



# Mining lease objections review

Scanning the horizon: Queensland  
mining in the future

Background paper 2

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All legislation referred to applies to Queensland, unless otherwise indicated. For example, Commonwealth legislation governing all Australian states and territories has (Cth) at the end of its title.

This background paper reflects the law as at 6 October 2023.

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## Summary

This background paper explores key drivers shaping the future of mining in Queensland. Its purpose is to give context for our review.

We have been asked to review and make recommendations about the processes to decide contested applications for mining leases and associated environmental authorities in Queensland. We need to be aware of the broader context, as any process we recommend must work well now and in the future.

Our review is taking place at a dynamic time for the mining industry, with rapid developments in law, policy, technology, industry and science taking place on a State, national and global scale.

We identify the following key drivers as particularly relevant:

- decarbonisation and the demand for critical minerals
- the rising focus on environmental, social and governance (ESG) principles
- increasing recognition and respect for First Nations rights.

In Queensland, there is significant opportunity for industry growth and transformation as we transition toward a low-emissions future. More broadly, there is a rising focus on ESG principles that has both direct and indirect impacts for regulatory frameworks. There is also increasing recognition and respect for First Nations rights, including the right to free, prior and informed consent (FPIC) as the basis for community participation and for decisions about land and resource developments and cultural heritage.

We consider potential implications of these trends through the lens of the guiding principles we have identified for our review, with a view to ensuring that the recommendations we make are for a process that is fair, efficient, effective and contemporary.

### Our terminology

In this paper, the term 'First Nations peoples' is used to refer to the Aboriginal peoples and Torres Strait Islander peoples of Australia, individually and collectively.

We use other terms as appropriate, for example if we are quoting someone else or discussing laws or policies that use particular words.

We recognise that different language preferences exist.

We use these terms with the utmost respect.

# Introduction

1. This background paper scans developments in State, national and international law, policy and industry and discusses some of the key drivers shaping the future of mining in Queensland.
2. Its purpose is to explore the broader context for our review of the administrative law processes to decide contested applications for mining leases and associated environmental authorities in Queensland. We need to be aware of this context in developing recommendations for our review.

## Why we are considering the future of mining

3. Our review is taking place at a dynamic time for the mining industry. Rapid developments in law, policy, technology, industry and science are occurring at a global, national and state level. It is anticipated that the Queensland resources industry will grow, diversify and transform.<sup>1</sup>
4. The process to decide contested applications for mining leases and associated environmental authorities in Queensland must work well in the current context and in the future. It must be able to accommodate anticipated developments in mining, including changes to the types and volume of applications, the key actors, the nature of industry, the nature and extent of community participation and public interest considerations.
5. In this paper, we first provide a brief overview of the current state of mining in Queensland. We then explore 3 key drivers shaping the future of mining:
  - decarbonisation and the demand for critical minerals
  - the rising focus on environmental, social and governance (ESG) principles
  - increasing recognition and respect for First Nations rights.
6. For each driver, we consider the global context before moving to consider the approach taken in Australia and Queensland. We conclude each section by reflecting on the potential implications of these changes that we need to be aware of for our review.
7. 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 directions based on the information available to us without favouring a particular approach, making any predictions or drawing any conclusions in relation to these commitments. Our intent is to provide a high-level summary and to focus on key issues, rather than to examine each issue in-depth.

We have published a list of relevant resource materials on our website that will provide further information about the matters discussed in this paper. We will continue to update this list as our review progresses.

## The guiding principles for our review

8. Informed by the terms of reference, we have identified 4 guiding principles for our review.<sup>2</sup> We aim to develop recommendations to ensure the process for deciding contested applications for mining leases and associated environmental authorities is fair, efficient, effective and contemporary.

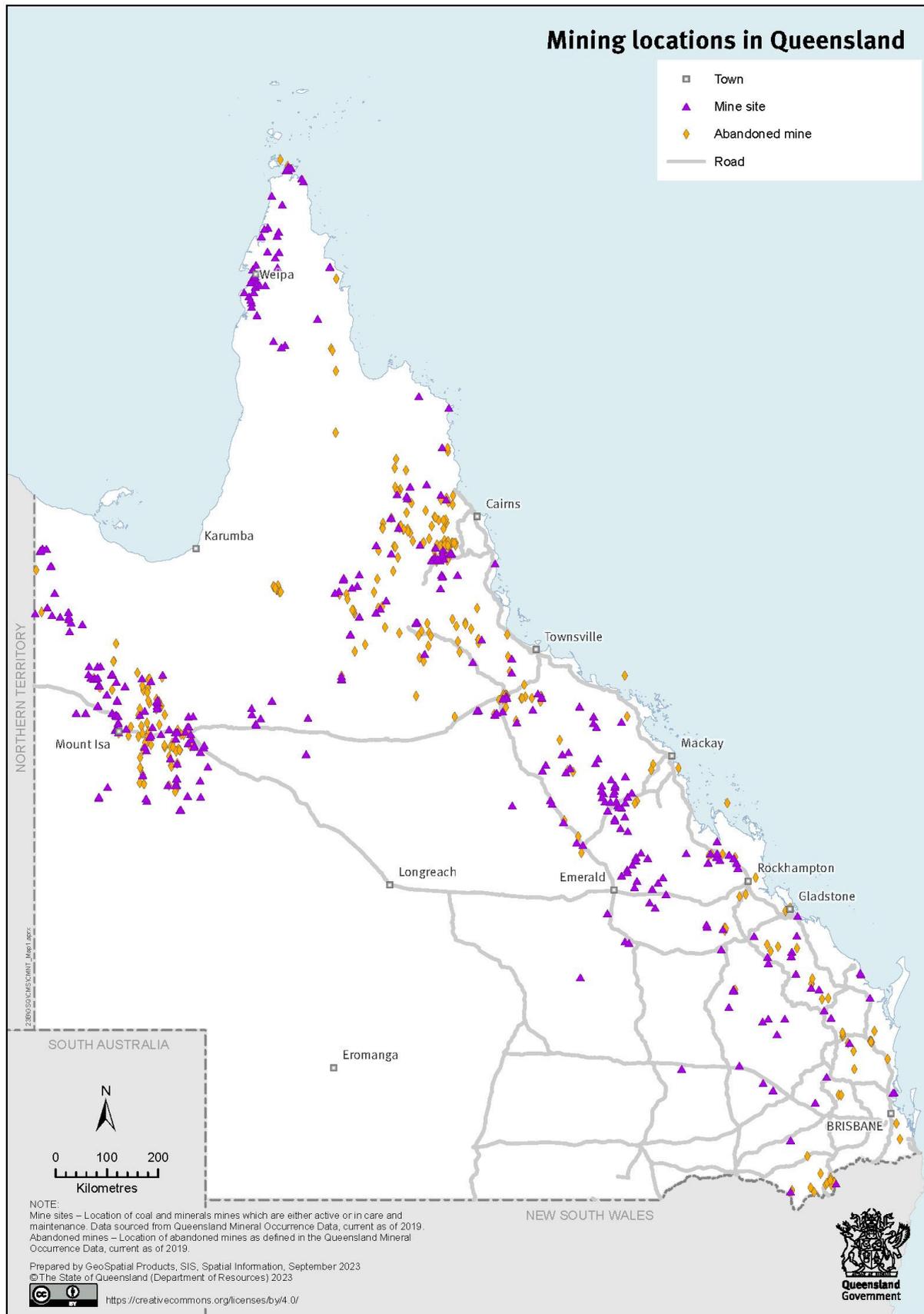
Fair	Efficient	Effective	Contemporary
<p>The process should:</p> <ul style="list-style-type: none"> <li>• be impartial, just, robust, transparent, independent and accountable</li> <li>• be clear and certain</li> <li>• support access to justice and be compatible with human rights</li> </ul>	<p>The process should:</p> <ul style="list-style-type: none"> <li>• be as simple and streamlined as possible</li> <li>• avoid unnecessary delay</li> </ul>	<p>The process should:</p> <ul style="list-style-type: none"> <li>• work well to resolve contested applications</li> <li>• be conducive to ongoing investment and sustainable growth in mining</li> <li>• provide environmental protections</li> <li>• instil community confidence</li> <li>• include rigorous merits assessment</li> <li>• contain appropriate review mechanisms</li> </ul>	<p>The process should:</p> <ul style="list-style-type: none"> <li>• be insights-driven and risk-based</li> <li>• provide adequate opportunities for community participation, including for First Nations peoples</li> <li>• accommodate future developments in policy and industry</li> </ul>

