in institutional practice
- enhanced opportunities for collective education and resource development
- greater service alignment and expertise
- increased efficiencies and reduced costs, including in regulatory oversight, compliance and enforcement
- increased applicability and relevance of case law and precedents.

79. Key considerations include:[90]

- the need to determine a clear agreed policy objective or goal across separate regulatory frameworks, with careful consideration of the underlying principles
- ensuring flexibility to innovate or respond to specific conditions and regulators
- costs associated with implementing a harmonised legislative scheme.

80. In the context of decision-making processes for resource activities, the aim of increasing consistency across resources Acts is not new. The goal of a simplified common framework drove introduction of Mineral and Energy Resources (Common Provisions) Act 2014.[91] The then Government's intention was for that Act to be the first step in replacing all resources Acts with a simplified common framework applicable to all resource authorities.[92]

81. While this unification has not been achieved in full, the Government has continued to examine methods for streamlining and reducing duplication. Our review is one of the actions specified in QRIDP to improve regulatory efficiency.[93] The action highlights the inconsistent approach to objection and review mechanisms for administrative decisions across the resources Acts and the potential for inefficiency and inequity.[94]

82. Recent Government consideration of regulation of the emerging hydrogen industry saw a focus on harmonisation, streamlining and minimising duplication from the outset. Support for achieving regulatory harmonisation by bringing hydrogen regulation within the existing Petroleum and Gas (Production and Safety) Act 2004 included the desire to avoid the complexities, unnecessary delays and additional costs that can result from the creation of bespoke legislation and regulation.[95]

83. We will explore the appropriateness of recommending consistent changes to the process for other resource proposals through the lens of these considerations for consistency, along with our guiding principles.

Question

Q2 Should we recommend that there is a consistent process by applying the consultation proposals for mining to other resource proposals?

Q3 Is the rationale for the consultation proposals for mining also appropriate and justifiable for other resource proposals? If so, would the consultation proposals need to be tailored, and if so, how?

Key differences between the processes for mining and other resource production proposals

84. There are some differences in process that we must consider in deciding whether to recommend that any changes proposed for mining should also apply to other resources production proposals.

85. In this section, we describe the key differences under the following topics:

- participation
- decision-making
- review.

Participation

86. The processes for notification and participation for other resource proposals differ to those for mining proposals in three main ways:

- direct notice: there is no direct notification
- public notice: there is no public notification of the tenure application
- public participation: the objections process does not apply and there is no public participation on the tenure application.

Direct notice means information about the application is given directly to a person or organisation.

Public notice means the application is brought to the public attention in some way.

87. The associated environmental authority application is therefore the primary way to participate in other resource proposals.

88. Neither the resource Acts nor the Environmental Protection Act 1994 require the proponent to give direct notice of an application for other resource production tenures or the associated environmental authority.

89. There are some direct notification requirements under other Acts, but they are for a different purpose.

90. Native title parties receive direct notice from the Government under the Native Title Act 1993 (Cth).[96] This commences the right to negotiate process under that Act.

91. Landholders receive direct notice from the proponent under the Land Access Framework,[97] which commences the process for agreeing (or deciding) Conduct and Compensation Agreements about:[98]

- how and when the resource company may enter the landholder's land

- how authorised activities, to the extent they relate to the resource company, must be carried out
- the resource company's compensation liability to the landholder or any future compensation liability that the resource company may have to the landholder.

92. However, the Land Access Framework does not give the landholder input into the Minister's decision about whether to approve an application for the tenure. Further, this process need not occur before the tenure is granted. This is another difference to the mining lease processes, where access and compensation must be decided before the mining lease can be granted.

93. Public notice is only required for the associated environmental authority application. There is no public notification of other resource production tenures. The proponent must give public notice of an application for a new environmental authority,[99] or to amend an existing environmental authority to include a new production tenure.[100]

94. Public notice of all major amendment applications is important because holders of an ATP will hold an associated environmental authority which are then generally amended to transition to a production tenure.[101] This is a recent reform designed to provide certainty for proponents and increase opportunities for public participation.[102] It responds to stakeholder concerns about the level of scrutiny of the assessment of amendment applications involving new resource production tenures.[103]

95. There is no opportunity for the public to participate in the processes for deciding applications for other resource tenures.

96. Although the objections process does not apply to environmental authority applications associated with other resource production tenures, the public notice invites any person to make a submission about the application.[104] However, the rights that flow from making a submission are not consistent across the applications relating to other resource proposals. This is explained under review, below.

