



Mining lease objections review

Other jurisdictions

Background paper 3

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Legislation:

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.

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Summary

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 (the objections processes), including review of such decisions.

In our first background paper, we gave an overview of the terms of reference for our review and the objections processes in Queensland (available on our website [here](#)).

Our second background paper explored key drivers shaping the future of mining in Queensland that give important context for our review (available on our website [here](#)).

The purpose of this background paper is to compare Queensland's objections processes for mining leases and associated environmental authorities to other Australian and overseas jurisdictions:

- Western Australia
- New South Wales
- Northern Territory
- British Columbia, Canada (British Columbia)
- South Africa.

This will give context to the discussion of other jurisdictions over the course of our review and assist in the consideration of reform options.

In each of these jurisdictions, minerals are owned by the state and a miner must obtain relevant authorisations from the government to start mining activities. Mining and environmental laws are complex and the authorisations that are required vary between jurisdictions.

For the purposes of this paper, we identify the main authorisations in each jurisdiction that are like the mining lease and associated environmental authority in Queensland and categorise them accordingly.

We compare the processes established by legislation to decide whether to grant each authorisation, focussing on how members of the public can participate in those decisions. While each of the comparative jurisdictions establishes different ways for members of the public to participate, Queensland is the only jurisdiction we examined that enables any person to object to either a mining lease application, an environmental authority, or both. Queensland is also unique in that objections on either or both applications trigger a referral to a court, which conducts a hearing (together, if practicable) and makes a recommendation to the relevant decision-makers on each application.

Introduction

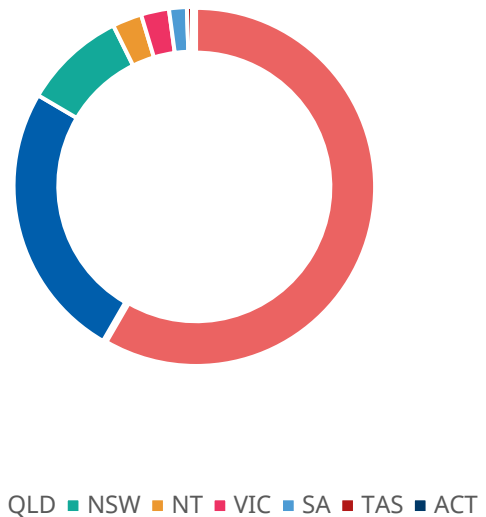
1. We have been asked to ‘review and make recommendations about the processes to decide contested applications’ for mining leases and associated environmental authorities in Queensland (the objections processes), including review of such decisions. Among other things, the terms of reference for our review ask us to consider ‘current legislative and regulatory frameworks in other Australian and comparative international jurisdictions’.¹
2. In this background paper, we consider comparative authorisations to the mining lease and associated environmental authority in Queensland in:
 - Western Australia
 - New South Wales
 - Northern Territory
 - British Columbia, Canada (British Columbia)
 - South Africa.
3. We focus on how people can participate in the government’s decision-making processes for each relevant authority, as established by legislation in each jurisdiction. This will give context to the discussion of other jurisdictions over the course of our review. It will also help us to identify the strengths of Queensland’s objections processes and consider reform options.

Comparative jurisdictions

Australian jurisdictions

4. The 3 largest mining jurisdictions in Australia are Western Australia, Queensland and New South Wales. Together, they accounted for around 92.7% of the value of Australian mining in the 2022–23 financial year. The largest was Western Australia (58.3%), followed by Queensland (25.1%) and New South Wales (9.2%). Out of the other jurisdictions, the Northern Territory was the largest (2.7%), followed by Victoria (2.5%), South Australia (1.6%) and Tasmania (0.5%). The Australian Capital Territory accounted for less than 0.1%: see Figure 1.²
5. We selected Western Australia and New South Wales to compare with Queensland due to the size of the mining industry in those jurisdictions. We also included the Northern Territory because of its geographic closeness to a significant mining region in Queensland and because it is progressing mining and environmental law reforms.

Figure 1: Australian mining jurisdictions by value 2022–23



Overseas jurisdictions

6. In selecting comparative overseas jurisdictions, we sought to identify jurisdictions that met the following key criteria:
 - liberal democracies
 - political stability
 - comparable human development to Queensland³
 - English speaking and have a common law system.
7. We asked the Sustainable Minerals Institute, a transdisciplinary research institute based at the University of Queensland, to undertake preliminary research to help identify jurisdictions that met our criteria.⁴ Additional criteria used to guide the selection were:
 - population size and land area
 - size and composition of the resources sector
 - number of agreements between mining companies and First Nations peoples.
8. Based on the criteria, Canada and South Africa were identified as the most suitable comparative jurisdictions.
9. Canada has a federal system of government similar to Australia and selecting a subnational jurisdiction was considered appropriate to compare to Queensland. Applying the criteria outlined above, British Columbia was identified as the most suitable province or territory for comparative purposes.
10. In South Africa, mining is regulated at the federal level. We selected South Africa, rather than one of its provinces, as a comparator for Queensland.

Relevant authorisations

11. In each jurisdiction, minerals are owned by the state and a miner must obtain authorisations from the government to start mining. The authorisations that are required vary between jurisdictions.
12. We have identified the main authorisations in each jurisdiction that are like the mining lease and associated environmental authority in Queensland ('relevant authorisations'). We recognise that these are only some of several authorisations that may be required in each jurisdiction. We do not cover all of the authorisations required for a mining project in this paper. We have only included the main ones that are like the mining lease and associated environmental authority in Queensland.
13. Caution should be exercised in comparing jurisdictions as mining and environmental laws are complex. Approaches to the regulation of mining development and the environmental impacts of mining vary.
14. For an overview of the relevant authorisations in each jurisdiction and the processes to obtain them, see the Appendix.

Mining leases and environmental authorisations

15. Our focus is on the authorisations required at the production stage of a mining project that are like the following in Queensland:

- Mining lease – which gives the miner the right to access minerals and the authority to mine the area subject to the conditions of the lease and is used for mining projects that involve machine-mining.
- Environmental authority – which a miner must have before carrying out mining activities on the lease and imposes conditions on the miner to help avoid or address the environmental impacts of mining. A progressive rehabilitation and closure plan is required for a site-specific application and will progress together with the environmental authority application.

16. In each of the comparative jurisdictions, there are authorisations that a miner must have before they can start mining. These include authorisations that give the miner rights to access minerals and authority to mine, and that manage the environmental impacts of mining. We have identified the relevant authorisations in each jurisdiction and, for the purposes of comparison, we have categorised them as either ‘mining leases’ or ‘environmental authorisations’: see Table 1.

17. In some jurisdictions, there are more than 2 relevant authorisations that are like the mining lease and associated environmental authority in Queensland.

18. For example, in the Northern Territory, Western Australia and British Columbia, there are authorisations required under mining laws before mining can start, which are separate from and additional to the mining lease (namely, the mining proposal in Western Australia, the mining authorisation in the Northern Territory and the mining permit in British Columbia). Among other things, these authorise the mining activities and include details about how environmental risks will be identified and managed. We have included these as environmental authorisations. However, we recognise that they cannot be precisely split between the categories of mining leases and environmental authorisations in the same way as the mining lease and associated environmental authority in Queensland.

19. In many jurisdictions, an environmental impact assessment will be required for mining projects that meet certain criteria, such as projects that will likely have a significant impact on the environment. This assessment is generally required as part of, and integrated within, the process to obtain one of the environmental authorisations identified above. For example, in Queensland, if an environmental impact assessment is required, the process is carried out as part of the process to decide the environmental authority application. In contrast, in Western Australia, if an environmental impact assessment is required, the process is separate from and additional to the processes to obtain any other environmental authorisations. For this reason, we have included the environmental impact assessment in Western Australia as a separate environmental authorisation in this paper.

20. In Queensland, mining development is regulated separately from other forms of land development and is not subject to the Planning Act 2016.⁵ In contrast, mining development in New South Wales is regulated under the planning framework, which manages the associated environmental impacts, and will require development consent. In this paper, we represent the planning assessment pathway for State significant development, which is how mining and extractive operations are usually categorised and determines the planning assessment pathway.

Terminology

The relevant authorisations vary between jurisdictions. We refer to them collectively as ‘mining leases’ and ‘environmental authorisations’ when we are comparing them in this paper.

Table 1: 'Mining leases' and 'environmental authorisations'

Jurisdiction	'Mining leases'	'Environmental authorisations'
Western Australia	Mining lease	Mining proposal Environmental impact assessment Works approval and licence
New South Wales	Mining lease	Development consent
Northern Territory	Mineral lease	Environmental approval Mining authorisation
British Columbia	Mining lease	Mining permit Environmental assessment certificate
South Africa	Mining right	Environmental authorisation

Connection between the relevant authorisations

21. In Queensland, a mining lease cannot be granted unless the miner has a valid environmental authority.⁶ The application processes for mining leases and associated environmental authorities are connected at key points and the objections processes are integrated.⁷
22. In New South Wales, the mining lease cannot be granted unless development consent has been granted. The processes to obtain each authorisation are separate. However, the mining lease application must be approved in a way that is substantially consistent with the development consent.
23. In South Africa, the mining right also cannot be granted unless the environmental authorisation has been granted.
24. In contrast, in Western Australia, the Northern Territory and British Columbia, the mining lease can be granted independently from the environmental authorisations. It is possible for a miner to obtain the mining lease before environmental matters are considered. However, the miner cannot start mining operations until they have obtained the relevant authorisations, which include environmental authorisations.