9. These principles provide a lens to consider the implications of the developments impacting mining that we discuss in this paper.

## Current state of mining in Queensland

10. Queensland has a long and varied history of mining that has been and continues to be a major contributor to the Queensland economy.<sup>3</sup> While coal and gas are the State's traditional commodity strengths,<sup>4</sup> there is also a strong presence of minerals mining, including bauxite, copper, gold, lead, tin and zinc.<sup>5</sup> Figure 1 shows the location of current mines in Queensland, including those currently in care and maintenance and abandoned mines.

Figure 1: Map of mining locations in Queensland



## Types of mining

### Coal mining

11. There is a mature coal market operating in Queensland, which contributes a large portion of all Australian coal exports.<sup>6</sup> Queensland has some of the world's largest coal reserves with 54 coal mines in operation in 2021–22, primarily based in the Mackay and Central Queensland regions.<sup>7</sup> Many of the larger mines are operated by global companies.<sup>8</sup>
12. Queensland remains an attractive environment for investment in coal and there continues to be newly announced coal projects in the State.<sup>9</sup> However, the global coal industry is facing challenges, including uncertain future demand and the transition toward clean energy. This is resulting in changes in the industry, including in the corporations owning and operating productive coal mines.<sup>10</sup>

### Coal seam gas

13. Commercial production of coal seam gas (CSG) began in Queensland in 2006,<sup>11</sup> with the first export occurring in 2015.<sup>12</sup> CSG is now the dominant source of gas in Queensland, representing more than 90% of the total gas produced in the State.<sup>13</sup> Most of this gas is exported, with Australia now one of the largest exporters globally.<sup>14</sup>
14. The majority of Queensland's CSG is drawn from the Bowen and Surat basins, with exploration activity also occurring in the Galilee Basin.<sup>15</sup>

### Mineral mining

15. Queensland is well endowed with mineral resources, with mining for gold and copper occurring since the 1850s. The Queensland North-West Minerals Province, centred around Mount Isa and Cloncurry, was established in the 1920s when some of the world's richest deposits of copper, silver and zinc were first mined. Today, the area contains the majority of Queensland's mineral resources and is operating as one of the world's largest mining regions.<sup>16</sup>
16. While coal and gas will continue to play an important role in the mining industry in Queensland for the coming decades, there has been a recent spike in interest in the mining of certain minerals. This interest is expected to grow in the coming decades as part of the global trend toward decarbonisation, which is driving the need for minerals. This shift in demand for minerals is discussed in detail below.

## Methods of mining

17. All mining projects are carried out as greenfield or brownfield projects:
  - Greenfield projects involve developing new mine sites in previously unexplored or underdeveloped areas.
  - Brownfield projects involve searching known or currently mined sites for new and additional mineral deposits. These projects include expansion work and reworking mine waste (tailings and waste rock) on operating or abandoned mine sites.
18. Mining in Queensland to date has mostly been greenfield projects. While greenfield projects will continue, current deposits are beginning to be exhausted, with mining extending to deeper deposits and lower grade ores. This is likely to produce exponentially more waste and contain higher risk elements, resulting in more complex and complicated mine footprints during both operation and closure.<sup>17</sup>

19. Industry is increasingly exploring alternative methods to extract resources while minimising mine footprints and risk profiles. Commercial opportunities being examined include a range of brownfield options, including:<sup>18</sup>
- co-producing additional minerals on existing sites
  - establishing new processing and extraction facilities on existing sites
  - deriving metals through reworking of mine waste on both existing and abandoned mine sites.
20. Mine closure and rehabilitation planning also forms an important part of minimising mine footprints and risk. The importance of closure planning underpins the Government's recent rehabilitation reforms, which introduced progressive rehabilitation and closure plan requirements.<sup>19</sup>

## Key drivers shaping the future of mining

21. A number of key global trends are impacting the Queensland resources industry.<sup>20</sup> We have identified 3 key trends as particularly relevant for our review of the mining objections processes:
- decarbonisation and the demand for critical minerals
  - the rising focus on ESG principles
  - increasing recognition and respect for First Nations rights and participation.
22. We will now briefly consider each of these trends and their implications for our review.

## Decarbonisation and demand for critical minerals

### A global shift to a low-emissions future

23. Increasing concerns about climate change have seen almost global adoption of the Paris Agreement, which aims to substantially reduce global greenhouse gas emissions in order to limit global temperature rise.<sup>21</sup> To meet the goals of the Paris Agreement and achieve net zero emissions by 2050, we are witnessing a global commitment to transition away from fossil fuels and an increasing uptake of clean energy technology.<sup>22</sup> There is also strong pressure to reduce the impacts of existing industries, including mining.<sup>23</sup>
24. Moving to a low-emissions future is likely to be a metal intensive process as clean energy technologies require substantially more metals than fossil fuel-based energy technologies.<sup>24</sup> The large-scale uptake of these new energy systems will also require the development of new renewable energy infrastructure, which is also metals dependent.
25. The growing uptake of clean energy technologies is already resulting in a significant increase in demand for minerals.<sup>25</sup> This demand is only set to increase with the International Energy Agency estimating that the worldwide mineral requirements will quadruple by 2040 to reach the Paris Agreement goals.<sup>26</sup> Increasing demand for minerals is being further fuelled by the current digital transformation, with metals essential for the manufacture of digital technologies including mobile phones, computers and fibre-optic cables.<sup>27</sup>
26. While metals (such as copper, tin, iron and lead) have historically been in demand, the current metals boom is seeing demand grow exponentially, not only for more minerals but also for new and previously lesser used metals and minerals.<sup>28</sup>