97. Like mining, participation for Aboriginal peoples and Torres Strait Islander peoples and their communities in relation to other resource proposals that may impact Country occurs through any applicable native title and cultural heritage processes.[105] We discuss these processes in Reimagining decision-making processes for Queensland mining and Valuing the perspectives of Aboriginal peoples and Torres Strait Islander peoples.

Decision-making

98. A key difference in the decision-making processes for mining proposals compared to other resource proposals is the role of the public interest.

99. The public interest is a critical consideration when designing a process that is fair, efficient, effective and contemporary.

100. Like the mining lease processes, the decision-maker on an application for a geothermal lease or a GHG lease must consider the public interest.[106] The same applies to decisions on environmental authorities associated with other resource production tenures.

101. However, there is an important difference in the role of the public interest in deciding applications for petroleum leases. It is less direct and more confined than for mining proposals.

102. The Minister is not required to consider the public interest when deciding the application. However, a petroleum lease can only be granted where the Minister has approved the initial development plan.[107] In deciding whether to approve the plan, the Minister must consider

whether petroleum production sought under the lease will be optimised in the best interests of the State having regard to the public interest.[108] This confines the consideration of public interest to the purpose of optimising production and the Minister is not required to balance the project against the public interest more generally.

Review

103. The processes for review of decisions about other resource proposals differ to those for mining proposals in the availability of internal review and post-decision merits review.

104. While there are no internal review processes for decisions relating to mining proposals, there are internal review rights for the following decisions about associated environmental authorities:

- The proponent can seek internal review of a decision to refuse an application for an environmental authority associated with an application for an other resource production tenure.[109]
- A submitter for an application for an environmental authority associated with a petroleum lease can seek internal review of a decision to approve the application.[110]

105. While the pre-decision objections hearing does not apply for other resource proposals, there is the ability to seek merits review of a decision by the Land Court in the following instances:

- The proponent can appeal a decision to refuse an application for other resource production tenures,[111] except where the application was part of a competitive tender.
- The proponent can, after exhausting internal review, appeal a decision to refuse an application for an environmental authority associated with other resource production tenures.[112]
- A submitter for an application for an environmental authority associated with a petroleum lease can, after exhausting internal review, appeal a decision to approve the application.[113]

106. There are no rights of internal review or appeal to the Land Court for submitters on an environmental authority application associated with a geothermal or GHG lease.

107. We draw on these key differences between the processes for mining and other resource proposals when discussing the key considerations for the proposals for reform below.

Figure 3: Comparison of processes for mining leases and other resource production tenures

