



Mining lease objections review

Introducing our review

Background paper 1

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Postal address: PO Box 13312, George Street Post Shop, Brisbane, QLD 4003

Telephone: (07) 3564 7777

Email: LawReform.Commission@justice.qld.gov.au

Website: [www.qlrc.qld.gov.au](http://www qlrc.qld.gov.au)

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Summary

A range of laws apply to mining projects. These laws establish various processes for miners to obtain approvals. As part of these processes, different public and private interests are considered.

One of the main ways for members of the community to participate in mining projects is by objecting to an application for:

- a mining lease (under the Mineral Resources Act 1989)
- an associated environmental authority (under the Environmental Protection Act 1994).

The making of an objection triggers the referral of the application and objection to the Land Court, which makes a recommendation to the relevant government decision-maker. The decision-maker must take the recommendation into account in making their decision to grant, grant with conditions, or refuse the mining lease application or environmental authority.

We have been asked by the Attorney-General to review those objections processes. The referral of this review is one of the actions of the Queensland Resources Industry Development Plan.

This background paper is our first publication for our review. Its purpose is to:

- explain what the review is about
- identify our principles and the key issues
- give a summary of the current application and objection processes for mining leases and associated environmental authorities and identify other relevant laws
- give information about our process and timeline.

Our aim is to make recommendations to ensure the process is:

- fair
- efficient
- effective
- contemporary.

These are our guiding principles for reform.

We have identified the following key issues to focus on in making recommendations about the process:

- defining the critical elements
- maximising efficiency
- ensuring effective community involvement and participation
- maintaining integrity and rigorous merits assessment
- conforming to the wider legislative context
- facilitating consistency.

We will use this background paper for the purpose of preliminary discussions about our review and we invite feedback on our principles and the key issues.

Terms of reference: extract

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

Scope

1. The Commission is asked to review and make recommendations about the processes to decide contested applications for mining leases under the Mineral Resources Act 1989 and associated environmental authorities under the Environmental Protection Act 1994, including review of such decisions (the objections processes).
2. The Commission is asked to have regard to:
 - (a) the fairness, efficiency and effectiveness of the objections processes;
 - (b) providing opportunities for community participation, including access to justice and the cost of participating;
 - (c) maintaining the ability for a court to consider the relative merits of mining lease applications and related environmental authorities;
 - (d) the basis of standing to make an objection and participate in the objections processes, including for community members and relevant government entities;
 - (e) the role of statutory criteria under the Mineral Resources Act 1989 and the Environmental Protection Act 1994 in making an objection, deciding an application, and reviewing the decision;
 - (f) at what stage or stages in the process, an entity, such as an advisory panel or a court, should consider an objection to an application, and what role that entity should play in the process to decide an application or review a decision on the application;
 - (g) practices and procedures for the conduct of proceedings or hearings to decide an application and to review a decision, that would enhance the fairness, efficiency and effectiveness of the objections processes; and
 - (h) the government election commitment, which was delivered, to reinstate third party notification and objection rights for mining lease and related environmental authority approvals.
3. Noting that different regulatory frameworks apply, the Commission is also asked to consider whether any recommended changes to the objections processes should apply to applications for resource production tenures under the following Acts:
 - (a) Greenhouse Gas Storage Act 2009
 - (b) Geothermal Energy Act 2010
 - (c) Petroleum and Gas (Production and Safety) Act 2004

4. In making its recommendations, the Commission is asked to consider:
 - (a) how any recommended process would interact with decisions made under other Acts including:
 - i. Aboriginal Cultural Heritage Act 2003
 - ii. Torres Strait Islander Cultural Heritage Act 2003
 - iii. State Development and Public Works Organisation Act 1971
 - iv. Water Act 2000
 - v. Planning Act 2016
 - vi. Local Government Act 2009
 - vii. Environment Protection and Biodiversity Conservation Act 1999 (Cwth)
 - viii. Native Title Act 1993 (Cwth)
 - (b) the implications of other Acts including:
 - i. Human Rights Act 2019
 - ii. Judicial Review Act 1991
 - (c) any amendments to current legislative frameworks that will be required to implement any recommended process.
5. In making its recommendations, the Commission is also asked to consider:
 - (a) current legislative and regulatory frameworks in other Australian and comparative international jurisdictions
 - (b) views expressed to the Commission during stakeholder consultation; and
 - (c) any other matters the Commission considers relevant.