27. The term 'critical minerals' refers to those metallic or non-metallic elements that are essential for the functioning of modern technologies, economies or national security and that are at risk of supply chain disruption.<sup>29</sup> They include the minerals that are used to develop clean energy technologies such as electric vehicles, batteries, wind turbines and solar panels.<sup>30</sup>
28. Each country develops its own list of critical minerals based on the relative importance of certain minerals to their industrial needs and strategic assessment of supply risks. Australia currently lists 26 critical minerals and will continue updating this list over time in response to global strategic, technological, economic and policy changes.<sup>31</sup>

## **Mining critical minerals – opportunities and challenges for Queensland**

29. Queensland is rich in critical minerals. Critical minerals found in Queensland include minerals that have been mined for decades, such as copper and zinc,<sup>32</sup> as well as lesser known minerals such as cobalt, lithium, manganese, rare earth elements, tungsten and vanadium.<sup>33</sup> Current known deposits of critical minerals in Queensland are primarily located within a broad corridor from Mount Isa to Townsville, in the North-West Minerals Province and the North-East Minerals Province.<sup>34</sup>
30. Government and industry are facing various risks in establishing a reliable and sustainable supply of the critical minerals needed, including:
  - Long lead times for commencing new mineral production: analysis suggests it takes 16 years on average to move a new mine into production. These long lead times raise questions about the ability to quickly match supply with increasing demand.<sup>35</sup> Government and industry are both looking to ensure that the current systems and processes are efficient and conducive to investment and growth of the critical minerals industry.
  - Declining resource quality in some areas: over recent years ore quality has continued to fall across a range of commodities. Extracting metal content from lower-grade ores requires more energy and places upward pressure on production costs, greenhouse gas emissions and waste volumes (rock waste and tailings).<sup>36</sup>
  - Environmental and social impacts from mining: mineral mining raises a variety of environmental and social issues that, if not properly managed, can harm local communities and environments.<sup>37</sup> Research has highlighted concerns that the future supply of critical minerals may exacerbate social inequalities in already vulnerable locations.<sup>38</sup> There are also increasing calls for companies to source minerals that are sustainably and responsibly produced. It is imperative that both companies and governments manage the environmental and social impacts of mineral production.<sup>39</sup>
  - Co-dependencies: some critical minerals form the dominant mineral in a deposit and can be directly mined, but many are located alongside other traditionally mined resources, such as cobalt as a by-product of copper.<sup>40</sup> It is estimated that more than 60% of metals commonly considered critical for the energy transition and for digital technologies are produced as co-products or by-products.<sup>41</sup> These co-dependencies add additional complexity and volatility to the mining of critical minerals.<sup>42</sup>
  - Market volatility: demand for minerals that are used across a broad range of technologies, including aluminium and copper, is likely to steadily increase.<sup>43</sup> For minerals that are used in a small range of technologies, such as cobalt and lithium, future demand is likely to be volatile and unpredictable as technological innovations could change requirements.<sup>44</sup> There are high uncertainties related to the requirements of future technologies and the pace of decarbonisation.<sup>45</sup>

- Change in maturation of the market and mining companies: while demand for critical minerals is rising, the current overall market for many of these minerals is small and volatile, particularly when compared to our exports of iron ore and coal.<sup>46</sup> These factors impact investment decisions and can impede market development. As a result, increasing activity in critical minerals mining has brought a broader diversity of mining applicants including more junior mining companies.<sup>47</sup> The implications of these changes are not yet clear.

## The policy landscape for mining in Queensland

31. The Queensland and Australian Governments have made strong commitments to seize the opportunities arising from decarbonisation and the current surge in demand for minerals. Key elements of these commitments are to fast-track, streamline and reform processes.

### Australian Critical Minerals Strategy 2023-2030

32. The Australian Government has released the Australian Critical Minerals Strategy 2023–2030 that outlines its plan to grow the critical minerals industry.<sup>48</sup> The plan is generally high-level, outlining the Government's objectives rather than precise actions. It highlights 6 focus areas to help deliver diverse, resilient and sustainable supply chains, meet net zero targets, maximise the economic opportunity presented by Australia's minerals endowment and maintain and grow sovereign capability.<sup>49</sup>
33. The strategy points to an initial concerted role for Government in establishing the critical minerals industry until such time as the industry becomes self-sustaining.

### The Queensland Resources Industry Development Plan (QRIDP)

34. QRIDP is a 30-year plan for Queensland's resources industry and sets the Government's vision for 'a resilient, responsible and sustainable resources industry that grows as it transforms'.<sup>50</sup> A key part of this plan is to accelerate the State's critical minerals sector and become a global supplier of critical minerals.
35. QRIDP identifies that the Government will need to play a key role in helping establish the sector. It includes proposals to:
- Establish common user infrastructure to support the development, extraction and production of critical minerals –  
The Queensland Resources Common User Facility will be in Townsville with an initial focus on vanadium.<sup>51</sup> The Government is working in collaboration with potential future users of the facility to determine how it will be owned and operated. This proposal indicates a potential change in the role of Government throughout the mining life cycle.
  - Invest in exploration activities to help locate and define deposits for future critical minerals production –  
Increasing efforts in critical minerals exploration may see mining extend into communities without a recent history of mining. A concentrated effort in exploration may also provide unique opportunities for early community involvement and participation in decision-making.
  - Carry out a pilot program to investigate the potential for re-commercialisation of activities at abandoned mine sites: see, for example, the case study below<sup>52</sup> –

With approximately 120 major abandoned mines located in Queensland,<sup>53</sup> many of which pose current environmental risks and require ongoing management by the Government, re-commercialisation of these sites is a huge opportunity to transform liabilities into assets. However, there are important economic and environmental risks that must be addressed to make these processes safe. There are also specific community considerations in areas where the previously abandoned mine has resulted in a negative mining legacy for the area.

## Case study

A tender for resource exploration activities was recently awarded for Wolfram camp and Bamford Hill mines, which includes a former tungsten mine. This release is part of the pilot program into the re-commercialisation of abandoned mines, a key action of QRIDP. This project is considering the feasibility of redeveloping the former tungsten mine in response to the growing global demand for critical minerals like tungsten, which is used in many renewable technologies such as solar technology and wind turbine blades.