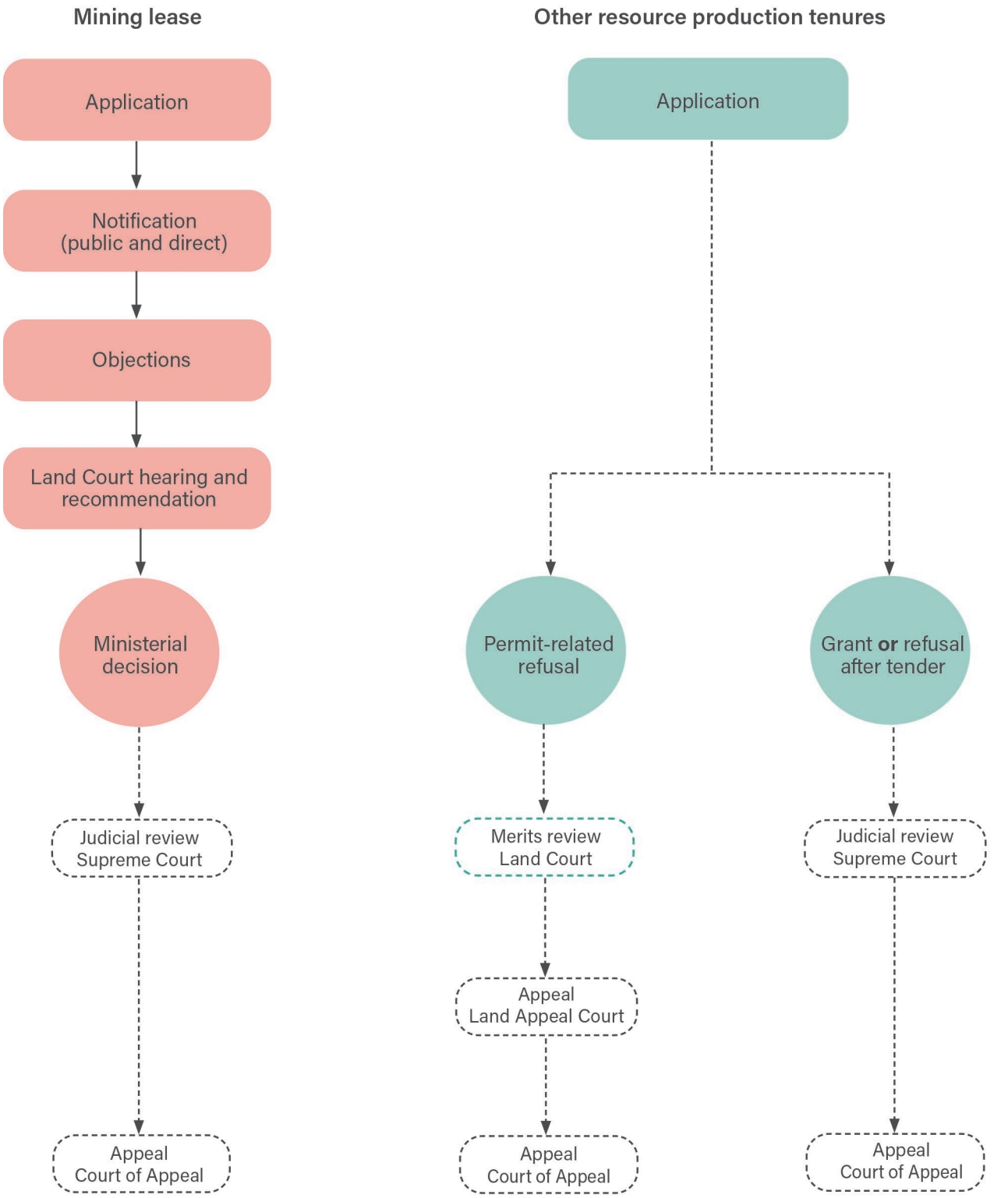
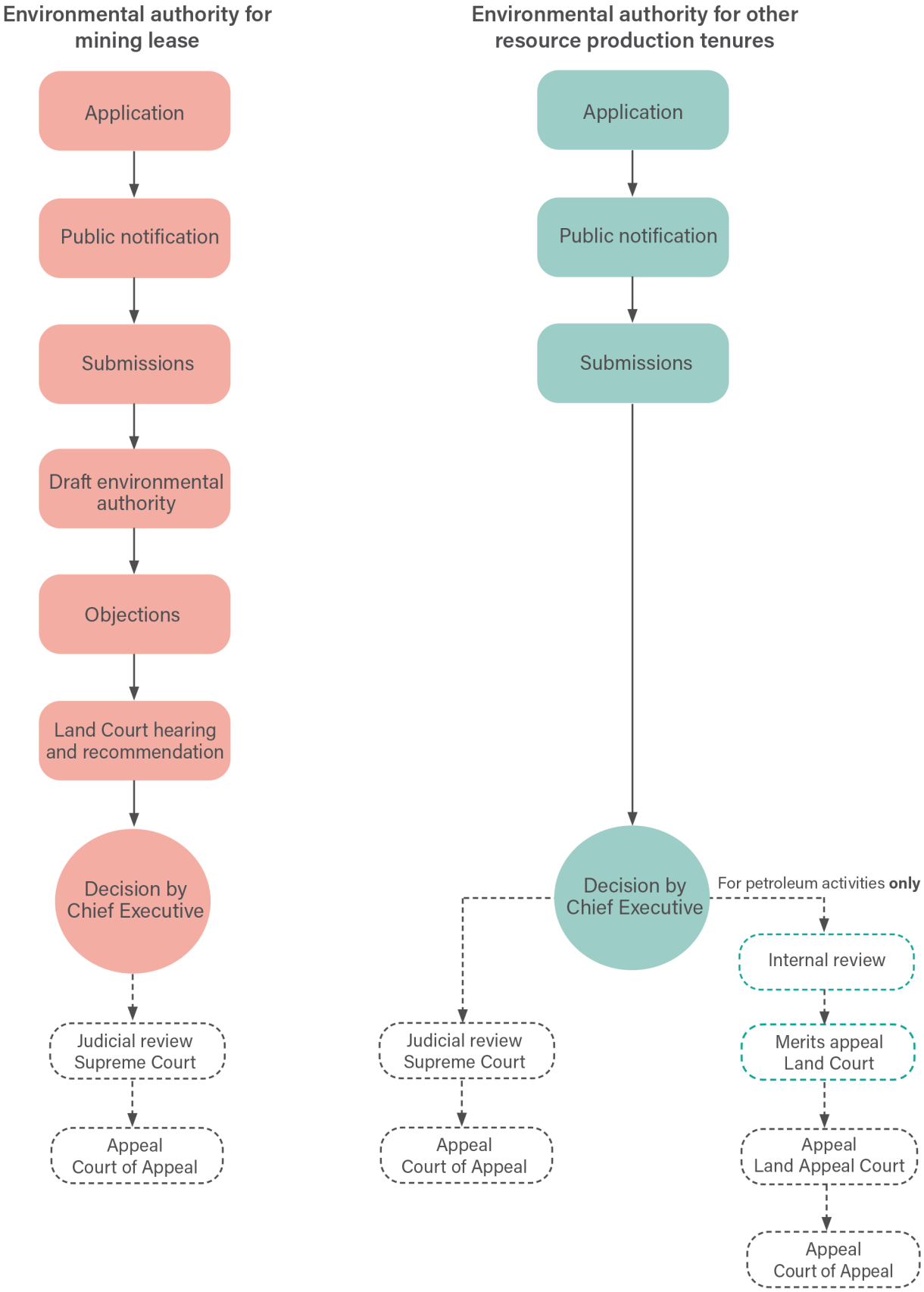


