

BRIEFING PAPER

This briefing paper was provided to the Commission and contains options for consideration prior to publication of a consultation paper.

Briefing note 3 – Notification

Notes to the Commission

This briefing note considers the notification requirements for ML applications and associated EAs under the MR Act and the EP Act. It also considers the notification requirements for an EIS (under either the EP Act or the SDWPO Act). If there is a complete and current EIS, notification (and the opportunity to make submissions) is given through that process and the miner does not need to notify the EA application.

This briefing note primarily focusses on the mechanics of notification – including how it is given, to whom it is given, timing of notification and the form and content. Briefing note 2 primarily focuses on the opportunities for participation. However, there is necessarily some overlap.

Currently, the notice that must be given both makes people aware of each application and of the opportunities to participate. The notice is linked with the sole opportunity for any person to participate in the processes for each application, by either making an objection (for the ML application) or a submission (for the EA application or EIS). If a person does not make either an objection or submission, there is no further opportunity to participate in the process to decide each application (only a person who has made a submission can object, and only a person who has objected can become an active party in the Land Court hearing).

Key issues for consideration for reform options include:

- what notification should be required (including when it should be required, how it should be given and to whom it should be given), noting this will depend on decisions made about the opportunities for participation pre and post decision
- how (and what) information is shared.

Overview of current law

Mining lease applications

- If a ML application is accepted, the chief executive gives the applicant a written notice for the application (the 'ML notice'). Under section 252A of the MR Act, the applicant must give direct notice to specified persons and general public notice.

Direct notice

- Within 5 business days, the applicant must give written notice to each 'affected person', which includes landowners that will be directly impacted, the relevant local government and infrastructure providers.¹ The applicant must give each affected person—
 - a copy of the mining lease notice

- a copy of the application for the mining lease (except for any part that is commercial in confidence, or that state’s the applicant’s financial or technical resources) and
- any other documents and other information that the chief executive requires (as stated in the mining lease notice).
- The applicant is under a continuing obligation to notify each affected person of any additional documents the applicant gives the chief executive (until the hearing day for the application).²

General public notice

- The applicant must give notice to the general public by publishing a copy of the ML notice (or a notice in the [approved form](#) and a map or sketch plan) in an approved newspaper circulating generally in the area of the subject land.
- The department has explained that the advertisement can be either in a hard copy newspaper or online publication and should be published for at least 24 hours.³
- The publication must take place at least 15 business days before the last day for lodging objections to the applications (the ‘last objection day’). The last objection day is stated in the ML notice and must be at least 20 business days after the ML notice is given to the applicant.
- Among other things, the notice states how an objection can be made, when the last objection day is, and where ML application documents can be accessed.
- The chief executive may decide that the notice be given in some other way (either additional or substituted).
- In practice, the Department of Resources publishes ML applications on its [website](#).

Compliance

- The applicant must give the chief executive a statutory declaration that they have complied with the notification requirements. Until a declaration is made, the Land Court may refuse to hear any matter about the application and must not make a final recommendation to the Minister about the application for the mining lease (other than a recommendation to reject the application).⁴

Environmental authority applications

- All applications for EAs (that is, standard, variation and site-specific EA applications) must be publicly notified, unless notification has already been provided through an EIS that remains complete and current.⁵

General public notice

- The applicant must publish a notice about the EA application in the same way as the ML application.⁶ The applicant does this by publishing a combined notice in an approved newspaper, using the [advertisement template](#) provided by the Department of Resources.