## Queensland Critical Minerals Strategy 2023

36. The Critical Minerals Strategy builds on the work of QRIDP and the Queensland Energy and Jobs Plan.<sup>54</sup> The strategy focuses on maximising the opportunities of Queensland's critical minerals deposits in order to diversify and decarbonise the economy while building future sustainable economic prosperity.<sup>55</sup> The 4 key objectives of the strategy are to 'move faster, smarter', 'maximise investment', 'build value chains' and 'foster research and ESG excellence'.<sup>56</sup> Key actions relevant to our review include:
- Critical Minerals Office: establishing a dedicated office to provide a centralised point for industry, investors and community.<sup>57</sup>
  - Critical Minerals Zones: adopting a place-based approach for projects located in one regional area, to leverage collaboration opportunities and streamline Government processes.<sup>58</sup>
  - Providing funding to explore remaining mineralisation in mine waste, including mine tailings and waste rock.<sup>59</sup>
  - Considering a review of the regulatory framework to facilitate reprocessing opportunities, including a potential new 'Residual Mineral Recovery Tenure'.<sup>60</sup>
  - Partnering with industry to improve ESG performance and reporting.<sup>61</sup>
  - Committing to undertake research and development in circular economy and mineral discovery, extraction, processing and recycling.<sup>62</sup>

## Moving forward – critical minerals and the objections processes

37. At this time of such rapid change in the mining industry landscape, it is difficult to identify future developments with any certainty and many of the proposals noted above are yet to be finalised. However, the Government is exploring many options that may change the way mining activities are undertaken and regulated in Queensland, including:

- fast-tracking the critical minerals sector and streamlining processes
  - facilitating the growth of the critical minerals sector
  - increasing brownfield mining initiatives.
38. We must consider the implications of these proposals in the development of our recommendations to ensure the process will remain contemporary and can accommodate potential future changes, while being fair, efficient and effective.
39. Fast-tracking the development of the critical minerals sector and streamlining processes: the Government has made clear commitments to take 'quick and purposeful action' in maximising the opportunities offered by Queensland's critical minerals deposits.<sup>63</sup> In this context 'fast-tracking' is more than just streamlining the administrative approval processes for mines. It also refers to the need to accelerate the development of the entire critical minerals sector and associated downstream value chain.<sup>64</sup> The principles of our review recognise the importance of an efficient process that is conducive to ongoing investment and the sustainable growth of mining. However, the need to provide effective environmental protections and adequate opportunities for community participation is also recognised. Achieving a balance between these objectives will be a key challenge for our review.
40. Changing role of the Government: actions in both QRIDP and the Queensland Critical Minerals Strategy indicate a potential shift in the role of the Government in facilitating the growth of the critical minerals sector. The Government has publicly acknowledged the dynamics associated with transitioning from a more mature commodity market and that relying on industry-led developments in the critical minerals sector will be insufficient to out-compete the state's competitors.<sup>65</sup>
41. Increase in brownfield mining initiatives: the Government is promoting brownfield initiatives, such as investigating deposits contained in mine tailings and abandoned mines. These initiatives have the potential to increase the supply of critical minerals and, if done well, improve the environmental outcomes for these sites.<sup>66</sup> However these approaches also raise regulatory issues, such as the lack of clarity on tailings ownership and responsibility, especially for abandoned mines, and specific social and environmental risks that must be properly managed.<sup>67</sup> Mining or processing operations in waste dumps or tailings raises environmental issues, as some of these elements are toxic (such as lead or mercury) and are made more mobile through the mining and extraction process.<sup>68</sup> In recognition of the importance of correctly managing tailings, a new Global Industry Standard on Tailings Management was launched by the United Nations Environment Programme, the International Council on Mining and Metals and the Principles for Responsible Investment in 2020. The standard aims to strengthen current tailings management practices by integrating social, environmental, local economic and technical considerations across the full mining life cycle. It requires potentially affected people to be meaningfully engaged through all phases of a tailings facility life cycle.<sup>69</sup>
42. The transition toward clean energy technology is changing the mining industry landscape. Moves to expand mining of critical minerals will occur alongside moves toward closure of large coal mines. With this shift there will be economic, environmental and social challenges in meeting increased demand for minerals and ensuring an equitable and just transition for coal dependent communities.<sup>70</sup>

## Rising focus on ESG principles

### The global context

43. The role of business in upholding human rights is increasingly recognised and there are calls for greater corporate accountability.<sup>71</sup> This is driving a focus on ethical, responsible and sustainable practices, including in the resources industry.
44. As part of this focus, the concept of a 'social licence to operate' by mining companies is often used in industry publications, government policy documents and the research literature.<sup>72</sup> However, there are concerns with the use of this term.<sup>73</sup> In this paper we focus on 'ESG'.
45. The rising focus on ESG principles has been driven by international developments, including:
  - The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct (1976). The guidelines set standards to enhance business contribution to sustainable development and address adverse impacts associated with business activities on people, the planet and society.<sup>74</sup>
  - The United Nations (UN) Global Compact (2000). It prescribes a list of environment, human rights, labour and anti-corruption standards that corporations can commit to follow.<sup>75</sup>
  - The UN Guiding Principles on Business and Human Rights (2011). Based on the UN 'Protect, Respect and Remedy Framework' endorsed in 2008, the principles are a set of guidelines that operationalise the UN Framework and define key human-rights related duties and responsibilities of business.<sup>76</sup> The principles are considered the most authoritative international statement on the human rights responsibilities of business and have been credited with driving a notable and increasing trend for businesses to 'exercise human rights due diligence' to prevent business-related harm.<sup>77</sup>
  - The UN 2030 Agenda for Sustainable Development (2015). The agenda is based on 17 Sustainable Development Goals and was developed as a corporate social responsibility initiative to assist companies and organisations to achieve sustainable development practices.<sup>78</sup>
46. Over the past 10 years, understanding of the correlation between ESG investment and positive company performance has grown and ESG considerations have rapidly gained traction. ESG principles are increasingly recognised as relevant considerations for regulators, policy makers, companies and investors.<sup>79</sup>
47. The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct were most recently updated in 2023 in response to social, environmental and technological priorities facing business and society, including climate change, biodiversity, ecosystem degradation, deforestation, pollution, waste and hazardous substances. They include recommendations about environmental management systems and performance and stakeholder engagement.<sup>80</sup>

#### A 'social licence to operate'

This concept does not have a clearly accepted meaning. It is generally understood to mean that the local community that will be directly impacted has approved the mining project proceeding. There are some concerns about the use of this term. It has been noted that the term suggests a positive approval that is rarely meaningfully obtained in practice.