[View the full terms or reference on our website](#)¹

What our review is about

- 1 Our review is about the processes for obtaining a mining lease and an associated environmental authority for a mining project. Specifically, it is about public participation in the decisions about whether to grant them. The primary method of public participation is through the objections processes for:²
 - a mining lease application, under the Mineral Resources Act 1989 ('Mineral Resources Act')
 - an associated environmental authority, under the Environmental Protection Act 1994 ('Environmental Protection Act').
- 2 Mining projects are long-term projects. The life cycle of a mine goes through different stages, from exploration (including locating minerals and assessing the mine's viability), through to development, mining and rehabilitation activities and the closure of the mine. Although our review concerns approvals to mine, not explore, we must have regard to the full life cycle of a mine to make appropriate recommendations about the objections processes.
- 3 Public and private interests in mining projects include sustainable growth and development, protecting the environment, recognising and protecting cultural heritage and native title and community, agricultural and landowner interests.
- 4 A range of Queensland and Australian laws apply to mining projects. These laws establish various assessment and approval processes. As part of these processes, different interests can be considered.
- 5 One of the ways different interests can be considered is through the objections processes. If any person objects to an application for a mining lease or an associated environmental authority, the Land Court of Queensland must conduct a mining objection hearing. If there are objections to both the mining lease application and the associated environmental authority, the Court will hear them together.
- 6 The Land Court must consider the merits of the application and objections, having regard to the matters specified in the relevant Act (the statutory criteria). It makes a recommendation to the relevant government decision-maker for each application. The decision-maker must take the recommendation into account in making their decision to grant, grant with conditions, or refuse the mining lease application or environmental authority.
- 7 The Land Court's role in the government's decision-making process is unusual for 2 reasons. First, because it occurs before the decisions on the applications are made. Second, rather than making a binding court decision, the Land Court makes a recommendation to the relevant decision-maker.
- 8 The Land Court's recommendation is an administrative decision.³ A person may apply to the Supreme Court under the Judicial Review Act 1991 for a review of whether that decision was properly made (known as 'judicial review'). The decision made by the relevant decision-maker after the Land Court's recommendation can also be judicially reviewed. There is no right to appeal to a court for a review on the merits of these decisions. This is different to the approval process for other types of development in Queensland. For example, under the Planning Act 2016, a non-mining development decision may be appealed to the Planning and Environment Court, which conducts a merits review.⁴

What we have been asked to do

- 9 The Government has asked us to review and make recommendations about the process to decide contested applications for mining leases and associated environmental authorities, including review of those decisions. People can contest mining lease applications and associated environmental authorities through the objections processes under the Mineral Resources Act and the Environmental Protection Act.
- 10 The process for obtaining a mining lease and an associated environmental authority is one of several processes that apply to mining projects. Our terms of reference ask us to consider how any changes we recommend to the objections processes will interact with decisions made under other relevant laws, discussed below.
- 11 We have also been asked to consider the implications of other Acts, including:
 - the Human Rights Act 2019
 - the Judicial Review Act 1991.
- 12 Unlike for mining lease applications, there is no opportunity to object to applications for the grant of resource production authorities under the Greenhouse Gas Storage Act 2009, the Geothermal Energy Act 2010 or the Petroleum and Gas (Production and Safety) Act 2004. The objections process that applies to environmental authorities associated with mining leases under the Environmental Protection Act 1994 does not apply to environmental authorities for these resource production authorities, although in certain situations there is a process for public notification as part of the application and some rights of internal review and appeal. We have been asked to consider whether any changes we recommend to the objections process for mining leases and associated environmental authorities should apply to applications for resource production authorities under those Acts.