- Among other things, the combined notice states how objections (to the ML) or submissions (to the EA) may be made, when they must be made by, and how relevant information can be accessed. The period for making submissions to the EA application is the same as the objection period (a minimum of 20 days).⁷
- The administering authority may decide that the notice is given in some additional or substituted way.
- The applicant is also required to publish site-specific EA applications on a website.⁸
- The Department of Environment, Science and Innovation publishes notices on its [website](#). It is also required to keep the application documents open for inspection by members of the public during the access period for the application.
- If a major amendment is made, the public notification and submissions requirements will apply, even if an EIS has been completed. The Department of Environment, Science and Innovation must decide whether an amendment to an EA is a minor or a major amendment and let the applicant know the decision.⁹

Compliance

- The applicant must give the administering authority a declaration of compliance with the notification provisions. If the applicant states they have complied, they are taken to have complied with the public notification requirements.¹⁰ The administering authority may also accept substantial compliance.¹¹

Environmental impact statements

- If an EIS is prepared, public notification (and the opportunity to make submissions) is provided through the EIS process.
- Proposed large mining and petroleum projects are required to prepare an EIS before an application for an EA or resource authority can be issued.¹²
- An EIS may be completed under either the EP Act or, for projects that the Coordinator-General has declared to be a 'coordinated project', the SDWPO Act.

Notification requirements for EIS (under EP Act)

- Under section 51 of the EP Act, within 20 business days after the chief executive gives the proponent notice of a decision to allow the EIS to proceed, the proponent must:
 - Give written notice about the EIS (the 'EIS notice') to each 'affected person' for the project, each interested person and any other person decided by the chief executive. An 'affected person' is defined in section 38 and includes the landholders whose land will be used for the project and other landholders potentially affected by the project. 'Interested persons' are any person the resource company thinks

will be interested in being notified of the draft terms of reference, such as an unincorporated community or environmental body connected to the local area.

- Publish the EIS notice on a website and in another way prescribed under a regulation or decided by the chief executive. Section 8 of the Environmental Protection Regulation 2019 requires the EIS notice to be published in a newspaper circulating throughout Australia, or in each State and Territory in a newspaper circulating generally in the State or Territory.
- Among other things, the EIS notice must state how submissions may be made, where relevant information may be obtained, and when the submissions period ends. The submission period must be at least 30 business days and must end at least 20 business days after the publication of the notice. A person who has made a submission can later make an objection to the EA application in the Land Court.

Notification requirements for EIS (under the SDWPO Act)

- Under the SDWPO Act, the Coordinator-General may decide to invite comments on the draft terms of reference and give public notice.
- After the proponent has prepared a draft EIS to the satisfaction of the Coordinator-General, the proponent must give public notice of the draft EIS and that submissions may be made to the Coordinator-General about the draft EIS. Under the State Development and Public Works Organisation Regulation 2020, public notification must be given by publishing the notice in a newspaper circulating throughout Australia or in each State, in a newspaper circulating generally in the State.
- Among other things, the draft EIS notice must state where a copy of the draft EIS is available for inspection, that submissions may be made to the Coordinator-General and the submission period during which submissions may be made. The submission period is set by the Coordinator-General but must be at least 28 days after the draft EIS is publicly notified.

Issues identified

An overarching issue for reform is that the notification requirements need to be modernised to ensure that affected people and members of the community are made aware of ML and EA applications and of their participation rights and have access to relevant information. There is also a need to ensure that the notification requirements are not overly burdensome for stakeholders, including industry.

Issue	Details for consideration	Stakeholder	Commissioner Notes
Responsibility for giving notice	<p>Current laws place responsibility on the miner to give notice</p> <ul style="list-style-type: none"> Industry have repeatedly raised the burden to industry – particularly the cost of advertising in newspaper and because there are multiple requirements to notify. See also the issue of ‘compliance’ below in relation to inconsistency/variation in how applicants notify. 	Industry	
Direct/written notice	<p>Definition of ‘affected person’ in the MR Act does not capture every person whose interests are affected</p> <ul style="list-style-type: none"> Under section 252A of the MR Act, the applicant must give written notice to each ‘affected person’, which means directly affected landowners, the relevant local government and infrastructure providers. Stakeholders, including landholders, community and legal professionals, have raised concerns that the definition of ‘affected person’ for the purpose direct notification of the mining lease application is not sufficiently broad to capture nearby landowners or members of the community who may be affected (for example, through impacts on groundwater or by dust or noise emissions). In contrast, the definition of ‘affected person’ for the purpose of EIS notice under section 38 of the EP Act is broader and includes landholders whose land will be used for the project and other landholders potentially 	Legal professionals, Government, Community, Local Government, Landholders, Environmental organisations	