## ESG principles in Australia

48. ESG is now considered a priority for publicly listed Australian companies and investors. The regulatory environment is evolving to reflect this, with ESG metrics, standards, reporting and disclosure requirements rapidly developing.<sup>81</sup>
49. Climate and environmental issues have been, and remain, a primary focus of ESG considerations for business and investors.<sup>82</sup> However, social issues (for example, diversity, modern slavery and workplace health and safety) are gaining prominence and increased regulatory attention,<sup>83</sup> as are governance concerns (for example, privacy, cyber security and corruption).<sup>84</sup>
50. Strong ESG performance is a key focus of the Australian Critical Minerals Strategy 2023–2030, with high ESG credentials seen as a point of difference for Australia in the global critical minerals market.<sup>85</sup> The strategy aims to build industry capability and embed and strengthen existing ESG credentials, setting regulatory and policy frameworks that support access to global markets.<sup>86</sup> Key initiatives outlined in the strategy that are reflective of the current focus on ESG credentials include a pilot program to develop tools and guidance to improve ESG performance in the critical minerals sector.<sup>87</sup>
51. Australia is also involved in several international partnerships to support the achievement of Australia's critical minerals objectives that prioritise ESG considerations and promote sustainable and environmentally and socially responsible mining practices.<sup>88</sup>

## ESG principles in Queensland

52. The Queensland Critical Minerals Strategy identifies that, in the face of growing international competition, there is a need for ongoing and enhanced efforts to ensure Queensland's mining sector maintains and strengthens its ESG credentials.<sup>89</sup> The strategy includes a commitment to establishing a dedicated ESG industry network to improve ESG performance and reporting.<sup>90</sup>
53. The Queensland Energy and Jobs Plan outlines how the Government will achieve its renewable energy targets and provide a sustainable and affordable energy future for Queensland.<sup>91</sup> It maps a pathway to transform the electricity system by 2035, with commitments to renewable energy targets, electricity emissions reductions, reduced energy costs, increased energy independence and a framework to support energy workers through the energy transformation.<sup>92</sup>
54. The Energy and Jobs Plan recognises that developing a clean energy economy requires investment in renewable energy projects in designated regional areas where there are multiple and competing interests in access to land. To address this, the plan includes design of a roadmap in consultation with communities to chart future development, including strategic land use analysis. Regional Reference Groups are established as part of this process to provide community input.<sup>93</sup>
55. The Government is also exploring regulatory responses, including a different approach to its role in the assessment and approval of mining activities, that are consistent with heightened ESG considerations. This can be seen in the recent tender process for the Wolfram camp and Bamford Hill mines, discussed above, where ESG credentials was a specific criterion of the tender application process.<sup>94</sup> The proposal to establish critical minerals zones may involve the Government taking the lead in carrying out baseline social and environment assessments and coordinated consultations.<sup>95</sup>

## Moving forward – ESG and the objections processes

56. The regulatory landscape for ESG risk disclosure and reporting is rapidly evolving, with new reporting and disclosure requirements being introduced.<sup>96</sup> To embrace the opportunities created by the clean energy transition, there is a strong policy and industry focus on ensuring that the ESG credentials of Queensland and Australian mining operators meet international standards and expectations.
57. The rise of ESG principles is also bringing increased focus on independence, transparency and accountability in mining approval processes.<sup>97</sup> To instil community confidence, there must be integrity and rigour in the decision-making process. This requires careful consideration of matters including:
  - how and when decisions are made
  - the matters that must be considered
  - the information available to decision-makers
  - how affected individuals and communities can participate in the process
  - how competing interests are considered, including environmental, agricultural and First Nations interests in land
  - review of decisions.
58. While First Nations rights are a key component of the 'social' limb of ESG considerations, it has been suggested that First Nations rights have not been given the same attention as other environmental, social and governance issues.<sup>98</sup> However, with the dual and intersecting trends of a rising focus on ESG risks and opportunities and increasing recognition and respect for First Nations rights – including respect for the rights of First Nations peoples in decisions about mining and the protection of Aboriginal cultural heritage – this is likely to shift.

## Increasing recognition and respect for First Nations rights

### The global context

59. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly in 2007 and supported by Australia in 2009.<sup>99</sup> While it does not create legally binding obligations, UNDRIP builds on existing human rights treaty obligations as they apply to First Nations peoples, including the right to self-determination.
60. The right to self-determination is a human right with civil, political, economic, social and cultural aspects recognised in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>100</sup> It establishes a universal standard for how governments should engage with and protect the rights of First Nations peoples. The concept of genuine participation is fundamental to the right to self-determination and is reflected throughout UNDRIP, including for decision-making that would affect rights.<sup>101</sup>
61. Free, prior and informed consent (FPIC) is another fundamental principle underpinning UNDRIP.<sup>102</sup> Its focus is on achieving agreement through fair and prior negotiations conducted in good faith.<sup>103</sup> FPIC has been widely characterised as the 'gold standard' for community engagement practice;<sup>104</sup> the 'best practice' process or mechanism for safeguarding the rights of Indigenous peoples, including land and resource rights and the right to self-determination.<sup>105</sup>

62. FPIC is rapidly becoming a key dimension of the mining industry's commitment to sustainable development.<sup>106</sup> Its importance has been recognised by bodies including the International Council on Mining and Metals and the Minerals Council of Australia.<sup>107</sup>
63. There is no universally accepted definition of FPIC.
64. The former UN Special Rapporteur on Indigenous Peoples' Rights emphasised that FPIC requires consent from Indigenous peoples to the impact of proposed activities, rather than mere consultation.<sup>108</sup>
65. The Joint Standing Committee on Northern Australia, that led the Parliamentary Inquiry into the destruction of Indigenous heritage sites at Juukan Gorge, determined that FPIC requires clear processes to ensure effective communication over a project's lifetime. It also requires the ability for consent to be revoked or altered if new information related to significant sites is provided.<sup>109</sup> Any timeframes imposed must be culturally appropriate and consistent with decision-making processes in accordance with traditional law and custom.<sup>110</sup>
66. Maintaining consent throughout the life cycle of a project is noted as particularly important for large-scale mining projects, with dynamic footprints that can expand, intensify and contract over time.<sup>111</sup> The importance of ensuring communities are sufficiently resourced to support informed consent has also been recognised.<sup>112</sup>
67. The significant global growth in mining of certain minerals, and the placement of mineral deposits, has been noted to have the potential to exacerbate demands on First Nations communities to engage. The potential challenges associated with balancing this with the requirements of FPIC have also been noted.<sup>113</sup>
68. The jurisprudence is developing through oversight and decisions by international bodies.<sup>114</sup> This is an evolving space and we are yet to see how the Australian and Queensland Governments will respond. Below, we outline some key law and policy commitments expressed to date.