Other relevant laws

25. In each jurisdiction, there is a range of laws that apply to mining projects at both a national and subnational level. For example, in Queensland the Mineral Resources Act 1989 and the Environmental Protection Act 1994 are part of a broader regulatory framework that includes native title and cultural heritage laws, laws regulating complex or significant projects, laws regulating water use and monitoring and laws regulating matters of national environmental significance.⁸ We do not consider the range of other laws in this background paper. The interaction of mining leases and associated environmental authorities with other laws, including native title and cultural heritage laws, will be considered over the course of our review.

Participation in the government's decision-making processes

26. In each jurisdiction, the relevant government decision-maker decides whether to grant the mining and environmental authorisations. Legislation establishes the government's administrative decision-making processes, which often include opportunities for public participation. For example, members of the public may be able to participate by:
- making comments, submissions or objections
 - participating in a public forum (for example, a public hearing or public meeting)
 - becoming a party to an objections hearing.

Queensland's objections processes

27. In Queensland, members of the public can participate in the government's decision-making processes for mining leases and associated environmental authorities by:
- objecting to a mining lease application
 - making a submission to an associated environmental authority application
 - objecting to an associated environmental authority application (if they have made a submission).
28. Any person can object to an application for a mining lease and make a submission and object to an associated environmental authority through the objections processes established under the Mineral Resources Act 1989 and the Environmental Protection Act 1994. An objection triggers the referral of the application and objections to the Land Court, which conducts a hearing and makes a recommendation to the relevant government decision-maker. If there are objections to both applications, the Land Court will hear them in a combined hearing (if practicable) and make a recommendation on each application.⁹
29. The Land Court's recommendation is an administrative decision (not a binding judicial decision). However, the relevant government decision-maker must take it into account in deciding whether to grant, grant with conditions or refuse the mining lease or associated environmental authority. There are matters that both the Land Court and the relevant government decision-maker must consider for each application, including the public interest.¹⁰
30. You can read a summary of the application and objection processes for mining leases and associated environmental authorities in Queensland in our first background paper (available on our website [here](#)).¹¹

Objections processes in other jurisdictions

31. Except for British Columbia, the legislation in each comparative jurisdiction enables objections to be made to mining lease applications. However, in some jurisdictions, the basis of standing to object to a mining lease application is limited and the main way for members of the public to participate in the mining project is through the processes to obtain environmental authorisations.

32. Any person can object to a mining lease application in Western Australia and make submissions and object in South Africa. In Western Australia, objections are referred to a warden (a magistrate appointed as a warden in the Wardens Court), who can decide whether to hear the objection. The warden makes a non-binding recommendation to the decision-maker on the application. Similarly, in South Africa objections are referred to an internal government committee (the Regional Mining and Development Committee), which makes a non-binding recommendation to the relevant government decision-maker.
33. In New South Wales, objections to the mining lease application can only be made by landholders and exploration licence holders on limited grounds.
34. In the Northern Territory, only landowners can make an objection on the mining lease application, although any person can make submissions. Unlike Queensland, objections do not automatically trigger a referral for a hearing. However, the Minister for Mining can decide to refer the application to the Northern Territory Civil and Administrative Tribunal to conduct a hearing and make a recommendation to the Minister on the application. A landowner who made an objection is a party to the hearing.
35. In British Columbia, there is no opportunity for members of the public to participate in the government's administrative decision-making process for mining leases by making an objection or submission. However, a person who claims a right to the minerals or mineral title can bring a proceeding in the Supreme Court to establish who has the right to the lease.
36. Queensland is the only jurisdiction where any person can object to either a mining lease application, an environmental authority, or both. It is also unique because objections on either or both applications trigger a referral to a court, which conducts a rigorous merits assessment and can consider objections to both applications (together, if practicable) before the relevant decision-maker decides each application.

Other forms of participation

37. Like Queensland, in most of the comparative jurisdictions, participation in mining lease applications is limited to making an objection.
38. While none of the comparative jurisdictions establish an objections process for environmental authorisations, they provide other ways for members of the public to participate, including by making submissions or engaging in a public forum.
39. The ways members of the public can participate may vary depending on the size or risk of the project, with mining projects identified as posing increased environmental risk often including more opportunities for public participation. Some opportunities for participation may depend on the level of community interest or concern. For example, in British Columbia, a community advisory panel must be established if there is sufficient community interest in a project.
40. In British Columbia there is a focus on early and ongoing engagement. For example, as part of the environmental assessment process, the miner may develop an engagement plan outlining the proposed engagement, including with the public, Indigenous groups, local communities and government agencies from the commencement of the project planning phase and throughout the assessment process.
41. In New South Wales, the Northern Territory, British Columbia and South Africa, members of the public may be able to participate in a public forum. For example, in the Northern Territory and British Columbia, a public hearing may be required as part of the environmental assessment process. In New South Wales, it is the usual practice for a public hearing to be required as part of the development consent assessment process for mining. Similarly, in South Africa it is the general practice for public meetings to be held as part of the environmental assessment process.

42. In some jurisdictions, the environmental authorisation processes include assessment of the application by a body, which is separate to the decision-maker on the application, resulting in a non-binding recommendation to the relevant decision-maker. For example, in Western Australia, environmental impact assessments are conducted by the Environmental Protection Authority, which provides a report to the government decision-makers. In New South Wales, the department carries out an assessment of the application and provides a report to the decision-maker on the application (the Independent Planning Commission).

Review of decisions

43. In Queensland and each comparative jurisdiction, a person may be able to seek judicial review of administrative decisions about relevant authorisations. Whether a person can seek judicial review depends on the laws (under common law or legislation) in each jurisdiction.¹²
44. There is no opportunity to apply for a review of the merits of decisions about relevant authorisations by a court. The legislation in New South Wales provides for a review of the merits of development consent application decisions by the Land and Environment Court. However, this is not available if the Independent Planning Commission determines the application and holds a public hearing, which is the usual practice for mining projects.
45. In some of the comparative jurisdictions, a review of the merits of decisions about relevant authorisations is available by way of an internal review.
46. In South Africa, any person who disagrees with the decision to grant a mining right can appeal the decision to the Minister for Mineral Resources. The Minister can set aside the decision to grant, amend the terms of the grant or confirm the original decision. Similarly, any person who disagrees with the decision on the environmental authorisation can appeal the decision. While the original decision on the environmental authorisation is made by the department responsible for mines, the appeal is determined by the Minister for the Environment. The Minister may consider and decide the appeal or appoint an appeal panel to consider and advise the Minister on the appeal. The Minister may confirm, set aside or vary the decision.
47. In Western Australia, any person can appeal a decision about the conditions of the works approval and licence. The miner can also appeal the decision to refuse the works approval and licence. If an environmental impact assessment is conducted, any person can appeal certain decisions and recommendations of the Environmental Protection Authority. In each case, the Appeals Convenor investigates the appeals and reports to the Minister for Environment, who considers and determines the appeal.
48. In the Northern Territory, any person may apply to the chief executive officer for a review of the merits of a decision refusing to grant, or imposing conditions on, a mining authorisation.

Terminology

In this paper, we use the term 'review' to describe a review of the merits of a decision.

This is different to 'judicial review', which considers if an administrative decision was lawfully made.

Comparative tables

49. Tables 2 and 3 below show the main ways people can participate in the government's administrative decision-making processes for mining and environmental authorisations, as established by the following legislation.

Queensland (QLD)

Mineral Resources Act 1989
Environmental Protection Act 1994

Western Australia (WA)

Mining Act 1978
Environmental Protection Act 1986

New South Wales (NSW)

Mining Act 1992
Environmental Planning and Assessment Act 1979

Northern Territory (NT)

Mineral Titles Act 2010
Mining Management Act 2001
Environment Protection Act 2019

British Columbia, Canada (British Columbia)

Mineral Tenure Act 1996
Coal Act 2004
Mines Act 1996
Environmental Assessment Act 2018

South Africa

Mineral and Petroleum Resources Development Act 2002
Environmental Management Act 1998

50. The tables include the relevant authorisations identified above. They give a high-level overview only. For more information about each jurisdiction, including legislation references, see the Appendix.