Issue	Details for consideration	Stakeholder	Commissioner Notes
	<p>affected by the project. Applicant must also give direct notice to 'interested persons' that may be identified for the project.</p> <p>Applicant not required to give direct notice of ML application to Native Title holders or claimants</p> <ul style="list-style-type: none"> The definition of 'affected person' for the purposes of direct notification of the ML application does not include Native Title holders or claimants. However, the definition of 'owner' of land does include the trustees of DOGIT land under the Aboriginal Land Act or the Torres Strait Islander Land Act and the trustees of Aboriginal land or Torres Strait Islander land taken to be a reserve under the Aboriginal Land Act or Torres Strait Islander Land Act). In contrast, the definition of 'affected person' for the purposes of EIS notice under the EP Act includes a registered native title body corporate, registered native title claimant and a representative Aboriginal/Torres Strait Islander body under the Native Title Act 1993 (Cth). It also includes the trustee of Aboriginal land, DOGIT land and Torres Strait Islander land (under relevant Acts). <p><u>Other jurisdictions</u></p> <ul style="list-style-type: none"> In NSW and the NT, the applicant for a mineral lease must give written notice to Native Title holders. In the NT, it has been held that this does not include Native Title Claimants.¹³ <p><u>Native Title Act</u></p> <ul style="list-style-type: none"> Ordinarily, under the Native Title Act 1993 (Cth), the State must notify any registered native title body corporate, any registered native title claimants, 		

Issue	Details for consideration	Stakeholder	Commissioner Notes
	<p>representative native title body, the National Native Title Tribunal and the ML applicant. The State or ML applicant may also be required to publicly notify the ML application.</p>		
Public notification	<p>Public notification by newspaper advertising alone is outdated and ineffective</p> <ul style="list-style-type: none"> • Advertising in the newspaper is intended to notify general public/local community. However, many stakeholders have noted that newspaper advertising alone is outdated and may not be effective. • Newspapers are in decline (especially local or regional newspapers). They are not as widely read or published. • Newspaper advertising (both in print or online newspapers) is only available for a short time (24 hours). • See also issue of compliance below. 	<p>Legal professionals, Government, First Nations</p>	
	<p>Public notification requirements for ML applications should be modernised to include notification on a website</p> <ul style="list-style-type: none"> • Several stakeholders considered that the notification provisions should be updated to include modern forms of communication. However, there were differing views about whether advertising on a website alone is adequate to notify the general public. • On one hand, notifying on a website is efficient and accessible. The notification can stay online for the whole period (compared to newspaper advertising, which is only accessible for a short period either in print or online). 	<p>Landholders, Community, Landholders, First Nations, Legal professionals, Government</p>	

Issue	Details for consideration	Stakeholder	Commissioner Notes
	<ul style="list-style-type: none"> • On the other hand, you need to know where to look online to find notices and be seeking the information to find it. • Some stakeholders, including landholders and First Nations, noted that it cannot be assumed everyone can access websites. In particular, remote communities may not have good access to the internet. • A legal professional suggested an email subscription service to notify interested persons. • The Department of Environment, Science and Innovation publishes statutory public notices and consultations on its website. There is the option to subscribe to receive email notifications when new public notices and consultations are available. • One landholder in submissions to the parliamentary committee considering the Mineral and Energy Resources (Common Provisions) Bill 2014 suggested that notification in a substituted way could be better used to target methods that would best reach a wide range of local community members. This could include at least 3 different types of communication e.g., internet, radio and local council newsletter. • Note that the requirement to notify ML applications by datum post on the land was removed by the Mineral and Energy Resources (Common Provisions) Act 2014. One member of the public considered that this should have been retained. However, most stakeholders considered that notification in this way was onerous and had limited utility, particularly in regional and remote areas. 		