Figure 4: Comparison of processes for environmental authorities associated with mining leases and environmental authorities associated with other resource production tenures



Proposals for reform of mining lease processes

108. We have six consultation proposals for reform of the mining lease processes. These are preliminary ideas we have developed for public discussion and input. The consultation proposals are intended to preserve the strengths of the current processes while addressing identified problems, through the lens of our guiding principles.[114]

109. The consultation proposals are conceptual in nature and developed on the basis that any recommended process must:

- be conducive to investment and growth
- provide environmental protections
- provide opportunities for community participation
- properly consider human rights
- recognise and balance relevant interests
- support good decision-making based on robust expert evidence
- include appropriate review mechanisms.

110. In Reimagining decision-making processes for Queensland mining, we discuss our consultation proposals in detail, including different options and implementation considerations. In this consultation paper, we focus on specific aspects of our consultation proposals that are particularly significant for other resource proposals.

Participation

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.

111. Our first consultation proposal for reform of the mining processes is designed to:

- remove the burden and barriers of participating through a court process
- create efficiencies and reduce delay
- ensure that major resource projects can benefit from participation by the community and other interested parties at the design and assessment stage, to support early identification and resolution of key concerns and gather relevant information to inform decision-making
- harmonise the Land Court's function with the traditional role of Queensland courts as reviewers of Government decisions
- create a mechanism for appropriate consultation and input from the right people for Country, to ensure that decision-making for projects that may affect the rights and interests of Aboriginal peoples and Torres Strait Islander peoples is appropriately informed. Our intent is that the Aboriginal and Torres Strait Islander Advisory Committee would:

- be locally based
- consult and obtain views from persons beyond the boundaries of the proposed project in circumstances where the potential impacts of the project extend beyond boundaries
- recognise existing mechanisms for gathering and sharing information and views by relevant Aboriginal peoples and Torres Strait Islander peoples
- be formed independently of status and recognition by criteria set out in law, such as being a native title holder or claimant
- be formed for those applications that engage relevant interests.

112. This proposal is based on the principles that:

- people potentially affected by project proposals have the right to meaningfully participate in the decision-making processes
- good decision-making processes about public interest matters include opportunities for public participation
- when appropriately balanced, early and ongoing participation prior to decision-making improves, rather than detracts from, efficiency.

113. As noted above, participation in the processes for deciding applications for other resource proposals is currently limited to providing written submissions on the associated environmental authority application. There is no opportunity for public participation for other resource production tenures.

114. Key considerations for applying participation rights to other resource proposals include:

- the models of participation that should apply
- when opportunities to participate should be provided
- timeframe for different forms of participation
- thresholds for participation
- the potential role for the Land Access Ombudsman and Coexistence Queensland, given their recently expanded remits
- whether participation mechanisms for other resource production tenures and associated environmental authorities should be integrated. This integration is reflected in the current mining lease processes and our proposals do not suggest changing that
- how to ensure genuine engagement and input by the right people for relevant Country
- how to ensure any recommended process is accessible and responsive to the diverse needs of communities.

Options for a new non-adversarial participation process

115. Reimagining decision-making processes for Queensland mining sets out a range of different models of participation that may form part of a new non-adversarial participation process. These options are summarised below.

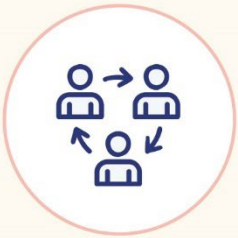
116. These models vary in the time and commitment required to participate, the level of active engagement and influence and the control and autonomy they vest in the community. We are interested in views about what forms of participation should be included in a fair, efficient, effective and contemporary process for other resource proposals.