Table 2: Ways to participate in the government’s decision-making processes for mining leases

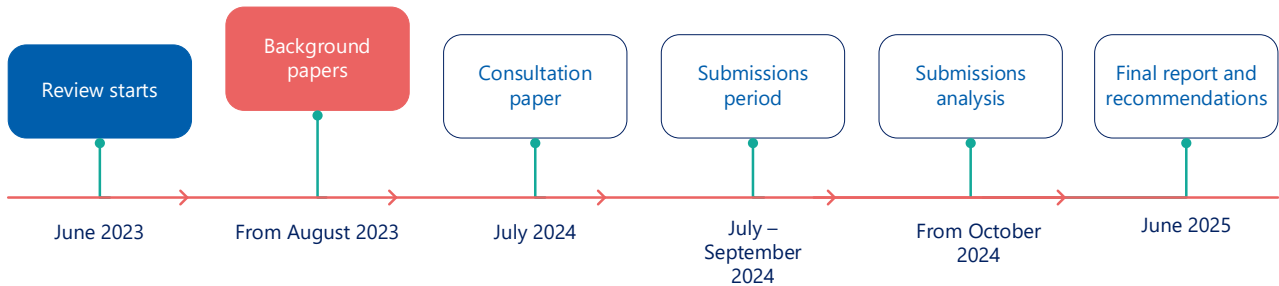
	QLD	WA	NSW	NT	British Columbia	South Africa
	Mining lease	Mining lease	Mining lease	Mineral lease	Mining lease	Mining right
Notification required	✓	✓	✓	✓	✓	✓
Public submissions				✓		✓
Objections	✓ by any person	✓ by any person	✓ only by landholders and exploration licence holders (if development consent required)	✓ only by landholders		✓ by any person
Objections hearing	✓ Land Court (if objection)	✓ warden (if objection)	– Secretary determines if agricultural land (if landholder objection about agricultural land)	✓ NT Civil and Administrative Tribunal (if referred by Minister)		✓ Regional Mining Development and Environmental Committee (if objection)
Public forum						
Review						✓ appeal to Minister on decision on the application (by aggrieved or adversely affected person)

Table 3: Ways to participate in the government’s decision-making processes for environmental authorisations

	QLD	WA		NSW	NT		British Columbia		South Africa	
	Environmental authority	Mining proposal	Environmental impact assessment	Works approval and licence	State significant development consent	Environmental approval	Mining authorisation	Environmental assessment certificate	Mining permit	Environmental authorisation
Notification required	✓		✓	✓	✓	✓		✓	✓ if required by Chief Permitting Officer	✓
Public submissions	✓		✓	✓	✓	✓		✓		✓
Objections	✓ by person who made submission									
Objections hearing	✓ Land Court (if objection)									
Public forum					✓ may be required	✓ may be required		✓ may be required	✓ may be required	✓
Review			<ul style="list-style-type: none"> ✓ appeal to Minister on decisions of the Environmental Protection Authority (by any person) ✓ appeal to Minister on the conditions (by miner) 	<ul style="list-style-type: none"> ✓ appeal to Minister on the conditions (by applicant) ✓ appeal to Minister on decision to refuse application (by applicant) 	<ul style="list-style-type: none"> ✗ appeal to Land and Environment Court not available if Independent Planning Commission holds public hearing 		<ul style="list-style-type: none"> ✓ application to chief executive officer for review of decision to grant or decision imposing conditions (by any person) 			<ul style="list-style-type: none"> ✓ appeal to Minister on decision on the application (by any person)

Our next steps

Figure 2: Review timeline



51. Work on our review started on 5 June 2023. This is the third background paper we have released to provide relevant information and prompt participation in our review.
52. We have not developed any proposals for reform at this early stage. We encourage you to give us your views, including about the laws in these jurisdictions and if there are any other relevant jurisdictions you think we should consider. 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.
53. We will release a consultation paper in July 2024. It will include questions for consultation and ask for submissions.
54. Our final report with recommendations will be given to the Government by 30 June 2025.
55. All of our publications and updates for our review will be available on our [website](#). If you would like to be notified when new information is posted, you can subscribe to our e-newsletter on our website [here](#).

Appendix: Relevant authorisations in other jurisdictions

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Introduction

- [1] This Appendix gives information about relevant authorisations in:
- Western Australia
 - New South Wales
 - Northern Territory
 - British Columbia, Canada
 - South Africa.
- [2] The summaries include the main authorisations that have been identified as being like the mining lease and associated environmental authority in Queensland (see 'relevant authorisations' above). They describe the processes established by legislation to obtain those relevant authorisations, focussing on the ways members of the public can participate in the government's decision whether to grant the authorisation and, if so, the conditions of grant.
- [3] Mining and environmental laws are complex and there is a range of laws that apply to mining projects at both the national and subnational level. The summaries below do not cover all the authorisations that may be required in each jurisdiction.
- [4] For example, environmental laws at a national level can also include other environmental assessment processes. In Australia and in some other jurisdictions, such as British Columbia, there are agreements between the federal and subnational governments that allow for a joint assessment process (with separate federal and subnational decision-making processes).
- [5] In some jurisdictions, there are distinct rights to participate for First Nations communities. In British Columbia, these rights are based on a constitutionally recognised and affirmed Aboriginal or treaty right, the environmental assessment laws and reconciliation agreements between First Nations and state government. Where these rights have implications for participation in the processes to obtain authorisations comparable to the mining lease and environmental authority in Queensland, we discuss these rights in the summary for the relevant jurisdiction. We will consider First Nations participation in mining leases and associated environmental authorisations over the course of the review.

Western Australia

Quick guide: Western Australia

[6] A mining lease gives the miner permission to mine the land, subject to the conditions of the lease.¹³ Before the miner can commence any ground disturbing mining operations, they must have an approved 'mining proposal'. It contains detailed information about how the environmental impacts will be identified, evaluated and managed and must include a mine closure plan.¹⁴ A mining proposal may accompany the mining lease application, or it may be obtained after the mining lease is granted.¹⁵

[7] There are several other environmental authorisations that a miner may require.¹⁶ In particular, they must have a works approval and licence to construct and operate premises used for the extraction and processing of minerals and removing groundwater from a mine.¹⁷ The works approval and licence regulate emissions and discharges to prevent unacceptable impacts to public health or the environment.¹⁸

[8] A proposal for a mining development that is likely to have a significant effect on the environment will be referred to the Environmental Protection Authority (EPA) to determine if an environmental impact assessment is required and, if so, the EPA will conduct the assessment. If a proposal is referred to the EPA, other decision-making authorities cannot do anything to implement the proposal until the EPA process is completed.¹⁹

Mining lease

[9] Mining leases are granted by the Minister for Mines and Petroleum under the Mining Act 1978 (WA).²⁰ The responsible agency is the Department of Energy, Mines, Industry Regulation and Safety.

[10] The applicant must mark out on the ground the boundary of the land for the mining lease (for example, by fixing posts, cutting trenches and fixing a notice to post).²¹ They can then make a mining lease application in the approved form.²² It can be accompanied by a mining proposal, or by a statement of likely mining operations and either a mineralisation report or resource report.²³

[11] The applicant must directly notify particular people of the application, including the owner and occupier of the land and the local government.²⁴ The department must also publish the application on their website.²⁵

Relevant authorisations covered

- mining lease
- mining proposal
- environmental impact assessment
- works approval and licence

Opportunities for participation

- public objections to the mining lease application
- public comments and submissions as part of environmental impact assessment
- public comments and submissions on works approval and licence application

Review of decisions

- appeals of certain decisions about environmental authorisations to the Minister for Environment
- judicial review of administrative decisions

- [12] Any person can object to an application for a mining tenure, including mining leases.²⁶ Objections are heard by a warden (a magistrate who is appointed to preside in the Wardens Court, which is constituted under the Mining Act 1978 (WA)²⁷). The warden can decide whether to hear the objection, to limit its scope, or to make recommendations that require the parties to make representations to the Minister or another tribunal: see Box 1.²⁸ If the mining lease application is not accompanied by a mining proposal, the warden may have only limited information, which impacts the ability to assess objections.
- [13] If the application relates to private land, the owner and occupier has a right to be heard before an application is determined.²⁹ A mining lease cannot be granted over the surface of private land without their consent.³⁰ The consent of pastoralists is not required and they cannot make an objection to protect their private interests (for example, because the mining will interfere with pastoral activities).³¹

Box 1: Public interest objections

In *Re Warden Calder; ex parte Cable Sands*, the Full Court of the Supreme Court of Western Australia held that a warden may hear a mining lease objection based on public interest considerations, including an environmental objection.³²

In *Telupac Holdings Pty Ltd v Hoyer*, the warden held that, if an objection is about public interest matters that are addressed by another policy regime, they are not material considerations for the warden to hear (although the matters raised in the objection can still inform the warden's recommendation).³³ The warden ruled that the objectors would not be given the opportunity to be heard on a range of environmental objections. It was noted that, unlike the Land Court of Queensland, the warden only hears objections about mining tenures and the Mining Act 1978 (WA) does not make the warden directly subject to environmental considerations or set out particular matters that the warden must consider.³⁴

- [14] The Minister may grant, grant with conditions or refuse the application irrespective of the warden's recommendation.³⁵ The Minister can also terminate or refuse an application if they are satisfied on reasonable public interest grounds that the land should not be disturbed or the application should not be granted.³⁶
- [15] There is no avenue for merits review of the warden's recommendation or the Minister's decision on the application. Administrative decisions are subject to judicial review, which in Western Australia is governed by the common law. Whether a person can seek judicial review depends on the nature of relief they are seeking.³⁷

Mining proposal

- [16] Mining proposals are assessed and approved by the Resources and Environmental Compliance Branch of the Department of Energy, Mines, Industry Regulation and Safety under the Mining Act 1978 (WA).³⁸ The Act does not include any requirements for applications to be publicly notified, or for participation as part of the government's decision-making process on the application.
- [17] There are statutory guidelines for what must be included in mining proposals and mine closure plans.³⁹ Among other things, the miner must include information in the mining proposal to show they have consulted with stakeholders, including a record of the engagement undertaken and a strategy for ongoing engagement.⁴⁰

[18] Amendments have been passed to replace mining proposals and mine closure plans with a single document called a 'mining development and closure proposal'.⁴¹ A guidance document is being developed.⁴²

Environmental impact assessment

[19] Under the Environmental Protection Act 1986 (WA), 'significant proposals' will be referred to the EPA: see Box 2. The EPA is an independent Board established under the Act that conducts environmental impact assessments.⁴³ A proposal can be referred in different ways. However, the Department of Energy, Mines, Industry Regulation and Safety must refer mining proposals that could have a significant impact on the environment. The proponent of the proposal can also choose to refer it.⁴⁴

Box 2: 'Significant proposals'

The Environmental Protection Act 1986 (WA) defines 'proposal' to include a 'policy, plan, or programme', a 'project, undertaking or development', a change in land use or an amendment of any proposal.⁴⁵

A 'significant proposal' means a proposal that is likely, if implemented, to have a significant effect on the environment and includes a significant amendment of an approved proposal.⁴⁶

This would include, for example, if the proposal is in an environmentally sensitive area, or within 500 m of a State conservation estate (such as a national park, nature reserve or State forest), in a public drinking water source area, or within 2 km of a town.⁴⁷

Not all mining proposals will be significant proposals.⁴⁸

[20] An environmental impact assessment has 5 key stages. These are:⁴⁹

- stage 1 – Proposals are referred to the EPA
- stage 2 – EPA decides whether to assess a proposal and, if so, the level of assessment
- stage 3 – EPA assesses the proposal
- stage 4 – EPA gives its report with recommendations to the Minister for Environment
- stage 5 – The Minister makes a decision on the proposal and its implementation.