Issue	Details for consideration	Stakeholder	Commissioner Notes
	<p><u>Other jurisdictions</u></p> <ul style="list-style-type: none"> In NSW, the applicant must give notice of a ML application by advertising in a newspaper. However, if there is no local newspaper, the notice must be published on a website or another online platform 'that is likely to bring the notice to the attention of persons in the local area', for example the website of the local council. In contrast, in WA, the requirement for ML applications to be advertised in a newspaper was removed entirely. ML applications are only required to be published on a website. <p><u>Planning law Qld</u></p> <ul style="list-style-type: none"> Notice for impact assessable development must be given by: <ul style="list-style-type: none"> placing a physical notice on the premises that must remain for the entire notice period giving notice directly to adjoining owners of all lots adjoining the premises publishing, at least once, a copy of the notice in a local newspaper circulating in the locality of the premises – if there is no such newspaper, then publish in an online newspaper, the assessment manager's website or a State newspaper. 		
Barriers to notification	<p>Additional measures may be needed to ensure notification is effective</p> <ul style="list-style-type: none"> There are barriers to communities, including First Nations communities and regional and remote communities, becoming aware of applications (for example, illiteracy, language barriers, lack of access to 	Legal professionals, First Nations, Government	

Issue	Details for consideration	Stakeholder	Commissioner Notes
	<p>newspapers, lack of education and understanding about where to look for published notices).</p>		
<p>Timeframe/duration of notice</p>	<p>Minimum timeframe for notice needs to be adequate to raise awareness</p> <ul style="list-style-type: none"> Some stakeholders, including landholders and legal professionals, raised concerns that the timeframe for giving notice is insufficient (min 20 days after, with publication of newspaper advertising at least 15 days before last objection or submission day and direct notice within 5 days of receiving notice of acceptance of application). A legal professional noted that the timeframes do not give enough time for people to be made aware of the applications, to read and understand all the information given with the notice (some of which may be quite technical) and adequately assess and either make an objection (to the ML application) or a submission (to the EA application). If do not make an objection or submission, there is no further opportunity to participate. On the other hand, Industry stakeholders consider the need to reduce time delays. Compare, for EIS under EP Act – notice must be given within 20 business days <u>after</u> chief executive’s decision that EIS may proceed and the submission period must be a minimum of 30 business days <u>after</u> the notice is published. For EIS under SDWPO Act – notice must be given after the draft EIS is prepared to the satisfaction of the Coordinator-General and the submission period must be at least 28 days <u>after</u> draft EIS notified. 	<p>Legal Professionals, Industry</p>	

Issue	Details for consideration	Stakeholder	Commissioner Notes
Multiplicity of notification requirements	<p>Multiplicity of notification (and participation) processes for a single project can be a burden for applicants</p> <ul style="list-style-type: none"> • Industry stakeholders consider the notification (and participation) requirements to be duplicative and burdensome, increasing costs and time delays. They consider that, as far as possible, duplication should be removed. They also consider that there should be a shift toward parallel rather than sequential approval processes. • Industry stakeholders also point to the multiplicity of processes for mining projects under a range of other laws (for example, Regional Interests, Water Act 2000, Native Title Act), each with different notification requirements. • In contrast, other stakeholders, including community, landholders, legal professionals and environmental organisations, consider that it is essential and a fundamental right for the community to be made aware of applications (and able to participate). • Previous reform attempts to limit public notification (and objection) rights for ML applications were repealed before they commenced, and the government is committed to implementing its election commitment, which was delivered, to reinstate third party notification and objection rights for mining lease applications. See further the detail for consideration in the table for briefing note 2 (participation), 'Duplication in the grounds of objection'. 	Government, Industry	
	<p>Multiplicity of notification requirements can be a burden for recipients</p>	Legal professionals, Government	

