

TERMS OF REFERENCE

Reforming processes to decide contested applications for mining leases under the *Mineral Resources Act 1989* and associated environmental authorities under the *Environmental Protection Act 1994*

Background

The Queensland Resources Industry Development Plan (QRIDP) envisages the growth of the State's resources industry over the next 30 years. It contains the Queensland Government's commitment to ensuring that its regulatory framework is risk-based and transparent, reflects the community's expectations, and protects the public interest.

The regulatory framework sets out 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*, and for reviewing such decisions (the objections processes).

Currently, if an objection is made to a mining lease application, the Land Court of Queensland must conduct a hearing into the application and any objection and make a recommendation to the Minister for Resources. The Minister must then consider the Land Court's recommendation, before deciding the application. If no objection is made to the application, the Minister can decide it without the need to refer it to the Land Court.

A similar process exists under the *Environmental Protection Act 1994* for an application for an environmental authority associated with the mining lease, except the decision-maker is the Chief Executive of the Department of Environment and Science, and it is to that person that the Land Court makes its recommendation.

These processes place the Land Court in an unusual position for a court: making recommendations to a government Minister or senior public servant. Because the Land Court's function under both Acts is administrative, it has the obligations of a public entity under the *Human Rights Act 2019*. Also, its recommendations may be challenged by judicial review proceedings in the Supreme Court before a decision has been made on its recommendations. The subsequent decisions by the Minister (for the mining lease) and the Chief Executive (for the environmental authority) are also open to judicial review in the Supreme Court.

Applicants, objectors, and government agencies can be caught up in lengthy and expensive legal proceedings about the validity of any one or more of the Land Court's recommendations, the Minister's decision on the mining lease, or the Chief Executive's decision on the environmental authority.

During consultation on the draft QRIDP, there was general support for a review by an independent body: the Queensland Law Reform Commission (the Commission). Review by the Commission is sought to examine the current objections processes and make recommendations to government that will ensure that processes for contested applications:

- are efficient, effective, and support investment and sustainable growth in mining projects; and
- provide environmental protections, access to justice and opportunities for community participation, including for First Nations Peoples.

Objections processes only apply to applications for mining leases (and the associated environmental authority) and mining claims under the *Mineral Resources Act 1989*. Similar processes are not contained in other resources Acts such as the *Petroleum and Gas (Production and Safety) Act 2004*, *Geothermal Energy Act 2010*, and *Greenhouse Gas Storage Act 2009*. This review provides an opportunity to examine if processes for stakeholder input and review under the resources Acts should be aligned and made consistent.

Previous consideration of these processes

In 2014, amendments to the objections processes were passed as part of the *Mineral and Energy Resources (Common Provisions) Act 2014* that would have reduced standing for objectors and narrowed the grounds on which objections could be made.

In 2016, most of these amendments were repealed before they had commenced, in line with the election commitment to reinstate third party notification and objection rights for mining leases.

In 2017, the Queensland Government committed to improving the efficiency and timeliness of resource and environmental authority processes, including reducing duplication between assessing agencies.

In late 2018, the former Department of Natural Resources, Mines and Energy investigated opportunities to improve the efficiency and timeliness of resource and environmental authority processes and, where possible, reduce the duplication between assessing agencies. During the public consultation process, stakeholders provided submissions that raised concerns about the objections processes.

In 2022 the Queensland Government released the draft QRIDP, which acknowledged that rigorous and contemporary regulation is important for instilling community confidence in the industry and the current objections processes do not create certainty for industry and other stakeholders. It also noted these are complex issues and any reform needs to:

- take into account human rights;
- provide environmental protections and opportunities for community participation; and
- ensure that the regulatory framework is conducive to ongoing investment.

The Queensland Government is committed to implementing its election commitments, and to ensuring that the community is able to participate in processes to decide contested applications for mining projects and that appropriate review mechanisms are available to ensure that the assessment of these applications remains rigorous and robust.

Terms of Reference

I, SHANNON MAREE FENTIMAN, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, refer to the Queensland Law Reform Commission (the Commission) pursuant to section 10 of the *Law Reform Commission Act 1968* for review and investigation, the objections processes for mining projects in Queensland.

Scope

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 (Cwth)*
 - viii. Native Title Act 1993 (Cwth)*
 - (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.

Consultation

The Commission will consult with:

- key stakeholders (refer to Appendix A for a suggested stakeholder list); and
- any other group or individual, in or outside of Queensland, to the extent the Commission considers necessary.

Timeframe and outcomes of review

The Commission is to commence its review on 5 June 2023 and provide its final report to the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, no later than 30 June 2025. The final report may be used to inform possible legislative amendments.

Dated the^{5th} day of April 2023



SHANNON FENTIMAN MP

Attorney-General and Minister for Justice

Minister for Women and Minister for the Prevention of Domestic and Family Violence

Appendix A: Key Stakeholder Consultation

The list of key stakeholders is provided as a guide for consultation:

- Industry bodies, including:
 - Queensland Resources Council (QRC)
 - Australian Petroleum Production and Exploration Association (APPEA)
 - Association of Mining and Exploration Companies (AMEC)
 - Queensland Small Miners Council
- Landholder organisations, including:
 - AgForce
 - Queensland Farmers' Federation
- Indigenous organisations, including:
 - Cape York Land Council
 - Carpentaria Land Council
 - Queensland South Native Title Services
 - North Queensland Land Council
 - Torres Strait Regional Authority
- Environmental organisations, including:
 - Environmental Defenders Office Qld
 - Queensland Conservation Council
 - WWF - Australia
 - Lock the Gate
- Government agencies and authorities, including:
 - the Office of the Coordinator-General
 - GasFields Commission Queensland
- Land Court of Queensland
- Legal professional bodies, including:
 - Queensland Law Society
 - Queensland Bar Association
 - Energy and Resources Law Association
 - Queensland Environmental Law Association
 - Indigenous Lawyers Association of Queensland