## **Australian Government law and policy commitments**

69. Australia endorsed UNDRIP in 2009 but has not fully implemented it in Australian law.<sup>115</sup> The Government has recognised the importance of FPIC in particular decision-making processes.<sup>116</sup> Australian courts have recently identified principles consistent with FPIC in legislated consultation processes for resource and energy projects.<sup>117</sup>
70. The Australian Government has made the following commitments to policies and potential reforms to embed First Nations perspectives in decision-making:
  - The Australian Critical Minerals Strategy 2023–2030 includes First Nations engagement and benefit sharing as one of its 6 focus areas, emphasising 'genuine engagement and collaboration'.<sup>118</sup>
  - The Uluru Statement from the Heart is an invitation from First Nations Australians to the Australian people. It asks Australian people to walk together to build a better future by establishing a First Nations Voice to Parliament (enshrined in the Constitution) and a Makarrata Commission for treaty making and truth-telling.<sup>119</sup> The Government has responded to the Uluru Statement by committing to a referendum and passing a law to establish the basis for an Aboriginal and Torres Strait Islander Voice to Parliament.<sup>120</sup> For the constitutional change to come into effect, it must be approved by referendum, which will be held on 14 October 2023.<sup>121</sup>

- The National Agreement on Closing the Gap focusses on self-determination through shared decision-making by ensuring governments work in partnership with First Nations peoples to deliver change. The National Agreement has been established between the federal, state and territory governments, the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and the Australian Local Government Association.<sup>122</sup>
- A review of the Environmental Protection and Biodiversity Conservation Act 1999 (Cth) occurred in 2019 and recommended legally enforceable National Environmental Standards.<sup>123</sup> The recommended standards include a standard for First Nations engagement and participation in decision-making.<sup>124</sup> The Australian Government has said it will release draft legislation to establish the standards before the end of 2023.<sup>125</sup>
- The Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs has been referred an inquiry into the application of UNDRIP in Australia.<sup>126</sup> A particular focus is improving Australia's adherence to UNDRIP's principles and understanding how the Uluru Statement can support its application.
- The Australian Government has expressed strong commitment to First Nations cultural heritage protection reforms, to be developed through a co-design partnership with the First Nations Heritage Protection Alliance.<sup>127</sup> It has released an options paper setting out 3 proposed approaches to reform:<sup>128</sup>
  - overarching standalone Commonwealth legislation
  - Commonwealth accreditation of state and territory legislation that meets mandatory national standards
  - development of 'model' legislation to protect cultural heritage that states and territories could adopt.

## Queensland Government law and policy commitments

71. In Queensland, there is increasing focus on reframing the relationship with First Nations peoples and recognising and protecting the rights of Aboriginal and Torres Strait Islander peoples. The following specific policy commitments (not an exhaustive list) are reflective of this intent:
- QRIDP identifies strong and genuine First Nations partnerships as a key focus area.<sup>129</sup> The specified outcomes for this area, targeted for achievement by 2050, are:<sup>130</sup>
    - Aboriginal and Torres Strait Islander peoples are true decision-making partners in resource projects taking place on Country and are realising economic benefits as equity partners, owners and operators.
    - The resources industry will continue to recognise, protect and conserve Aboriginal and Torres Strait Islander peoples' cultural heritage through strong partnerships and meaningful engagement.
  - The Queensland Critical Minerals Strategy highlights the importance of genuine collaboration and partnership with First Nations peoples and expresses commitment to protecting the cultural heritage of First Nations peoples.<sup>131</sup>
  - The Queensland Government and Reparations Taskforce have developed a Statement of Commitment to reframe the relationship between Aboriginal and Torres Strait Islander peoples and the Queensland Government. The Statement of Commitment sets out how the Government and First Nations peoples will work together, based on

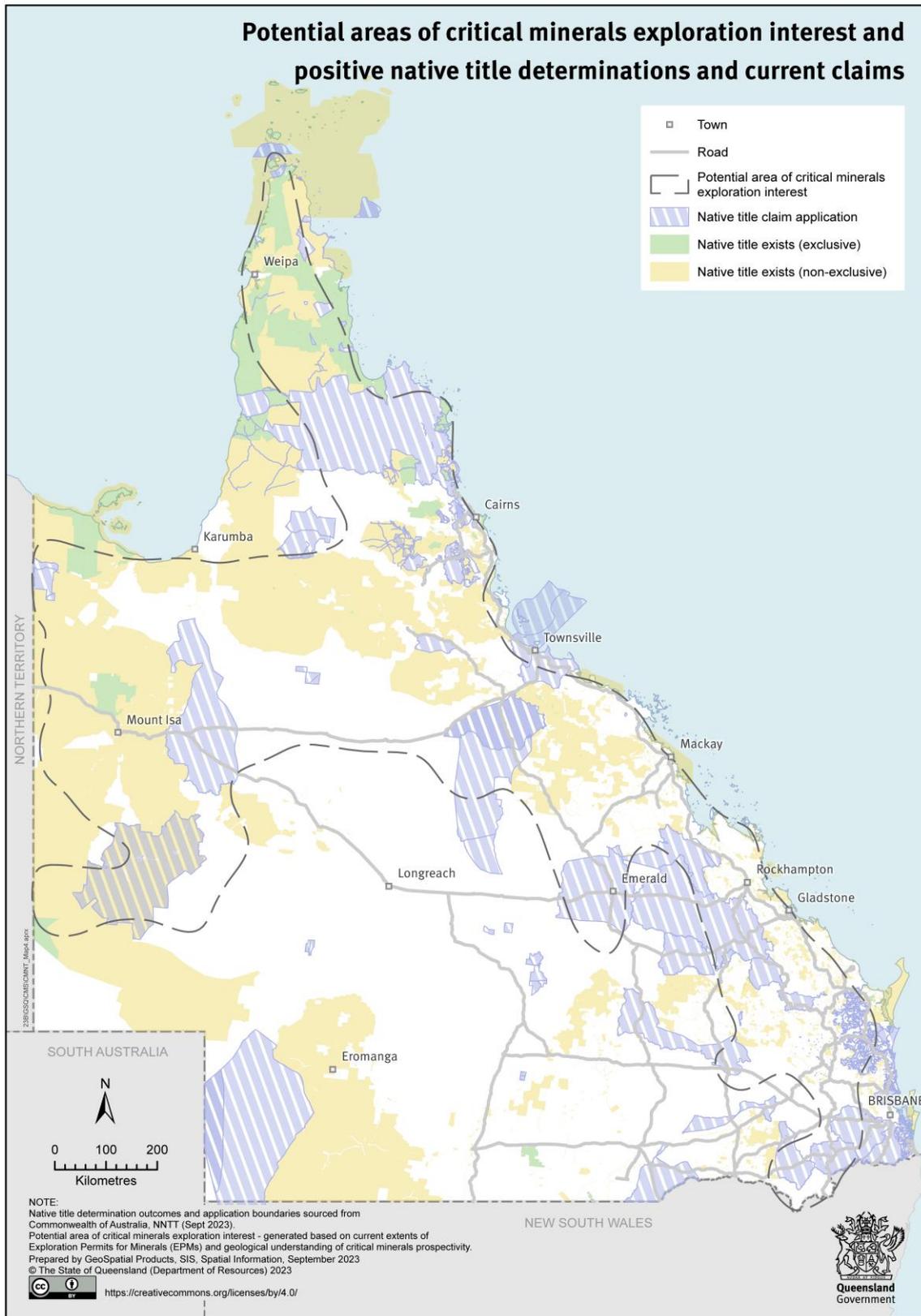
guiding principles of recognition, self-determination, respect, locally led decision-making, shared commitment, responsibility and accountability, empowerment, FPIC and a strength-based approach.<sup>132</sup>