Issue	Details for consideration	Stakeholder	Commissioner Notes
	<ul style="list-style-type: none"> Communities can become overburdened with the number of applications in an area. This can result in community members missing important notifications or uncertainty or confusion around which processes to engage in. For example, a landholder may receive a range of different notifications for a mining project and it may be difficult to know which notices are important to respond to. 		
	<p>Notification requirements do not differentiate depending on size and impact of proposed project</p> <ul style="list-style-type: none"> One issue raised in previous reviews is that there is no differentiation for the size and impact of mining operations – projects that may have a small impact must meet the same notification (and participation) requirements as large-scale operations that will have extensive impacts. See further the detail for consideration in the table for briefing note 2 (participation), ‘The ‘one size fits all’ approach lacks the ability to tailor participation opportunities to the size and risk of proposed project’. 	Industry, Community, Environmental organisations, Landholders, Local Government	
	<p>Uncertainty about when notification is required for a ‘major amendment’</p> <ul style="list-style-type: none"> There is confusion and uncertainty about when a change to the EIS is a ‘major amendment’ and requires notification. 	Government	
Compliance	<p>Applicant is responsible for complying with notification requirements</p> <ul style="list-style-type: none"> The Government noted that because notification stage is applicant driven, there are differences in approach/lack of consistency. For example, one 	Government	

Issue	Details for consideration	Stakeholder	Commissioner Notes
	<p>applicant may choose to advertise in The Courier Mail, another may choose to advertise in Central Queensland Today.</p> <ul style="list-style-type: none"> • There is limited oversight by Government to ensure compliance with the notification requirements. 		

Options for reform

Overarching reform option

An overarching option outlined in briefing note 1 is to:

- modernise notification requirements for ML applications and associated EAs
- establish a live online portal
- require information sessions to be convened for projects that meet a designated threshold

Associated with this is the option of reframing the objections process as a contemporary participation process (discussed in briefing note 2) and the option of merits review by a court post-decision (discussed in briefing note 4). The notification (and information-sharing) requirements will necessarily depend on the purpose of the notice/the opportunities to participate.

Reform options

- Expand the definition of 'affected person' who must be notified of ML applications under section 252A of the MR Act (for example, to include Native Title holders and claimants, other nearby landholders who will be affected). Consider who should be directly notified and when (note this will depend on the participation opportunities for ML applications).
 - see the broader definition of 'affected person' for EIS notices under section 38 of the EP Act and the ability to also identify and notify 'interested persons'. See also examples in other jurisdictions provided in the Table above under issue 'Direct/written notice'.
- Shift responsibility to give public notice from the miner to the Government. Considerations include who bears the cost.
 - see the examples in other jurisdictions provided in the Table above under issue 'Responsibility for giving notice'.

- Modernise how public notice must be given for ML applications under section 252A of the MR Act by requiring notification on a website. Some other considerations include:
 - whether to retain requirement for newspaper advertising (and who bears cost)
 - what requirements are included in Act and what is prescribed in regulation to give flexibility to prescribe other potential methods of giving public notice in future
 - See for example the public notification requirement for EIS notices under section 51 of the EP Act and in section 8 of the Environmental Protection Regulation 2019 and the examples of other jurisdictions in the Table above under issue 'Public notification'.
- Establish an online portal where notifications about mining activities can be published and information shared to increase accessibility, transparency and accountability. This could be updated progressively and include ability to sign up for notifications/updates by email. Some considerations include:
 - What information is shared on the portal/needed by participants and when
 - For implementation, which department responsible for maintaining online portal, need for resourcing and to facilitate co-operation and coordination between relevant departments.
 - See for example the [NSW Planning Portal](#), which gives public access to documents and information and online planning services and information. It is built and maintained in accordance with the *Environmental Planning and Assessment Act 1979* (Schedule 3 & Division 4).
 - See also, for example, [EPBC Act Public Portal](#).
- Include a requirement to hold community meetings/information sessions for projects that meet a designated threshold. Some considerations include:
 - what the designated threshold would be
 - when meetings would be held
 - who would be responsible for holding them.

Appendix: Overview of notification requirements - Qld

	ML application ¹	EA application ²	EIS notice ³	EIS for coordinated project ⁴
Direct/specific notification				
Requirement to give direct notice to	✓ to each 'affected person'	X	✓ to each 'affected person' and 'interested person' and any other person decided by the chief executive	X
- landowners	✓ 'owner' of subject land, of adjoining land and of land necessary to access subject land See also definition of 'owner' of land in Dictionary		✓ registered proprietor of freehold land that is operational land or any land adjoining it, and a person recorded as the registered holder of an interest (under Land Act 1994)	
- relevant local government	✓		✓	
- First Nations (e.g., Native Title holders, claimants etc)	X		✓ registered native title body corporate, registered native title claimant, representative Aboriginal/Torres Strait Islander body under Native Title Act) ✓ trustee of DOGIT land, Aboriginal land, Torres Strait Islander land (under various Acts)	

¹ Mineral Resources Act 1989 (Qld) ss 252, 252A, 252B, 252C.