Information session or open house

A public meeting to raise awareness and explain the mining proposal and decision-making process to interested community members and stakeholders

Community advisory committee or reference group

A working group that gathers community input and advises decision-makers about potential community impacts of a mining proposal



Community leader council

A working group of leaders from interested groups formed to help identify potential community impacts of a mining proposal and collaboratively develop possible solutions

Written submissions or comments

A written document that states the views of a person or organisation about a mining proposal

Public meeting

A gathering for community members to share their views, voice concerns and give suggestions about a mining proposal

Aboriginal and Torres Strait Islander Advisory Committee

A working group of Aboriginal peoples and Torres Strait Islander peoples that consults with community to identify relevant interests and provides advice to decision-makers about a mining proposal that may affect Aboriginal and Torres Strait Islander rights or interests

Tailoring participation

117. Our review is also considering whether there should be one form of participation or different participation opportunities depending on the project. This is especially important when considering expanding the operation of the participation process to cover other resource proposals and therefore a broader range of project types.

118. While a consistent participation process for all projects may provide certainty and clarity, this may limit flexibility to respond to the highly variable nature of resource projects and add unnecessary cost and delay. We aim to recommend a balanced process that is fair, efficient, effective and contemporary.

119. We are interested in hearing views about whether participation processes should be tailored depending on the nature of the project and if so, what criteria should be used to determine the different requirements for participation. For example, possible criteria that could be used for categorising projects include:

- scale, risk and impact of the project
- application type (standard, variation, site-specific)
- EIS triggers
- recognition of early or alternative public participation
- level of community concern.

120. If a tailored approach is recommended, we must also determine what models of participation should apply to each category of project.

Question

Q4 What should be the scope and extent of public participation in processes to decide other resource proposals?

Notification and information sharing

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.

121. Our second proposal for mining lease processes is to establish a contemporary platform for information-sharing which responds to issues with the current way in which notice and information for mining leases and associated environmental authorities is given. These issues are shared across different resource types and include:

- the inadequacy of current notice requirements, which can lead to lack of awareness of projects, both for those with private and communal interests and members of the public
- the connection between notification and the opportunity to participate in the decision-making process
- difficulties finding relevant and current information, including information about the process and participation rights and information about the project, which can compromise full and informed participation in the decision-making processes.

122. We recognise the importance of transparency in creating community trust and confidence in the process and as a check on Government decision-making and industry practice. We acknowledge that there are considerations in relation to the commercial sensitivity of certain information which would need to be managed. Maintaining data sovereignty in the collection, handling, storage and use of Aboriginal peoples' and Torres Strait Islander peoples' information must also be considered.

123. This proposal is designed to:

- increase efficiency
- support informed participation
- support good decision-making
- improve transparency and accountability.

124. As noted earlier, there is no direct or public notification of applications for other resource production tenures, although there is public notification of associated environmental authority applications.

Question

Q5 Should the consultation proposal for an online portal apply for other resource proposals? Are there any additional notification requirements?

Decision-making

125. Our proposals for decision-making for mining lease processes are based on the key elements of good administrative decision-making processes. They are designed to strengthen the evidence base for decision-makers in the absence of a pre-decision Land Court objections hearing. As the current process for other resource proposals already reflects the sequence of the proposed decision-making processes for mining lease processes, the rationale behind these options for reform can be directly considered.

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.

126. We are proposing a new Independent Expert Advisory Panel for environmental authority applications that meet specified criteria. The panel would:

- be comprised of technical experts that would form a project-specific committee ('Independent Expert Advisory Committee') where required

- include members with expertise in cultural heritage and Aboriginal and Torres Strait Islander rights and interests.

127. This consultation proposal is designed to:

- enhance the evidence base for all decisions that require it
- improve the quality, consistency and transparency of decision-making processes
- increase efficiency and reduce the need for information requests
- increase public trust and confidence in decisions.

128. The proposal to establish an Independent Expert Advisory Panel is intended to support, not supplant, the existing technical expertise within the Department of Environment, Science and Innovation. It is designed to enhance the evidentiary basis for decision-making by ensuring decision-makers have access to necessary scientific and technical advice.

129. We acknowledge the existing role the Office of Groundwater Impact Assessment ('OGIA') plays in providing expert advice to Government decision-makers about groundwater impacts from resource development, including petroleum and gas and GHG injection and storage. We note the recent expansion of OGIA's functions, which enables it to provide independent scientific advice in relation to subsurface impacts from authorised petroleum and gas activities when requested by relevant Government entities.

130. Our review aims to increase efficiency and reduce unnecessary duplication, so it is important to understand whether OGIA's expanded remit is sufficient, or whether there are gaps that may be met by an Independent Expert Advisory Panel.

Consequential amendments to the statutory criteria

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.