[21] Members of the public can participate in the process in various ways. In particular:

- the EPA publishes information about a referral on its website and invites public comment on whether it should assess the proposal and, if so, the level of assessment⁵⁰
- if the EPA decides the proposal should be assessed, it may require the proponent of the proposal make information publicly available so members of the public can make submissions.⁵¹

[22] Any person can appeal certain decisions of the EPA, including a decision not to assess a referred proposal, or against the content of, or recommendations in, an EPA report on proposals.⁵² Appeals are investigated by the Appeals Convenor (a statutory office established under the Environmental Protection Act 1986 (WA)) and determined by the Minister for the Environment.⁵³ The Minister can dismiss the appeal or remit it to the EPA. If the appeal is about the content of the EPA's report and recommendations, the Minister can remit it for further assessment or reassessment or vary the EPA's recommendations by changing implementation conditions.⁵⁴

- [23] The Minister for Environment considers the EPA's report and any appeals before determining whether to allow the proposal to proceed and, if so, under what conditions. The Minister must make this decision in consultation with others who they determine to be key decision-making authorities. If they cannot agree, the matter is referred according to one of the below circumstances:⁵⁵
- if another Minister is involved (for example, the Minister for Mines), it is referred to the Governor for final decision.
 - if no other Minister is involved, it is referred to an appeals committee, which considers and reports to the Minister for Environment on the matters in dispute.
- [24] Only the proponent of the proposal can appeal the implementation conditions or procedures agreed on. The appeal can be made to the Minister, who must appoint an appeals committee and allow or dismiss the appeals in accordance with their recommendations.⁵⁶

Works approval and licence

- [25] Works approvals and licences are granted by the chief executive officer of the Department of Water and Environmental Regulation under the Environmental Protection Act 1986 (WA).⁵⁷
- [26] An application for a works approval or licence must be made in the approved form and supported by any plans, specifications or other documents required. The chief executive officer must publicly notify applications for works approvals and licences and invite public comments. They must also seek comments from any public authority or person who, in their opinion, has a direct interest in the subject matter of that application. The chief executive officer must consider any comments received in deciding whether to grant a works approval or licence.⁵⁸
- [27] Any person can appeal the conditions of a works approval and licence. The applicant can appeal a decision to refuse the works approval or licence. Appeals are investigated by the Appeals Convenor and determined by the Minister for Environment.⁵⁹

Table 4: Ways to participate in the government’s decision-making processes for relevant authorisations – Qld and WA

	QLD	WA	QLD	WA		
Application	Mining lease	Mining lease	Environmental authority	Mining proposal	Environmental Impact Assessment	Works approval and licence
Notification required	✓	✓	✓		✓	✓
Public submissions			✓		✓	✓
Objections	✓ by any person	✓ by any person	✓ by person who made submission			
Objections hearing	✓ Land Court (if objection)	✓ warden (if objection)	✓ Land Court (if objection)			
Public forum						
Review					<ul style="list-style-type: none"> ✓ appeal to Minister on decisions of the Environmental Protection Authority (by any person) ✓ appeal to Minister on the conditions (by miner) 	<ul style="list-style-type: none"> ✓ appeal to Minister on the conditions (by applicant) ✓ appeal to Minister on decision to refuse application (by applicant)

New South Wales

- [28] In New South Wales, mining is subject to the planning framework, which regulates associated environmental impacts. Mining operations are usually categorised as ‘State significant development’, which require development consent.
- [29] State significant development consent must be obtained before the mining lease is granted.⁶⁰
- [30] If a State significant development consent has been issued, the mining lease application must be approved in a way that is substantially consistent with the development consent and the mining lease can only be refused on limited grounds, including that the applicant is not a fit and proper person.⁶¹

Mining lease

- [31] Mining leases are granted by the Minister for Natural Resources under the Mining Act 1992 (NSW). The responsible agency is the Department of Regional NSW.
- [32] The applicant must publicly notify the mining lease application by advertising it in a newspaper circulating generally in the State and in the local area. 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.⁶² The applicant must also give a copy of the notice directly to landholders.⁶³ The Minister must give direct notice of the application to certain persons, including affected exploration licence holders.⁶⁴
- [33] The application and objections process established by the legislation varies depending on whether development consent is required under the planning framework.⁶⁵ If development consent is required, objection rights to the mining lease application are limited and the main way for members of the public to participate is through the development consent process.⁶⁶ An objection to the mining lease application can only be made by the persons listed below:
- An affected exploration licence holder, whose consent is required to grant the mining lease. The Minister must take any objections made by an exploration licence holder into account in deciding the mining lease application.⁶⁷
 - A landholder, on the basis that the proposed mining lease is over ‘agricultural land’, which generally cannot be granted by the Minister without the landholder’s consent.⁶⁸ Whether land is agricultural land is determined by the Secretary of the Department of Planning and Environment. The Secretary will make this determination based on evidence submitted by the landholder and any expert reports the Secretary commissions, as well as any submissions made by the landholder and mining lease applicant.⁶⁹

Quick guide: New South Wales

Relevant authorisations covered

- mining lease
- development consent

Opportunities for participation

- objections to the mining lease application by landholders and exploration licence holders
- public submissions on the development consent application
- public hearing as part of development consent application (if required by Minister)

Review of decisions

- judicial review of administrative decisions

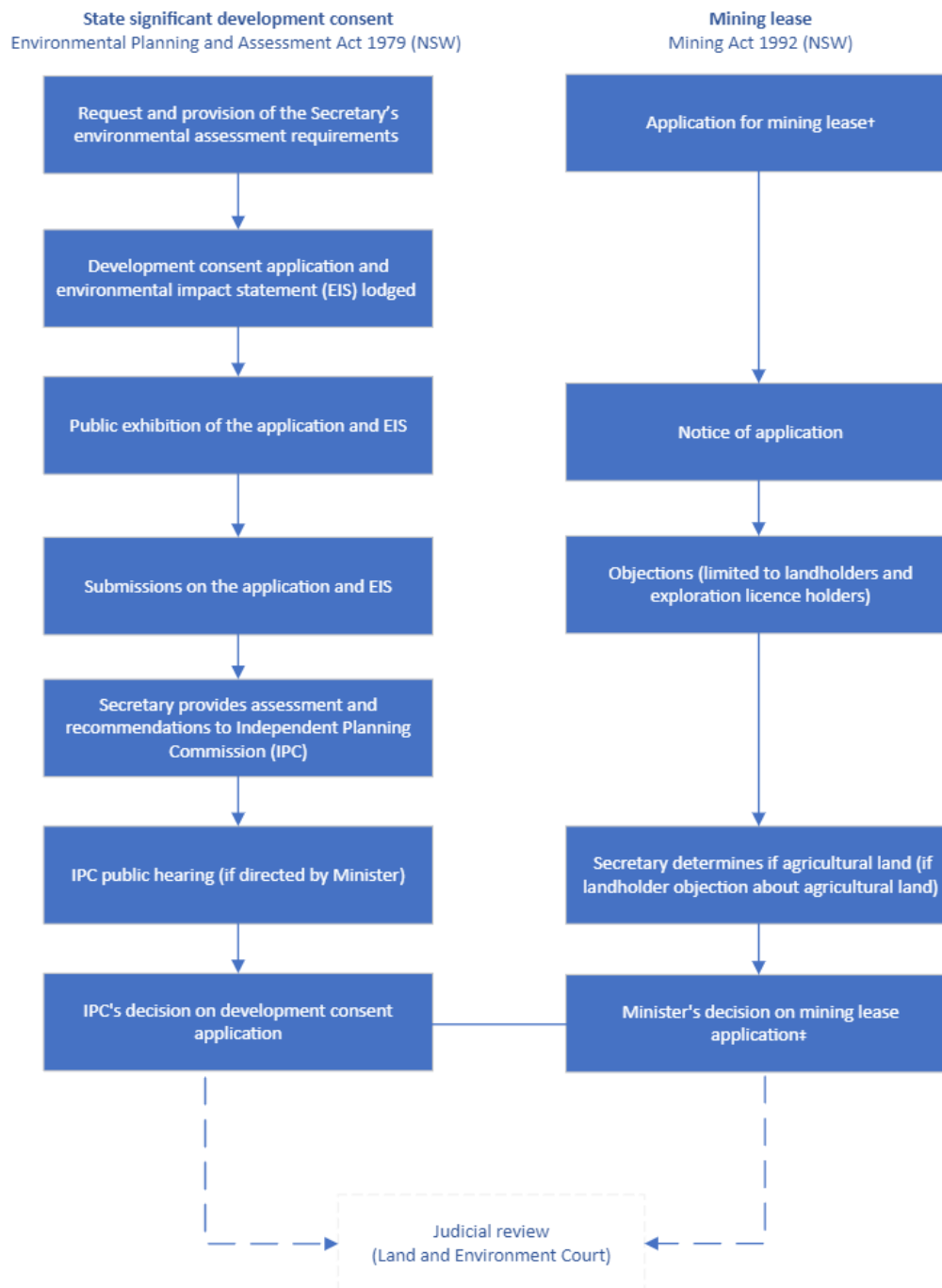
- [34] A landholder can also make a claim to the Minister that there is a 'significant improvement' to the land, and the Minister may refer the claim to be determined by the Land and Environment Court.⁷⁰ A mining lease cannot be granted over the surface of land that has a significant improvement (or a dwelling-house or garden) without the consent of the owner (or occupant of a dwelling-house).⁷¹
- [35] In deciding whether to grant the mining lease, the Minister must consider any objections made under the Mining Act 1992 (NSW).⁷² They must also consider matters including the need to protect and maintain the environment within the proposed mining lease's area, the technical and financial capability of the applicant to carry out the proposed work program and the applicant's compliance history.⁷³
- [36] A person with a 'relevant interest' can seek judicial review of the Minister's decision on the mining lease application in the Land and Environment Court.⁷⁴