Background to our review

- 13 Previous government policies and reviews have identified the need to improve the efficiency of the objections processes.⁵ Consultations and submissions for those reviews have raised concerns about their complexity, multiplicity, uncertainty, timeliness and cost, as well as the administrative role of the Land Court in the decision-making process.
- 14 In 2014, amendments were passed to limit who could object and the grounds on which objections could be made.⁶ However, those amendments were repealed before they commenced in 2016, in line with the incoming government's election commitment to reinstate third party notification and objection rights.⁷
- 15 In 2017, the Government committed to improve the efficiency and timeliness of resource and environmental authority processes. The Department of Natural Resources, Mines and Energy (as it then was) undertook public consultation. It released a report in 2019, in which the Government stated its commitment to seek opportunities to improve the regulatory framework and streamline assessment processes, while maintaining strong environmental standards and community participation rights.⁸
- 16 In 2022, the Government published the Queensland Resources Industry Development Plan (QRIDP). It contains the Government's commitment to ensuring that the regulatory framework for the State's resources industry is 'risk-based, efficient, effective and transparent' so that:⁹

- Queensland's resources are explored and developed in the public interest and
 - the community is confident that the resources industry is well regulated.
- 17 The QRIDP identifies six key focus areas, one of which is to improve regulatory efficiency. The referral of this review to the Queensland Law Reform Commission is one of the actions under that focus area.¹⁰
- 18 Our review is sought to examine the current objections processes and make recommendations that will ensure the processes for deciding contested mining lease applications and associated environmental authorities:¹¹
- are efficient, effective and support investment and sustainable growth in mining projects and
 - provide environmental protection, access to justice and opportunities for participation, including for First Nations peoples.

Our principles

- 19 Informed by the terms of reference, we have identified guiding principles for our review. We recognise that these principles will need to be reconciled and balanced in the development of our recommendations.
- 20 Our aim is to develop recommendations to ensure the process for deciding contested applications for mining leases and associated environmental authorities is:

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

- 21 Our review is occurring at a dynamic time for the resources industry in Queensland. Rapid developments in law, policy, industry, technology and science are taking place alongside increasing demand for critical minerals.¹²

- 22 Queensland is also at the start of its shared journey with Aboriginal and Torres Strait Islander peoples on the Path to Treaty and our review must reflect these developments, including in the ways in which government works together with First Nations peoples.¹³
- 23 The process for deciding contested mining lease applications and associated environmental authorities must be able to accommodate ongoing developments in a way that is fair, efficient, effective and contemporary.