131. The fourth proposal for reform of the mining lease processes is consequential on the earlier proposals, designed to ensure that the input provided through any new participation process directly informs decision-making. This would require decision-makers to consider:

- public input gathered through the new participation process and advice from the Aboriginal and Torres Strait Islander Advisory Committee, from local government and from other relevant entities
- any advice of an Independent Expert Advisory Committee.

132. This proposal is designed to:

- ensure effective, outcomes-based decision-making directly informed by community input and expert advice
- build community trust and confidence in decisions
- assist decision-makers to exercise their discretion to consider the public interest in deciding applications.

133. There are different ways to ensure decision-makers consider information generated through the new participation process including, for example, through consultation reports. Such

reports could include details on the opportunities and methods of engagement, how people were informed about the engagement process, key themes and issues raised and how the feedback was addressed or considered.

Consideration of Aboriginal and Torres Strait Islander rights and interests

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.

134. Like for mining lease processes, there is currently no requirement for the Government to consider the rights and interests of Aboriginal peoples and Torres Strait Islander peoples as part of the statutory criteria for deciding other resource proposals.

135. This proposal is designed to:

- break down siloed decision-making about the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in relation to relevant land and waters, culture and cultural heritage
- ensure the rights and interests of Aboriginal peoples and Torres Strait Islander peoples are directly considered by decision-makers
- enhance protection of cultural rights.

Consideration of the public interest

136. Consideration of the statutory criteria for decision-making for other resource proposals introduces an additional element, given the key difference in the way the public interest is considered for mining lease processes and other resource proposals.

137. We are interested in hearing views about whether and, if so, how the public interest should be considered in decisions about other resource proposals.

Question

Q6 How should the following interests be considered in the decision-making processes for other resource proposals:

(a) the public interest?

(b) the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage?

Review

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.

138. For mining lease processes, our review consultation proposal gives effect to changing the Land Court's role from undertaking pre-decision merits assessment to a more conventional post-decision merits review and streamlines fragmented review pathways. It is designed to:

- ensure decisions are subject to appropriate merits review
- align with the processes for other major projects in Queensland and with best practice administrative decision-making
- retain the Land Court as an accessible forum with specialist expertise
- support access to justice
- streamline the process by creating a single appeal pathway that combines appeals on the tenure and the associated environmental authority, as well as merits and judicial review
- increase efficiency and improve decision-making by limiting the review to the evidence that was before the primary decision-makers, unless exceptional circumstances apply. This is designed to ensure all relevant information is provided to the Government decision-makers prior to their decisions and to confine reviews to the issues in dispute.

139. There are some key differences between the review rights associated with decisions for mining proposals and other resource proposals. There are also differences between the review rights for petroleum tenures and those for geothermal and GHG tenures. Further, for environmental authorities associated with geothermal and GHG tenures, there are different review rights for proponents and for submitters.