Development consent

- [37] The Environmental Planning and Assessment Act 1979 (NSW) regulates the environmental impacts of development, including mining. The responsible agency is the Department of Planning and Environment.
- [38] There are 9 different planning assessment pathways under the Act. The planning assessment pathway that applies is determined by the size and scale of the proposed development.⁷⁵ Mining operations are usually categorised as 'State significant development', which require development consent.⁷⁶
- [39] State significant development consent applications are determined by the Minister for Planning and Public Spaces or the Independent Planning Commission (IPC).⁷⁷ The IPC usually determines State significant development applications for mining projects. It is the authority that determines the application if:⁷⁸
- the relevant local council has made a submission on the development consent application, or
 - more than 50 public objections were made to the development consent application, or
 - the applicant has disclosed reportable political donations.
- [40] State significant development consent applications must be accompanied by an environmental impact statement addressing the proposed mine's likely environmental impacts and detailing measures to mitigate them.⁷⁹ The environmental impact statement must address matters detailed in the 'Secretary's environmental assessment requirements' (SEARs).⁸⁰ These are like the 'terms of reference' for an environmental impact statement in Queensland. Community members are not given the opportunity to comment on the SEARs. However, in producing the SEARs, the Secretary of the Department of Planning and Environment must consult with relevant government agencies for their input on requirements the environmental impact statement should address.⁸¹
- [41] The department must publish notice of the development consent application, along with any documents submitted with it, on its website.⁸² It must also provide notice to any interested public authorities and owners or occupiers of adjoining land.⁸³
- [42] Any person can make submissions about the development consent application during the public exhibition period.⁸⁴
- [43] The Minister for Planning and Public Spaces may ask the IPC to hold a public hearing on the development consent application.⁸⁵ Since 2019, this has been the usual practice for mining development consent applications.⁸⁶

- [44] Before the public hearing, the Department of Planning and Environment prepares its recommendation and assessment report on the application based on the environmental impact statement and any submissions.⁸⁷ At the public hearing, the miner, relevant government agencies and community members can attend and address their position on the application.⁸⁸ While this gives an opportunity for views to be aired publicly to the ultimate decision-maker, the ability to rigorously test evidence at the hearing is limited.
- [45] If the IPC is asked to hold a public hearing, the development consent application cannot be determined until the public hearing has finished.⁸⁹ In deciding the application, the Minister for Planning and Public Spaces or the IPC must consider several factors, including the project's likely environmental, social and economic impacts and the public interest generally.⁹⁰ If the Minister decides the development consent application, they must consider the IPC's findings and recommendations on the application after the public hearing.⁹¹
- [46] A development consent may be granted unconditionally, with conditions, or refused.⁹²
- [47] If a State significant development consent application has been approved, some other approvals are not required, such as Aboriginal cultural heritage.⁹³ Other approvals, like an environmental protection licence, must be given on terms substantially consistent with the development consent.⁹⁴
- [48] The development consent applicant, or a person who made an objection as part of their submission, may appeal the decision to the New South Wales Land and Environment Court, which considers the merits of the decision and can make the decision again.⁹⁵ However, no appeal is possible if the IPC is the entity deciding the development consent application and it holds a public hearing.⁹⁶ As noted above, this is currently the usual practice for all mining in New South Wales.
- [49] Any person can bring judicial review proceedings in the Land and Environment Court about the development consent application decision.⁹⁷

Figure 3: Overview of State significant development consent and mining lease application processes in New South Wales*



* This diagram represents the processes for mining activities that require State significant development consent, where the IPC decides the application and holds a public hearing. This is the usual process for mining in New South Wales.

† The mining lease application can be made at any stage of the development consent process.

‡ The mining lease cannot be granted unless State-significant development consent has been granted and must be approved in a way that is substantially consistent with the development consent.

Table 5: Ways to participate in the government’s decision-making processes for relevant authorisations – Qld and NSW

	QLD	NSW	QLD	NSW
Application	Mining lease	Mining lease	Environmental authority	State significant development consent
Notification required	✓	✓	✓	✓
Public submissions			✓	✓
Objections	✓ by any person	✓ only by landholders and exploration licence holders (if development consent required)	✓ by person who made submission	
Objections hearing	✓ Land Court (if objection)	– Secretary determines if agricultural land (if landholder objection about agricultural land)	✓ Land Court (if objection)	
Public forum				✓ may be required
Review				* appeal to Land and Environment Court not available if Independent Planning Commission holds public hearing

Northern Territory

- [50] A mineral lease allows a miner to occupy the land and exclusively mine minerals, among other associated rights.⁹⁸
- [51] The miner must obtain a separate mining authorisation that allows them to carry out the mining activities detailed in the approved mining management plan.⁹⁹ The conditions of the mining authorisation must be consistent with the conditions for the mineral lease.¹⁰⁰
- [52] Mining activities that could have a significant impact on the environment must be referred to the Northern Territory Environmental Protection Authority (NT EPA) to determine if an environmental impact assessment and environmental approval is required.¹⁰¹ If a referral has been made, the mining authorisation cannot be given or the mining management plan approved until a determination has been made about whether environmental impact assessment is required and, if so, the assessment process has been completed and the environmental approval granted.¹⁰² The environmental approval authorises the miner to undertake the approved mining activities in accordance with the approval and any conditions and the requirements of the Environment Protection Act 2019 (NT).¹⁰³

Quick guide: Northern Territory

Relevant authorisations covered

- mineral lease
- mining authorisation
- environmental approval

Opportunities for participation

- landowner objections and public submissions on the mineral lease application
- public submissions as part of any environmental impact assessment process, may include a public hearing

Review of decisions

- review of certain decisions about mining management plan and mining authorisation
- judicial review of administrative decisions

Mineral lease

- [53] Mineral leases are granted by the Minister for Mining under the Mineral Titles Act 2010 (NT). The responsible agency is the Department of Industry, Tourism and Trade.
- [54] An application for a mineral lease must be in the approved form, describe the land applied for, show that mining will be economically viable and summarise the work that is proposed to be carried out.¹⁰⁴
- [55] The applicant must give direct notice of the application to 'landowners', which includes pastoral lessees and Native Title holders.¹⁰⁵ If the Minister considers the miner has not given notice to a person who should have been notified, they may direct the miner to notify that person.¹⁰⁶ The Minister must give public notice by advertising the application in a newspaper that circulates throughout the Territory.¹⁰⁷ The Government also publishes the advertised applications on their website.¹⁰⁸
- [56] Landowners can object to the grant of a mineral lease over their land and any other person can make submissions about the application.¹⁰⁹ These are sent to the applicant, who can respond in writing to the Minister. The applicant may give a copy of the response to the person who made the objection or submission.¹¹⁰ The Minister must consider all objections, submissions and responses before deciding whether to grant the mineral lease.¹¹¹

- [57] The Minister may decide to refer the application to the Northern Territory Civil and Administrative Tribunal to conduct a hearing and make a recommendation to the Minister. The applicant and landowners who objected are parties to that hearing. The Minister must consider, but is not required to follow, the Tribunal's recommendation in deciding the application.¹¹²
- [58] The Minister must also consider all other matters required by the Mineral Titles Act 2010 (NT) and be satisfied that all the procedures relevant to the application have been completed.¹¹³ For example, if the application relates to Aboriginal land or Native Title land, the Minister must be satisfied that all procedures under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) and Native Title Act 1993 (Cth) have been followed.¹¹⁴ There are also particular procedures for land in a declared park or reserve.¹¹⁵
- [59] There is no opportunity to apply to the Tribunal for merits review of the Minister's decision on the application.¹¹⁶ A person with a special interest may be able to seek judicial review of the Minister's decision on the application and Tribunal recommendation in the Supreme Court. In the Northern Territory, judicial review is governed by the common law.¹¹⁷