- The Queensland Human Rights Act 2019 recognises and protects the cultural rights of Aboriginal 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.<sup>133</sup> The Act recognises the special importance of human rights for Aboriginal and Torres Strait Islander peoples of Queensland as Australia's first people with their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters, coastal seas and other resources.<sup>134</sup> The right to self-determination is not one of the rights protected by the Act, but is reflected in the preamble and interpretation of the Act.<sup>135</sup> The Land Court is bound by the Act when it is making administrative decisions, including decisions about contested mining lease applications, and considers human rights, including the right to culture, in making these decisions.<sup>136</sup>
- The Queensland Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003 are currently under review. An Options Paper was developed by the Government that sets out 10 proposals for change across 3 key areas: providing opportunities to improve cultural heritage protection through increased consultation and strengthened compliance mechanisms; reframing definitions to ensure people who have a connection to an area under Aboriginal tradition or Ailan Kastom have an opportunity to be involved in cultural heritage management and protection; and promoting leadership by First Nations peoples in cultural heritage management and decision-making.<sup>137</sup> Public consultation on the proposed reforms has now closed and the Government is yet to respond.
- The Queensland Government has committed to developing a Path to Treaty to reframe the relationship between Aboriginal and Torres Strait Islander peoples and the Government. The Path to Treaty Act 2023 has been passed but has not yet commenced.<sup>138</sup> It will establish a First Nations Treaty Institute and a truth-telling and healing inquiry about the historical and ongoing impacts of colonisation on First Nations peoples in Queensland.<sup>139</sup> The preamble to the Act acknowledges that the foundation for a respectful and mutually beneficial relationship between Aboriginal peoples, Torres Strait Islander peoples and the Queensland community is to provide for processes and opportunities to hear the voices of Aboriginal peoples and Torres Strait Islander peoples. FPIC is identified as a principle that is important as part of treaty negotiations and treaty making processes.<sup>140</sup> The Queensland Government has committed to continuing progress on the Path to Treaty reforms in QRIDP.<sup>141</sup>
- The Queensland Government has developed a Closing the Gap Implementation Plan, which they report on annually, to address the priority reforms and socio-economic targets in the National Agreement on Closing the Gap.<sup>142</sup>
- The Local Thriving Communities Action Plan 2022–2024 is a program established by the Queensland Government to work with Aboriginal and Torres Strait Islander communities to establish greater decision-making authority in service delivery and economic development.<sup>143</sup> The reform is based on the principles of self-determination, collaboration, mutual respect and high-expectations relationships.<sup>144</sup>

## Moving forward – toward recognition and respect in the objections processes

72. The potential developments in law and policy identified above are coinciding with mineral exploration and mine expansion activities increasingly occurring in locations that affect the land and resource rights of First Nations peoples. This is shaping a dynamic context for our review.
73. The foreshadowed changes to Queensland and Australian laws and policies may embed best practice principles for engagement and participation, including FPIC, in decision-making processes in a way that has direct relevance for mining objections processes.
74. Our guiding principles of fairness and effectiveness require us to consider barriers to meaningful participation and engagement for First Nations peoples and communities and how communities are represented and provide consent. There are challenges in ensuring that there is adequate participation and engagement, not only by community leaders and spokespersons, but by the communities they represent. There are also tensions between the dynamic footprints of most large-scale mining projects, the requirements of FPIC and the current regulatory approach to consent as a 'one off' approval during the mining lease application process. Limited resources available to First Nations communities and time constraints may also compromise meaningful participation.
75. The Native Title Act 1993 (Cth) provides a legal mechanism for the formal recognition of traditional law and custom and other procedural rights associated with that recognition, such as cultural heritage.<sup>145</sup> However:
- The process can be overly burdensome for First Nations peoples. For example, to be successful in a native title proceeding, a 'substantially uninterrupted' acknowledgement and observance of traditional law and custom from sovereignty must be established.<sup>146</sup> This onerous requirement does not recognise evolution and development of culture or the significant impact of forced displacement of First Nations peoples.<sup>147</sup>
  - Agreements about land use represent the views of the authorised majority but may not represent all views. The Native Title Act (Cth) authorises a majority of the people comprising the 'applicant' for a native title determination application to execute Indigenous land use agreements, subject to any conditions otherwise imposed on them by the broader native title claim group. These agreements impact and bind all native title claim group members.<sup>148</sup>
76. Despite these difficulties, the native title process is the primary way in which First Nations peoples are formally consulted and engaged with in relation to mining activity on their Country.<sup>149</sup>
77. Figure 2 shows the areas where there has been a positive native title determination or a current native title claim, overlaid with potential areas of critical minerals exploration interest. This is not a comprehensive picture of First Nations peoples' interests in land and water in Queensland. We recognise that the Native Title Act 1993 (Cth) does not determine all First Nations peoples' interests in land and that there are other avenues through which interests in Country can be formally recognised and preserved.<sup>150</sup> We also recognise that First Nations peoples have a distinctive and diverse connection to land and water under Aboriginal tradition and Ailan Kastom that exists notwithstanding legal determinations.<sup>151</sup>

Figure 2: Map of potential areas of critical minerals exploration interest and positive native title determinations and current claims