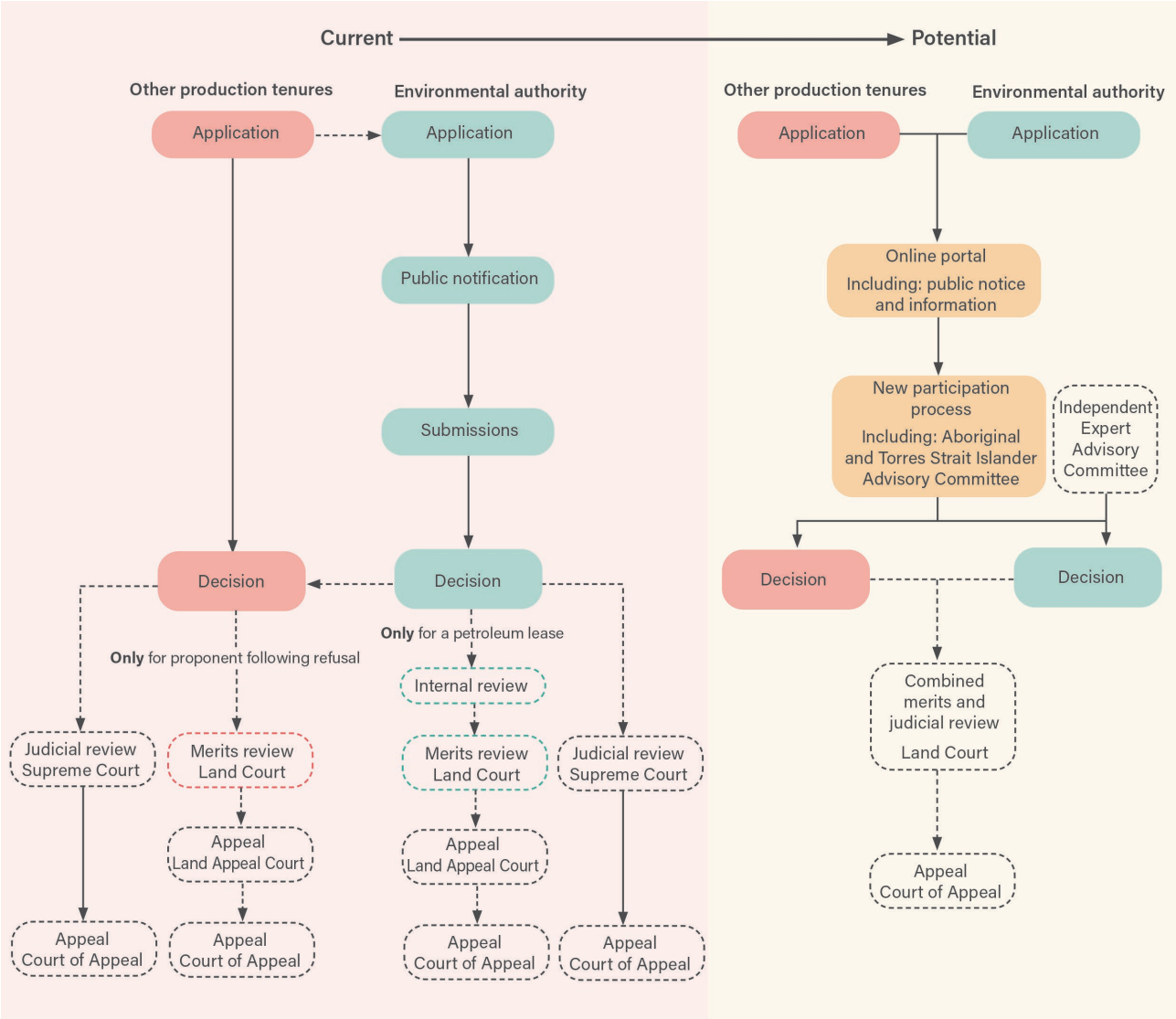
140. These differences mean there are additional considerations to those that we raise in Reimagining decision-making processes for Queensland mining, if the proposed model is to apply to other resource proposals. They are:

- who can seek review
- what decisions are reviewable
- whether to maintain a right to internal review and, if so, in what circumstances.

Question

Q7 Should the review consultation proposal for mining apply for other resource proposals?

Figure 5: Overview of current and potential processes for other resource proposals



Interacting laws and processes

141. Other Queensland and Australian laws apply to all resource projects. These laws establish various assessment and approval processes that must occur before a project can commence operations. For example, a proponent may need to comply with requirements for land access, native title, cultural heritage, state and federal environmental approvals, water, coordinated projects and regional planning interests.

142. In making our recommendations, we must consider how any recommended process would interact with decisions made under a range of other Acts, including:

- Aboriginal Cultural Heritage Act 2003
- Torres Strait Islander Cultural Heritage Act 2003
- State Development and Public Works Organisation Act 1971
- Water Act 2000
- Planning Act 2016
- Local Government Act 2009

- Environment Protection and Biodiversity Conservation Act 1999 (Cth)
- Native Title Act 1993 (Cth).

143. The above list is non-exhaustive and we have also identified the Regional Planning Interests Act 2014 and the Strong and Sustainable Resource Communities Act 2017 as relevant Acts in the larger Government assessment framework for resource projects in Queensland.

144. In Reimagining decision-making processes for Queensland mining, we identify the relevant interactions for mining lease processes. These interactions are the same for other resource proposals, save for the following key differences or considerations.

145. The Environment Protection and Biodiversity Conservation Act 1999 (Cth) ('EPBC Act') regulates significant impacts on water resources from petroleum and gas or large coal mining development (the water trigger). The water trigger was expanded in December 2023 and this has increased the likelihood of applications for petroleum and gas projects being required to obtain approval under the EPBC Act. The trigger, which previously only applied to CSG projects, now applies to all types of unconventional gas activities, for example, shale and tight gas related developments.[115] The water trigger does not apply to activities relating to GHG storage or geothermal energy.

146. Under the Regional Planning Interests Act 2014, all resource proponents must obtain approval to operate in an area of regional interest.[116] Concerns with the ability of the RPI Act to effectively manage the coexistence between CSG activities and agricultural interests was a key driver in the Government's review of the Act. There is a practical difference for CSG proposals because of the concentration in prime agricultural areas such as the Dalby agricultural region.