Mining authorisation

- [60] Mining authorisations are granted by the Minister for Mining under the Mining Management Act 2001 (NT).¹¹⁸ The responsible agency is the Department of Industry, Tourism and Trade. The Act does not include any requirements for public notification or participation as part of the government's process to decide whether to grant the mining authorisation.
- [61] An application for a mining authorisation must be made in writing to the Minister and be accompanied by a proposed mining management plan. Among other things, the mining management plan must include details about how the mining activities will be carried out, the management of environmental risks and stakeholder engagement.¹¹⁹
- [62] The Minister decides whether to approve the mining management plan and grant the authorisation. To approve the mining management plan, the Minister must be satisfied that it is appropriate, will operate effectively to protect the environment and water rights, and that the mining activities will be carried out according to good industry practice.¹²⁰
- [63] Under the Mining Management Act 2001 (NT), any person may apply for a review of the merits of a decision refusing to approve a mining management plan and grant an authorisation, or a decision imposing conditions on the mining authorisation. Applications for review are made to the chief executive officer and the decision is reviewed by a review panel. The review panel can confirm, vary or set aside the decision under review and make a new decision.¹²¹
- [64] Reforms are progressing to repeal the Mining Management Act 2001 (NT) and replace the current requirements to obtain a mining authorisation and approved mining management plan with a new 3-tier environmental (mining) licence. The new scheme will operate under the Environment Protection Act 2019 (NT) and the licence will be issued by the Minister for Environment, Climate Change and Water Security: see Box 3.¹²²

Box 3: Environmental (mining) licence

The Environment Protection Legislation Amendment Act 2023 (NT) proposes to insert new Parts 5A, 5B and 5C in the Environment Protection Act 2019 (NT), establishing an environmental (mining) licence scheme to manage the environmental impacts of mining activities.

The licence may be a standard, modified or tailored condition licence, depending on the kind of mining activity and level of risk.¹²³ If an environmental approval is required, there will be no opportunity for the public to participate in the licencing process.¹²⁴ However, if no environmental

approval is required for the mining activities and the licence applied for is modified or tailored, a public notification and submissions period will apply.¹²⁵ An environmental (mining) licence cannot be inconsistent with an environmental approval for the same mining activity.¹²⁶

A person who has made a 'genuine and valid' submission during the environmental (mining) licensing process may seek judicial review of decisions.¹²⁷

These provisions have not yet commenced. They are expected to commence in July 2024.¹²⁸

Environmental approval

[65] The Environment Protection Act 2019 (NT) establishes an environmental impact assessment and approval process. Environmental approvals are granted by the Minister for Environment, Climate Change and Water Security and the responsible agency is the Department of Environment, Parks and Water Security. Environmental impact assessments are conducted by the NT EPA, an independent body established by legislation.¹²⁹

[66] If a proposed action, including mining activity, has the potential to have a 'significant impact' on the environment, the miner must refer it to NT EPA: see Box 4.¹³⁰ The Minister for Mining can also refer the action and the NT EPA may, by written notice, request the miner to refer the action.¹³¹

Box 4: 'Significant impacts'

The Environment Protection Act 2019 (NT) defines 'action' to include a project, development, undertaking, activity or series of activities, works, or a 'material alteration' of any of those things.¹³²

An 'impact' of an action is an event or circumstance that is a direct or indirect consequence of the action and may be a cumulative impact that occurs over time. A 'significant impact' of an action is 'an impact of major consequence', having regard to the context and intensity of the impact and the sensitivity, value and quality of the environment impacted on and the duration, magnitude and geographic extent of the impact.¹³³

[67] After referral, the NT EPA determines if the proposal will have a significant impact on the environment and environmental impact assessment is required and, if so, the method or 'tier' of assessment. Depending on the level of risks, potential impacts and complexity of the proposal, the method may be:¹³⁴

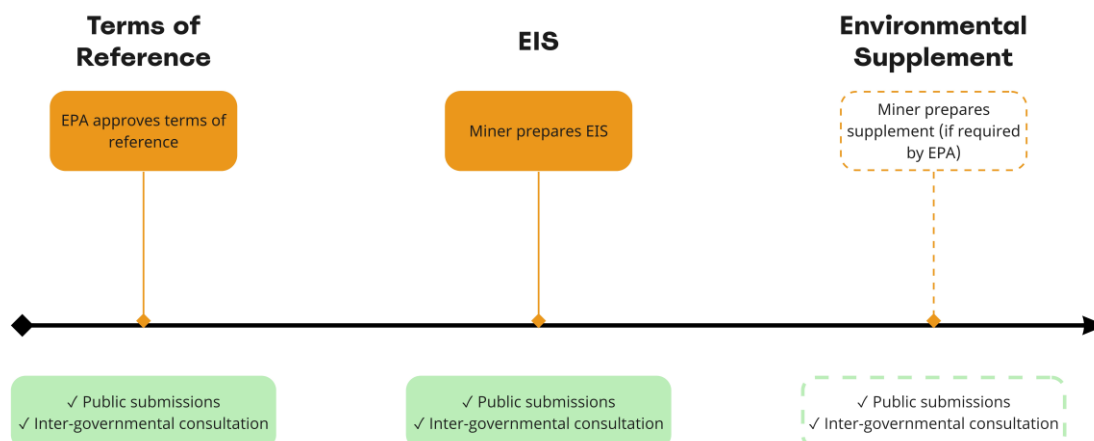
- assessment on the referral information (tier 1)
- assessment by supplementary environmental report (tier 2)
- assessment by environmental impact statement (tier 3)
- assessment by inquiry.

[68] The NT EPA will consult with government agencies and seek public submissions on what the appropriate method should be.¹³⁵

[69] There are different opportunities for participation depending on the tier of assessment. Throughout the referral and assessment process, the legislation includes various requirements for the publication of notices (for example, seeking public submissions) and documents. The NT EPA must also directly notify the proponent of the proposal of certain decisions.¹³⁶

[70] The most comprehensive form of assessment is environmental impact statement (tier 3), which allows for at least 2 opportunities for public submissions: see Figure 4.¹³⁷ Tier 2 includes at least one opportunity for public submissions as part of the assessment,¹³⁸ and tier 1 includes no opportunities (other than as part of the initial consultation to determine what the method of assessment should be).¹³⁹ Submissions may be made in writing, orally or in any other manner approved by the NT EPA.¹⁴⁰

Figure 4: Participation in the environmental impact statement process – NT



[71] All tiers of environmental impact assessment may be supplemented by a public inquiry, if the NT EPA believes it would be appropriate for stakeholders (for example, because of cultural or language barriers in impacted communities).¹⁴¹ The NT EPA conducts the inquiry but may appoint a panel to assist.¹⁴² An inquiry may involve public hearings, where the public can attend and make submissions.¹⁴³ At the conclusion of the inquiry, the NT EPA or panel must prepare a report about the inquiry, which is published.¹⁴⁴ An inquiry may be used as the sole assessment method.

[72] After completing the assessment, the NT EPA drafts a report for the Minister.¹⁴⁵ Accompanying this report will be either a draft environmental approval with conditions or a draft statement of unacceptable impact, whichever the NT EPA concludes is appropriate.¹⁴⁶ The NT EPA must publish a notice stating where those documents provided to the Minister may be obtained or inspected.¹⁴⁷

[73] The Minister then decides whether to grant, grant with conditions or refuse the environmental approval.¹⁴⁸ In making this decision, they must consider:¹⁴⁹

- the objects of the Environment Protection Act 2019 (NT)¹⁵⁰
- the NT EPA's assessment report
- whether the miner is fit and proper to hold the environmental approval¹⁵¹
- any other matters they consider relevant.

[74] The Minister must also be satisfied that the community has been consulted on the environmental impacts and benefits of the proposed action, that any significant impacts have been appropriately managed and that offsets may be utilised for significant residual impacts.¹⁵²

[75] Environmental approvals and statements of reasons are published on the department's website.¹⁵³

[76] Under the Environment Protection Act 2019 (NT), a person who made a 'genuine and valid' submission during the environmental impact assessment and environmental approval process may seek judicial review of a decision by the Minister and the NT EPA.¹⁵⁴ Judicial review may also be sought by a proponent of the action to which the decision relates, an applicant, or a person who is directly affected by a decision.¹⁵⁵

Table 6: Ways to participate in the government's decision-making processes for relevant authorisations – Qld and NT

	QLD	NT	QLD	NT	
Application	Mining lease	Mineral lease	Environmental authority	Environmental approval	Mining authorisation
Notification required	✓	✓	✓	✓	
Public submissions		✓	✓	✓	
Objections	✓ by any person	✓ only by landholders	✓ by person who made submission		
Objections hearing	✓ Land Court (if objection)	✓ NT Civil and Administrative Tribunal (if referred by Minister)	✓ Land Court (if objection)		
Public forum				✓ may be required	
Review					✓ application to chief executive officer for review of decision to grant or decision imposing conditions (by any person)