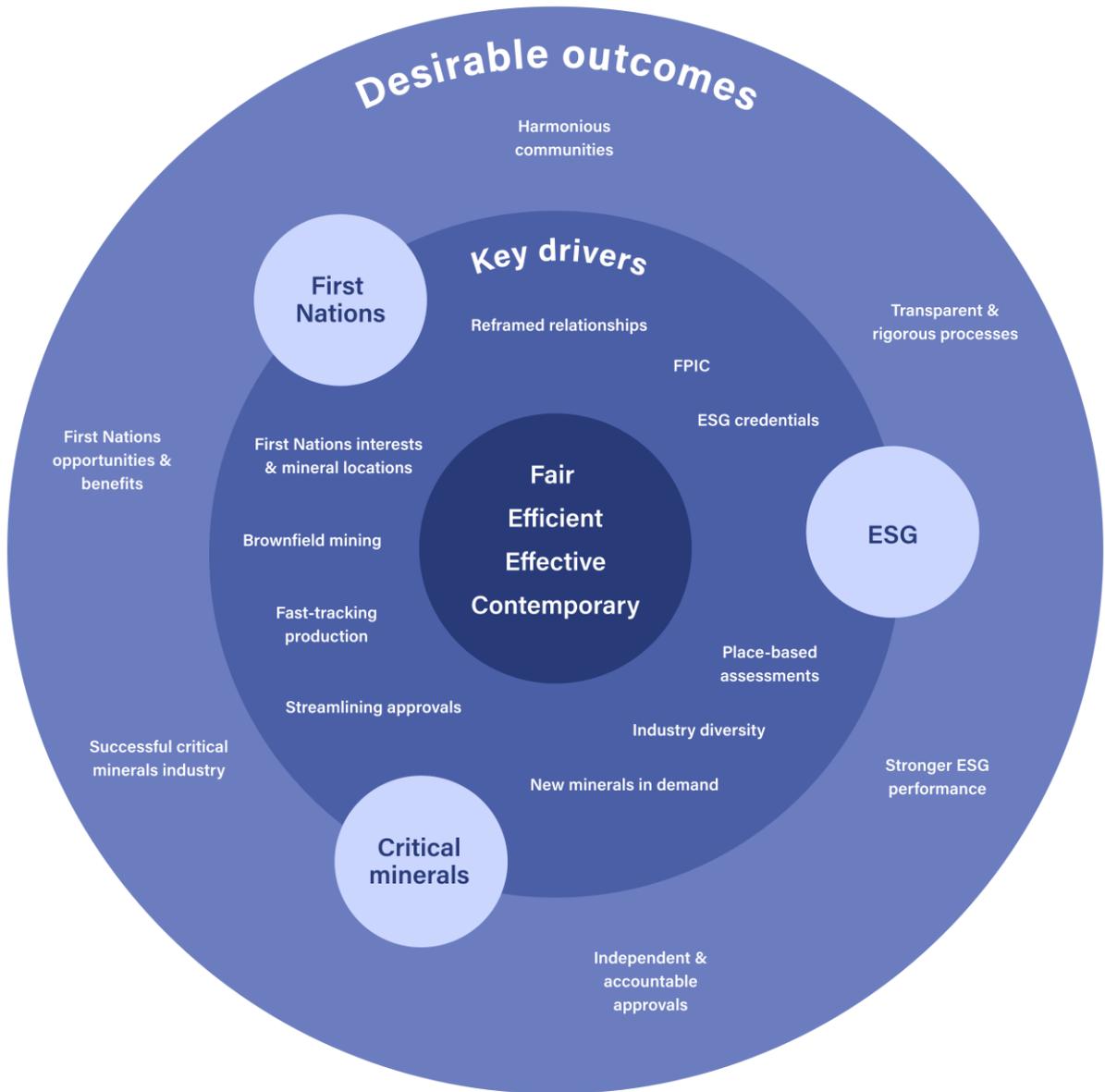


## The implications for our review

78. As set out above, we aim to make recommendations for a process that is fair, efficient, effective and contemporary. In this background paper we have explored key drivers affecting the mining industry now and into the future. We need to be aware of these key drivers to ensure our recommendations are contemporary and can work well with anticipated changes for government, industry and community.
79. Coal mining, which has been the dominant form of mining in Queensland over many decades, will continue for some time. However, decarbonisation and the demand for critical minerals is predicted to drive increasing diversity in the mining industry, with a broader range of applicants mining different types of minerals using different mining processes. There is also an anticipated growth in the number of applications for mining leases in response to the relative wealth of Queensland's critical minerals resources. To be contemporary, the process must be insights-driven and risk-based and able to accommodate industry developments. This will ensure it works well to decide applications now and in the future.
80. The policy imperative of responding to climate change and the economic opportunities in developing a critical minerals industry lends a sense of urgency to the transition. The guiding principle of efficiency is apparent in the Government's proposal to expedite the approval process for critical minerals. This review recognises the importance of an efficient process that is as simple and streamlined as possible and avoids unnecessary delay. This must be reconciled and balanced with the need for a fair, effective and contemporary process.
81. There are identified economic, social and environmental challenges, risks and opportunities associated with mining critical minerals. In response, the Government has proposed changes to its role in the critical minerals sector. These developments in policy and industry are coinciding with changes in the regulatory landscape for ESG risk disclosure and reporting, with new reporting and disclosure requirements being considered. To be effective and contemporary, our review must accommodate these potential changes in the role and regulatory response of the Government.
82. The surge in demand for critical minerals is occurring during a period of recognition of the importance of considering the impact of mining projects on local communities, the climate, the environment and rights-holding groups. These diverse interests and impacts are complex and multifaceted and require examination through an impartial, just, robust, transparent, independent and accountable process with appropriate review mechanisms. Rigorous merits assessment is required to balance investment in mining with the protection of environmental, community and landholder interests so that communities have confidence in the process.
83. The objections processes are the principal means for communities to participate in decisions about mining projects. As part of our review, we must consider the growing imperative for governments and mining companies to engage meaningfully with the different communities that may be impacted (both positively and negatively) by mining projects. The variability in impact throughout the mining life cycle is increasingly recognised. To develop recommendations for a process that fairly and effectively decides contested applications for mining leases and associated environmental authorities, we must recognise barriers to access. This includes specific challenges experienced by regional communities directly affected by mining projects and by First Nations communities.

84. Clear and certain processes are required that address, rather than exacerbate, tensions where there are competing interests in relation to land use. They must be meaningful and accessible for different communities, including communities representing the broader public interest as well as local communities directly impacted by mining projects. This requires careful consideration of the nature, form, extent and timing of effective community participation. This is occurring in the context of an increasing focus on the interface of mining and human rights (particularly First Nations rights) at an international level, which is influencing project-level negotiations. We must also be aware of other strategic planning processes about land use analysis that are arising in the context of the energy transition. There is a need for clarity to avoid confusion and duplication.
85. Participation in decisions relating to mine closure and rehabilitation are critical concerns for many communities, especially for First Nations communities and communities where there are abandoned mines. While mining companies are increasingly committing to upholding ESG considerations regarding mine closure, to date there are limited examples of large mines that have been successfully rehabilitated to a standard accepted by regulators and stakeholders. The Queensland Government has recently introduced mining rehabilitation reforms that increase public participation in the closure planning process. As the industry shifts and many large coal mines move toward closure, it is an ideal time to consider how and when communities should have the opportunity to participate, including opportunities to create a positive legacy from mining in these areas. This includes considering the approach taken in other international jurisdictions to require participation in planning activities throughout the mining life cycle, including closure.
86. There is tension between key drivers that will shape the landscape for mining in Queensland. The objective of efficiency in promoting a critical minerals industry, including fast-tracking approvals, is modulated by the increased commitment to strong ESG performance and respect for First Nations peoples' rights and interests. The challenge for our review is to make recommendations about a process that effectively responds to multiple interests in future mining projects, both fairly and efficiently.

Figure 3: Identifying the relationship between principles, drivers and outcomes for mining in Queensland



## Our next steps

Figure 4: Review timeline



87. Work on our review started on 5 June 2023. This is the second of a series of background papers intended to provide relevant information and prompt participation in our review.
88. We have not developed any proposals for reform at this early stage. We encourage you to give us your views, including about key trends we should be aware of that have implications for the mining objections processes. There will be several opportunities to participate over the course of our review, including by attending public events, consultation and submissions. You can also email [qlrc-miningobjections@justice.qld.gov.au](mailto:qlrc-miningobjections@justice.qld.gov.au).
89. We will release a consultation paper by the end of May 2024. It will include questions for consultation and invite submissions, to be made by the end of July 2024.
90. Our final report with recommendations will be given to the Government by 30 June 2025.
91. All of our publications and updates for our review, including information about events, will be available on our [website](#). If you would like to be notified when new information is posted, you can subscribe on our [website](#).

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