147. While there is no relevant difference between mining and other resource proposals under the Native Title Act 1993 (Cth) or the cultural heritage acts, there is a practical difference in the management of cultural heritage for other resource proposals. A Cultural Heritage Management Plan is only mandatory when an EIS is required.[117] In practice, few new applications for environmental authorities for petroleum leases require an EIS and there is no current activity in geothermal or GHG storage.

148. While the regulatory framework under the Water Act 2000 operates in the same way for all resource activities, OGIA plays a particular role for petroleum and gas projects. OGIA assesses and predicts the impact of water extraction on groundwater resources in cumulative management areas ('CMA'). The Surat CMA is the only current CMA[118] and while it applies to all resource activities, it was established because of the concentration of CSG projects in the area. The remit of OGIA has recently been expanded to include providing information or advice on subsurface impacts of petroleum and gas activities.[119]

Questions

Q8 Are there any issues or opportunities arising from interactions with decisions made under other Acts that we should consider?

Q9 Is there anything else you would like to tell us about the current processes for deciding other resource proposals or any additional options for reform of these processes you would like us to consider?

Appendix A: Terms of Reference

1. The Commission is asked to review and make recommendations about the processes to decide contested applications for mining leases under the Mineral Resources Act 1989 and associated environmental authorities under the Environmental Protection Act 1994, including review of such decisions (the objections processes).
2. The Commission is asked to have regard to:
    (a) the fairness, efficiency and effectiveness of the objections processes;
    (b) providing opportunities for community participation, including access to justice and the cost of participating;
    (c) maintaining the ability for a court to consider the relative merits of mining lease applications and related environmental authorities;
    (d) the basis of standing to make an objection and participate in the objections processes, including for community members and relevant government entities;
    (e) the role of statutory criteria under the Mineral Resources Act 1989 and the Environmental Protection Act 1994 in making an objection, deciding an application, and reviewing the decision;
    (f) at what stage or stages in the process, an entity, such as an advisory panel or a court, should consider an objection to an application, and what role that entity should play in the process to decide an application or review a decision on the application;
    (g) practices and procedures for the conduct of proceedings or hearings to decide an application and to review a decision, that would enhance the fairness, efficiency and effectiveness of the objections processes; and
    (h) the government election commitment, which was delivered, to reinstate third party notification and objection rights for mining lease and related environmental authority approvals.
3. Noting that different regulatory frameworks apply, the Commission is also asked to consider whether any recommended changes to the objections processes should apply to applications for resource production tenures under the following Acts:
    (a) Greenhouse Gas Storage Act 2009
    (b) Geothermal Energy Act 2010
    (c) Petroleum and Gas (Production and Safety) Act 2004
4. In making its recommendations, the Commission is asked to consider:
    (a) how any recommended process would interact with decisions made under other Acts including:
        i. Aboriginal Cultural Heritage Act 2003
        ii. Torres Strait Islander Cultural Heritage Act 2003
        iii. State Development and Public Works Organisation Act 1971
        iv. Water Act 2000
        v. Planning Act 2016
        vi. Local Government Act 2009
        vii. Environment Protection and Biodiversity Conservation Act 1999 (Cth)

viii. Native Title Act 1993 (Cth)

(b) the implications of other Acts including:

i. Human Rights Act 2019

ii. Judicial Review Act 1991

(c) any amendments to current legislative frameworks that will be required to implement any recommended process.

5. In making its recommendations, the Commission is also asked to consider:

(a) current legislative and regulatory frameworks in other Australian and comparative international jurisdictions

(b) views expressed to the Commission during stakeholder consultation; and

(c) any other matters the Commission considers relevant.

Appendix B: Consultation proposals and questions

Our threshold for reform

Q1 Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for considering reforms to the processes for deciding other resource proposals?

Our proposals for reform of the mining lease processes

Q2 Should we recommend that there is a consistent process by applying the consultation proposals for mining to other resource proposals?

Q3 Is the rationale for the consultation proposals for mining also appropriate and justifiable for other resource proposals? If so, would the consultation proposals need to be tailored, and if so, how?

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.

Q4 What should be the scope and extent of public participation in processes to decide other resource proposals?

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.

Q5 Should the consultation proposal for an online portal apply for other resource proposals? Are there any additional notification requirements?

Deciding applications

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.

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.

Q6 How should the following interests be considered in the decision-making processes for other resource proposals:

(a) the public interest?

(b) the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage?

Review

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.

Q7 Should the review consultation proposal for mining apply for other resource proposals?

Other matters

Q8 Are there any issues or opportunities arising from interactions with decisions made under other Acts that we should consider?

Q9 Is there anything else you would like to tell us about the current processes for deciding other resource proposals or any additional options for reform of these processes you would like us to consider?

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