British Columbia, Canada

Quick guide: British Columbia

- [77] Mining leases are the main authority that give subsurface title rights to the miner. The miner must also have a mining permit before they can start work that causes any substantive disturbance.¹⁵⁶
- [78] The mining permit process considers and evaluates the impacts of the proposed mining project and, if granted, allows the miner to develop and operate the mine.¹⁵⁷
- [79] Mines that meet the criteria for 'reviewable projects' must also undergo an environmental assessment and obtain an environmental assessment certificate. The environmental assessment considers the environmental, economic, social, cultural and health effects of the proposed mining project.¹⁵⁸
- [80] The environmental assessment process must be completed before the mining permit or any other environmental management permits can be approved.¹⁵⁹

Relevant authorisations

- mining lease
- environmental assessment certificate
- mining permit

Opportunities for participation

- extensive public engagement opportunities in the environmental assessment process, which can include:
 - development and approval of an engagement plan for each environmental assessment
 - multiple public engagement and comment periods
 - the establishment of a community advisory committee
 - consensus-seeking with participating Indigenous nations
- targeted public engagement, consultation and outreach in the mining permit process encouraged (may be required)

Review of decisions

- judicial review of administrative decisions

Mining lease

Mining leases for minerals

- [81] Mining leases for minerals are granted by the Chief Gold Commissioner under the Mineral Tenure Act 1996 (BC).¹⁶⁰ The responsible agency is the Ministry of Energy, Mines and Low Carbon Innovation.
- [82] To apply for a mining lease, the miner must hold a free miner certificate issued by the Mineral Titles Office (Ministry of Energy, Mines and Low Carbon Innovation).¹⁶¹ The miner must also hold a mineral claim, which allows the miner to explore the proposed mine site and undertake limited production.¹⁶²
- [83] Mining lease applications must be publicly notified. The miner must publish a notice in the prescribed form in the British Columbia Gazette and in a local newspaper.¹⁶³ Notice must also be given to owners of surface areas of land or leaseholders of public land where mining activities will occur.¹⁶⁴
- [84] There is no opportunity for members of the public to object to the grant of the mining lease on public interest grounds. Opportunities to contest the grant of the lease are limited to persons claiming a right to the minerals or mineral title.¹⁶⁵
- [85] If the Chief Gold Commissioner is satisfied that certain survey and public notice requirements are complete and the miner has paid the prescribed fee, they must issue a mining lease to the miner (which may be subject to conditions).¹⁶⁶

Mining leases for coal

- [86] Mining leases for coal are granted by the Minister of Energy, Mines and Low Carbon Innovation under the Coal Act 2004 (BC).¹⁶⁷ The responsible agency is the Ministry of Energy, Mines and Low Carbon Innovation.
- [87] To apply for a mining lease for coal, a free miner certificate is not required. However, the miner must hold a licence to explore for coal.¹⁶⁸
- [88] The application for a mining lease for coal must be accompanied by payment of the prescribed application fee, prescribed rent and a survey plan. It must also include a plan of operations showing the exploration, development and production to be carried out on the location during the term of the lease, supported by data, feasibility studies and other relevant information the Minister may require to evaluate the application.¹⁶⁹
- [89] If the Minister is satisfied that these requirements are met, they must issue a mining lease to the miner (which may be subject to terms and conditions).¹⁷⁰

Environmental assessment certificate

- [90] Large projects, including mines, that meet the criteria and thresholds for a 'reviewable project' must undergo an environmental assessment and cannot proceed without an environmental assessment certificate (or an exemption order): see Box 5.¹⁷¹ Environmental assessment certificates are granted by the Minister of Environment and Climate Change Strategy and the Minister of Energy, Mines and Low Carbon Innovation under the Environmental Assessment Act 2018 (BC).¹⁷²

Box 5: 'Reviewable projects'

The criteria and thresholds for 'reviewable projects' under the Environmental Assessment Act 2018 (BC) are set out in the Reviewable Projects Regulation 2019 (BC). For example, the criteria includes new mine facilities that will have a production capacity greater than or equal to 75 000 tonnes of mineral ore or 250 000 tonnes of coal per year. It also includes a project that emits 380 000 tonnes or more per year of greenhouse gases, or that includes one or more facilities located, in whole or in part, in an area prescribed as a protected area where the project will have a significant adverse environmental, economic, social, cultural or health effect in the area.¹⁷³ Existing mines may meet the threshold if they meet the production volumes and the project results in new land disturbance that is at least 50% of the area that was previously disturbed.

The miner must also notify the Environmental Assessment Office of a project that is within a set margin below the threshold for a reviewable project so that the project can be tracked and a decision made about whether the project should undergo an environmental assessment.¹⁷⁴

The Minister of Environment and Climate Change Strategy can also designate a project that is not reviewable under the criteria and thresholds to be a reviewable project, either on the Minister's own initiative or by request, if it is in the public interest.¹⁷⁵

The miner may apply to the Minister of Environment and Climate Change Strategy to designate a project as reviewable.¹⁷⁶

- [91] Environmental assessments are conducted by the Environmental Assessment Office (EAO), a regulatory agency within the provincial Government established by the Environmental Assessment Act 2018 (BC).¹⁷⁷

[92] The EAO works with and seeks input from scientific professionals, Indigenous groups, the public, and a range of government agencies and advisory committees to ensure all the project's potential environmental, economic, social, cultural and health effects are assessed.¹⁷⁸

[93] The key stages of the environmental assessment process are:¹⁷⁹

- early engagement: potential interests, issues and concerns are identified and engagement approaches considered.
- readiness decision: a decision is made on whether a project should proceed to an environmental assessment. Occasionally, a decision may be made to terminate or exempt a project from an environmental assessment.
- process planning: formalises how the environmental assessment must be carried out, including:
 - identifying the required information
 - defining who does what, when and how
 - determining how participants work together for the rest of the environmental assessment and future engagement process.
- application development and review: the miner conducts technical studies to develop the application and works with participating Indigenous nations and environmental assessment participants to develop the application for an environmental assessment certificate. The application is reviewed by the EAO, participating Indigenous nations, the technical advisory committee that must be established for each environmental assessment, and any community advisory committee.
- effects assessment: an effects assessment of the project is conducted and a draft assessment report and draft environmental assessment certificate prepared. There is opportunity for the public to comment on these documents.
- recommendation: recommendations on the project are made to inform the decision-makers. The application for an environmental assessment certificate, along with the recommendations and reasons for the recommendations, are referred to the ministers for decision.
- decision: the Minister of Environment and Climate Change Strategy and the Minister of Energy, Mines and Low Carbon Innovation decide whether to issue an environmental assessment certificate and, if so, under what conditions.¹⁸⁰

[94] There are extensive opportunities for public engagement and information-sharing throughout the assessment process, including the following:

- during the early engagement stage, miners for reviewable projects may submit an initial project description and engagement plan to be approved by the chief executive assessment officer of the EAO.¹⁸¹
- the chief executive assessment officer of the EAO must:
 - hold a minimum of 4 public engagement and comment periods throughout the process, including on the initial project description, the draft process order, the application for an environmental assessment certificate and the draft report and environmental assessment certificate, with proposed conditions and project description.¹⁸² They may only hold fewer if the public has not demonstrated sufficient interest, and may hold additional public comment periods and carry out other public engagement activities in relation to a process.¹⁸³

- establish a community advisory committee if they consider there is sufficient community interest in a project.¹⁸⁴ The committee is made up of community representatives that advises the EAO on the potential effects of the proposed project on the community.¹⁸⁵
- maintain the EAO's 'project information centre' to facilitate public access to information.¹⁸⁶

[95] There is also a strong focus on participation by, and consensus-seeking with, potentially affected Indigenous nations. The legal entitlement to participate for Indigenous nations stems from 3 distinct sources. They are:

- a constitutionally recognised and affirmed treaty right (clarified in recent decisions by the Supreme Court of Canada).¹⁸⁷
- reconciliation agreements between Indigenous nations and Government. British Columbia has passed the Declaration on the Rights of Indigenous Peoples Act 2019 (BC), which provides a framework for reconciliation and a mechanism for negotiating joint decision-making with Indigenous governing bodies.¹⁸⁸ Under that Act, the Declaration on the Rights of Indigenous Peoples Act Action Plan 2022–2027 has been developed, a key action of which is to advance collaborative land and resource management.¹⁸⁹
- consultation requirements in the Environmental Assessment Act 2018 (BC) and associated subordinate legislation.

[96] Indigenous nations that may be adversely affected by the project may opt to participate in the environmental assessment process as a 'participating Indigenous nation'.¹⁹⁰ The EAO will seek to achieve consensus with participating Indigenous nations throughout the environmental assessment process.¹⁹¹ Participating Indigenous nations have the opportunity to provide notice of their consent or lack of consent at different points throughout the environmental assessment process and to the issuing of an environmental assessment certificate.¹⁹² If a participating Indigenous nation does not consent to the issuing of the environmental assessment certificate, the Ministers must offer to meet with the participating Indigenous nation before making the final decision on whether to issue or refuse to issue the environmental assessment certificate.¹⁹³

[97] After the environmental assessment is completed, the Minister of Environment and Climate Change Strategy and the Minister of Energy, Mines and Low Carbon Innovation decide whether to issue an environmental assessment certificate. In making the decision, the Ministers must consider the EAOs assessment report and chief executive assessment officer's recommendations, the sustainability and reconciliation purposes of the EAO and any other matters they consider relevant to the public interest. They must also consider the consent or lack of consent of participating Indigenous nations and the reasons for this. The Ministers must publish reasons for their decision.¹⁹⁴

[98] There is no right to apply for a review of the merits of a decision to grant an environmental assessment certificate. However, administrative decisions may be subject to judicial review in the Supreme Court of British Columbia.¹⁹⁵

Mining permit

[99] The miner must hold a permit issued under section 10 of the Mines Act 1996 (BC) to engage in any mining activity (including activities done under a mining lease). This permit must be in place before any work in, on or around a mine can occur. Mining permits are issued by the Chief Permitting Officer.