The current objections processes

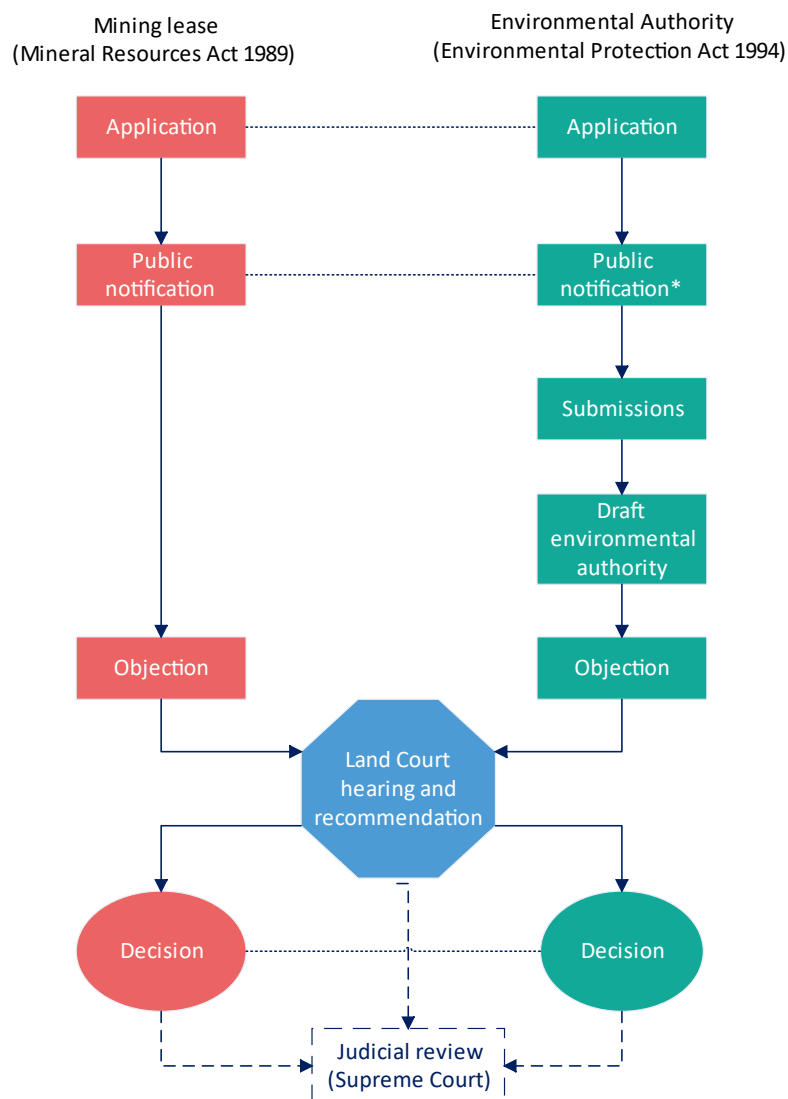
- 24 To machine-mine, a miner (a person or a resource company) must have a mining lease, granted by the Minister for Resources under chapter 6 of the Mineral Resources Act.
- 25 A mining lease can not be granted unless a valid environmental authority has been granted by the chief executive of the Department of Environment and Science under chapter 5 of the Environmental Protection Act.¹⁴ As part of the environmental authority process, an environmental impact statement may be required. This provides detailed information about the current environment in the relevant area, the anticipated environmental, social and economic effects of the project and ways to avoid, minimise, mitigate or offset them.
- 26 Members of the community can object to an application for a mining lease. They can also make submissions on the application for the environmental authority or on the environmental impact statement (if any) and then object.
- 27 If any person makes an objection to either or both applications, the relevant decision-maker (the Department of Resources or the Department of Environment and Science) must make a referral to the Land Court, which:
- conducts a hearing into the merits of the application and objections
 - makes a recommendation to the relevant decision-maker.
- 28 The Land Court has written a detailed [practice direction](#) that explains the procedure it uses to conduct a mining objection hearing.¹⁵
- 29 Each party to the mining objection hearing is responsible for their own costs. However, the Land Court can order one or more party pay the costs of another party. In making an order about costs, the Land Court will consider matters including whether all or part of the objection was started for an improper purpose.¹⁶
- 30 Applications for mining leases and associated environmental authorities are regulated by separate Acts and administered by different agencies, although they are connected at key points:
- only the applicant for a mining lease can apply for the associated environmental authority (the applications can be made at the same time or the mining lease application can be made first)
 - the miner must give public notice of the applications together (unless public notification has already been provided through an environmental impact statement that remains complete and current) and the processes for making objections are aligned
 - objections for mining lease applications and associated environmental authorities are heard by the Land Court together, if practicable

- the Land Court’s recommendation is made to the relevant decision-maker on each application before the final decision is made
- a mining lease can not be granted unless a valid environmental authority has been granted.

31 Decisions by the Land Court and by the relevant decision-makers are judicially reviewable by the Supreme Court under the Judicial Review Act 1991.