² Environmental Protection Act 1994 (Qld) ss ch 5 pt 4 div 2

³ Environmental Protection Act 1994 (Qld) ss 38, 39, 51, 52, 53; Environmental Protection Regulation 2019 (Qld) s 8.

⁴ State Development and Public Works Organisation Act 1971 (Qld) ss 29, 33; State Development and Public Works Organisation Regulation 2020 (Qld) ss 6, 8.

- other	✓ infrastructure provider		✓ holder or applicant of a mining tenure or tenure for an EA for a resource activity ✓ the State for particular land e.g., a national park or forest reserve, a State forest or timber reserve, a State-controlled road, a fish habitat (under various Acts) ✓ another person prescribed under regulation	
Who must give the notice	applicant		proponent	
When notice must be given	within 5 business days after ML notice issued		within 20 business days after chief executive gives notice of decision for EIS to proceed	
General public notification				
Requirement to give notice to general public	✓	✓	✓	✓
Who must give the notice	applicant	applicant	proponent	Coordinator-General (for draft terms of reference – discretionary) Proponent (for draft EIS)
How notice must be given	newspaper advertisement	newspaper advertisement (combined notice with mining lease) N/A if EIS undertaken – notice given through EIS process instead	on a website and in another way prescribed under a regulation or decided by the chief executive Regulation prescribes newspaper advertisement	newspaper advertisement <ul style="list-style-type: none"> • a newspaper circulating throughout Australia or • in each State, in a newspaper circulating generally in the State.

			<ul style="list-style-type: none"> • in a newspaper circulating throughout Australia or • in each State and Territory in a newspaper circulating generally in the State of Territory. 	
When must be given	at least 15 business days before last objection day		Within 20 business days after notice of chief executive's decision that EIS may proceed	After the proponent has prepared a draft EIS to the satisfaction of the Coordinator-General
Timeframes for notification				
Timeframe to respond to notice	by 'last objection day' – must be at least 20 business days after ML notice issued	submission period ends on last objection day for ML application	Submission period – must be at least 30 business days and must end either 20 business days after notice published (or a later period fixed by chief executive)	the submission period set by the Coordinator-General - at least 28 days after draft EIS publicly notified

¹ Mineral Resources Act 1989 (Qld) ss 5, 252A(7) ([definitions of 'affected person', 'adjoining land' and 'subject land'](#)) and sch 2 ([definition of 'owner'](#)).

² Mineral Resources Act 1989 (Qld) s 252C.

³ Queensland Government, 'Mining lease application notices', 8 March 2024 <https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/applying/mining-lease-application>.

⁴ Mineral Resources Act 1989 (Qld) s 252B(4).

⁵ Environmental Protection Act 1994 (Qld) ss 150, 152.

⁶ Environmental Protection Act 1994 (Qld) s 152.

⁷ Environmental Protection Act 1994 (Qld) s 153.

⁸ Environmental Protection Act 1994 (Qld) s 156.

⁹ See Department of Environment and Science, 'Major and minor amendments', Guideline <[Major and minor amendments guideline \(des.qld.gov.au\)](#)>.

¹⁰ Environmental Protection Act 1994 (Qld) ss 53, 158.

¹¹ Environmental Protection Act 1994 (Qld) ss 68, 159.

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- ¹² Queensland Government, 'Community involvement in mining and petroleum lease approvals', 22 June 2023 <https://www.qld.gov.au/environment/management/environmental/impacts-approvals/impacts>.
- ¹³ *Australian Ilmenite Resources Pty Ltd v Silver* (2018) 339 FLR 96 at 102 [21].