- [100] While the environmental assessment process is designed to collect and consider information during the conceptual phase of a project, the permit process focusses on the technical details of a project and enables the government to consider and evaluate its impacts.¹⁹⁶
- [101] Different permit paths are available, depending on the scope and nature of the proposed project. The Energy, Mines and Low Carbon Innovation Major Mines Office manages the coordinated authorisations process for new mineral and coal mines and large and complex projects.¹⁹⁷
- [102] To apply for a permit, the miner must file a plan detailing the proposed work and a program for conservation of cultural heritage resources and protection and reclamation of the land, watercourses and cultural heritage resources affected by the mine.¹⁹⁸ This includes information, particulars and maps established by regulation or by the Health, Safety and Reclamation Code for Mines in British Columbia.¹⁹⁹
- [103] Depending on the complexity of the proposal, an application may be reviewed by the relevant regional Mine Development Review Committee (established by the Chief Permitting Officer)²⁰⁰ or a project-specific Mine Review Committee (comprised of government, Indigenous nations and stakeholder groups).²⁰¹ These committees are advisory and do not have decision-making authority.²⁰²
- [104] Public engagement activities may be required during the review period and government policy encourages the miner to engage the public (for example, by hosting informational open houses, making information available online and meeting with potentially affected stakeholders).²⁰³
- [105] There is no right to appeal the grant of a mining permit but the decision may be subject to judicial review in the Supreme Court of British Columbia.²⁰⁴

Table 7: Ways to participate in the government’s decision-making processes for relevant authorisations – Qld and British Columbia

	QLD	British Columbia	QLD	British Columbia	
Application	Mining lease	Mining lease	Environmental authority	Environmental assessment certificate	Mining permit
Notification required	✓	✓	✓	✓	✓ if required by Chief Permitting Officer
Public submissions			✓	✓	
Objections	✓ by any person		✓ by person who made submission		
Objections hearing	✓ Land Court (if objection)		✓ Land Court (if objection)		
Public forum				✓ may be required	✓ may be required
Review					

South Africa

- [106] The regulation of mining in South Africa occurs at the federal level.²⁰⁵
- [107] To carry out mining, a miner must have a mining right and environmental authorisation.²⁰⁶
- [108] The mining right and the environmental authorisation must be applied for simultaneously and will be publicly notified together.²⁰⁷ The environmental authorisation must be issued before the mining right can be granted.²⁰⁸

Mining right

- [109] Mining rights are regulated under the Mineral and Petroleum Resources Development Act 2002 (South Africa) and granted by the Minister of Mineral Resources and Energy.²⁰⁹ The responsible agency is the Department of Mineral Resources and Energy.
- [110] A mining right application, accompanied by an application for an environmental authorisation, must be submitted to the Regional Manager of the department in the province in which mining is to take place.²¹⁰
- [111] The application must include various documents set out in the legislation and any other additional information or documents that the Minister of Mineral Resources and Energy requests.²¹¹
- [112] The Regional Manager must publish a notice of the application and invite interested and affected parties to send comments, concerns and objections to the department within 30 days of the notice.²¹²
- [113] Any person can object to the mining right application.²¹³ There are no statutory limitations on the content or scope of an objection, and they generally involve the entire spectrum of environmental, economic and social aspects of an application.²¹⁴
- [114] An objection triggers the referral to the Regional Mining and Development Environment Committee.²¹⁵ This is an internal government committee that consists of representatives from relevant government departments or other organs of state, chaired by the relevant Regional Manager.²¹⁶ The committee considers the objections and advises the Minister of Mineral Resources and Energy.²¹⁷
- [115] In addition to the public notice requirement, the miner is required to undertake meaningful consultation with landowners, lawful occupiers and interested and affected persons. This consultation is to take place through the environmental impact assessment public participation process.²¹⁸

Quick guide: South Africa

Relevant authorisations

- mining right
- environmental authorisation

Opportunities for participation

- public comments and submissions on mining right application
- objections to mining right application
- public comments and submissions as part of environmental impact assessment process
- public meeting as part of environmental impact assessment process

Review of decisions

- appeals to the Minister on decision about mining right and environmental authorisation
- judicial review of administrative decisions

- [116] The Minister for Mineral Resources and Energy must grant a mining right if an environmental authorisation has been granted and the mining will not result in unacceptable pollution, ecological degradation or damage to the environment, and if all the other requirements in the Act are satisfied (including that the miner has access to financial resources and has the technical ability to conduct the mining operations optimally).²¹⁹ If the application relates to land occupied by a community, the Minister may impose conditions to promote the rights and interests of the community, including those requiring the participation of the community.²²⁰
- [117] Generally, mining companies are exempt from obtaining landowner consent to mine.²²¹ However, following a 2018 landmark High Court case, where land is subject to informal land rights, the consent of the right holders is required before a mining right can be granted.²²²
- [118] Any aggrieved or adversely affected person can appeal the decision on the mining right.²²³ The appeal is by way of internal review. The Minister of Mineral Resources and Energy will either set aside the decision to grant the right, or amend the terms of the right, or confirm the decision.²²⁴
- [119] Judicial review on the administrative decision is also available under the Promotion of Administrative Justice Act 2000 (South Africa). However, all internal remedies must first be exhausted prior to applying to the court for review.²²⁵

Environmental authorisation

- [120] The environmental authorisation is regulated under the National Environmental Management Act 1998 (South Africa), which is generally administered by the Department of Forestry, Fisheries and Environment. However, the Minister of Mineral Resources and Energy is delegated the power over environmental authorisations relating to mining activities.²²⁶
- [121] Applications for environmental authorisations are to be made in the approved form and comply with the prescribed content requirements.²²⁷
- [122] Following acceptance of the application by the Regional Manager, the miner must undertake a scoping and environmental impact assessment process.²²⁸ The requirements of this, including participation requirements, are set out in the Environmental Impact Assessment Regulations 2014 and the associated guideline.²²⁹
- [123] The applicant must appoint an independent Environmental Assessment Practitioner to conduct the impact assessment and facilitate the public participation processes.²³⁰
- [124] The scoping and environmental impact assessment process involves the following steps:²³¹
- draft scoping report is made available to all interested and affected parties and subject to a public participation process of at least 30 days.²³² As part of this process a public meeting is generally held for comments to be made.²³³ The department is also able to make comments on the draft report.²³⁴
 - the scoping report, which reflects incorporation of comments received, is submitted to the department for review.²³⁵
 - if the scoping report is accepted, the application continues with the environmental impact assessment process and a draft environmental impact assessment report is developed.²³⁶
 - the draft environmental impact assessment report must go through a public participation process of a least 30 days. A public meeting is generally held to allow comments on the draft report.²³⁷
 - the environmental impact assessment report, which reflects the incorporation of comments received, is then submitted to the department for consideration.²³⁸

- [125] After the process is completed, the Regional Manager forwards all assessment material to the Minister of Mineral Resources and Energy for decision. The Minister either grants the environmental authorisation in all or part or refuses the application.²³⁹ In making the decision, the Minister must consider a range of prescribed criteria,²⁴⁰ including the principles of the National Environmental Management Act 1998 (South Africa).²⁴¹ The principles include that ‘the environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people’s common heritage’.²⁴²
- [126] Notice of the decision will be provided to the applicant,²⁴³ who is then required to forward the details to all interested and affected parties.²⁴⁴
- [127] Any person that disagrees with the decision on the environmental authorisation can appeal the decision. Despite the original decision being made by the Minister of Mineral Resources and Energy, appeals are made to the Minister of Forestry, Fisheries and Environmental Affairs.²⁴⁵
- [128] Lodging an appeal suspends the environmental authorisation,²⁴⁶ which effectively prohibits mining activities from taking place until the appeal is resolved. The Minister may consider and decide the appeal or appoint an appeal panel to consider and advise on the appeal.²⁴⁷ The Minister may confirm, set aside or vary the original decision.²⁴⁸
- [129] Judicial review is also available under the Promotion of Administrative Justice Act 2000 (South Africa).

Table 8: Ways to participate in the government’s decision-making processes for relevant authorisations – Qld and South Africa

	QLD	South Africa	QLD	South Africa
Application	Mining lease	Mining right	Environmental authority	Environmental authorisation
Notification required	✓	✓	✓	✓
Public submissions		✓	✓	✓
Objections	✓ by any person	✓ by any person	✓ by person who made submission	
Objections hearing	✓ Land Court (if objection)	✓ Regional Mining Development and Environmental Committee (if objection)	✓ Land Court (if objection)	
Public forum				✓
Review		✓ appeal to Minister on decision on the application (by aggrieved or adversely affected person)		✓ appeal to Minister on decision on the application (by any person)

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 - 21 Mining Act 1978 (WA) s 105; Mining Regulations 1981 (WA) regs 24, 59.
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 - 27 Mining Act 1978 (WA) ss 8 (definition of 'warden'), 13, 127.
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