32 Our review is focussed on the current objections processes. We recognise there are existing mining lease and associated environmental authority applications that are subject to earlier versions of these laws. However, our summary is of the current law.

Figure 1: Simplified representation of how the mining lease and associated environmental authority objection processes connect



* The sequence and timing for notification will depend on the nature of the application and whether there is an environmental impact statement

Mining leases

- 33 Mining in Queensland is primarily regulated by the Mineral Resources Act, which aims to encourage and facilitate mining and development in a way that is consistent with sound economic and land use management.¹⁷ The responsible agency is the Department of Resources.
- 34 With limited exceptions, minerals are owned by the Government.¹⁸
- 35 Miners must have the relevant authority to access minerals. There are 5 types of resource authorities (also known as 'mining tenements' or 'tenures') that the Government may grant under section 6D of the Mineral Resources Act:
- prospecting permit
 - mining claim
 - exploration permit
 - mineral development licence
 - mining lease.
- 36 Those authorities give the miner various rights to access minerals (including minerals located on private land) and other rights to use land for the purpose of mining and development.
- 37 A mining claim is required for small-scale mining projects, using hand-mining and limited machinery (such as mines for gemstones).
- 38 A mining lease is required for larger-scale mining projects. It allows a miner to machine-mine the mineral or minerals specified in the lease and to do anything necessary to carry out that mining.¹⁹ A mining lease can also be granted for other activities associated with mining, such as building infrastructure to support mining operations and establishing a tailings dam.²⁰
- 39 Before obtaining a mining lease, the applicant typically will have explored the area under a prospecting permit, an exploration permit or a mineral development licence.²¹

Applications

- 40 A person (an adult or a company) can make an application to the Department of Resources (either the Mineral Assessment Hub or Coal Assessment Hub) for a mining lease. The applicant is required to show, among other things, that the area of land applied for is mineralised and that there will be an acceptable level of development and use of the mineral resources.²² A development plan is required for certain mining leases (such as for coal or for prescribed minerals).²³
- 41 If the applicant meets the application requirements the chief executive must give the applicant a written notice for the application (a 'mining lease notice').²⁴

Public notification and objections

- 42 The Mineral Resources Act requires the applicant to give public notice by:²⁵
- giving a copy of the mining lease notice and application directly to 'affected persons' (including landholders in or adjoining the proposed mining lease area and the relevant local government) and

- publishing notice in an approved newspaper circulating generally in the area of the proposed mining lease.
- 43 The miner may also choose to notify in other ways, for example on their website or by social media. The Department of Resources also publishes mining lease notice applications online.²⁶
- 44 Any person may object to an application for a mining lease in the timeframe allowed.²⁷ If there is no objection, the application will proceed to the Minister for decision.

Land Court hearing and recommendation

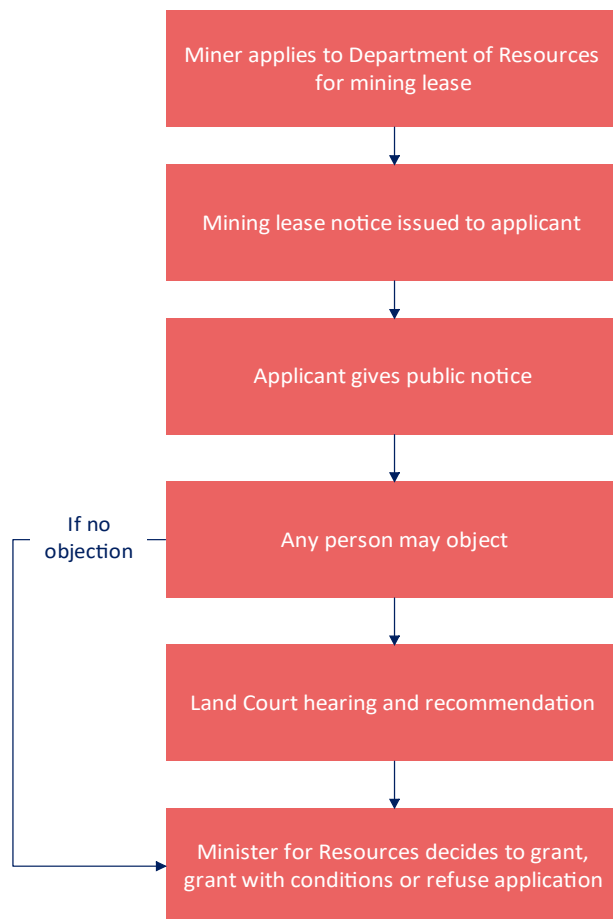
- 45 All properly made objections must be referred to the Land Court.²⁸
- 46 A person who has made an objection can choose to be heard and to call lay and expert evidence in a mining objection hearing in the Land Court.
- 47 The Land Court will hear the application and objections for the grant of the mining lease. It will only hear the grounds of objection (or hear evidence related to those grounds) stated in the objection.²⁹ The Land Court can receive evidence, hear persons and inform itself in the manner it considers appropriate to determine the merits of the application, objections and other matters.³⁰
- 48 The Land Court makes a recommendation to the Minister for Resources that the application is granted, granted with conditions or refused.³¹
- 49 In making its recommendation, the Land Court must consider the matters set out in section 269(4) of the Mineral Resources Act, including:³²
- if there will be an acceptable level of development and use of the mineral resources
 - the resource company's financial and technical capability to carry out the project
 - the past performance of the resource company
 - if the activities to be carried out under the mining lease will conform with sound land use management
 - if there will be any adverse environmental impact caused by the project (and, if so, its extent)
 - if the public right and interest will be prejudiced by the grant of the mining lease
 - if the proposed mining project is an appropriate land use (taking into consideration the current and prospective uses of the land).

Minister's decision

- 50 The Minister for Resources decides whether to grant the mining lease application, grant it with conditions or refuse the application. The Minister may also decide to refer the matter to the Land Court to conduct a hearing or further hearing on the application generally or on specific matters raised by the Minister.³³
- 51 In deciding the application, the Minister must consider:³⁴
- any Land Court recommendation for the application and
 - the matters mentioned in section 269(4) of the Mineral Resources Act.
- 52 The Minister can only grant the mining lease if the applicant has obtained the relevant environmental authority.³⁵

- 53 The applicant must also complete any other processes required under the Mineral Resources Act before the Minister can grant the mining lease. This includes:³⁶
- settling compensation for private landholders (either by agreement or by a determination of the Land Court)³⁷
 - obtaining the consent of the owner or trustee of land that is a 'reserve' (such as roads or road reserves, rail corridors, state forests, timber reserves, or Aboriginal or Torres Strait Island land and local government reserves)³⁸
 - obtaining the consent of the relevant owner for 'restricted land' (includes land within a certain distance of a home, hospital, school, cemetery or burial place, principal stockyard, artesian well, bore, dam or water storage facility)³⁹
 - obtaining approval for any development plan required.⁴⁰
- 54 Any processes required under other relevant laws will also need to be completed, including native title and cultural heritage agreements.⁴¹

Figure 2: Simplified overview of the current mining lease application and objection process



Environmental authorities for mining projects

- 55 Environmental protection associated with mining is regulated by the Environmental Protection Act, which aims to protect Queensland's environment and support ecologically sustainable development. The responsible agency is the Department of Environment and Science.⁴²
- 56 The Environmental Protection Act sets out the environmental values that are relevant to decisions about the management of Queensland's natural resources. It establishes protective requirements that must be met before activities relevant to the environment (called 'environmentally relevant activities') are approved. Mining activities, a type of resource activity,⁴³ are environmentally relevant activities.⁴⁴
- 57 A miner must have an environmental authority before they can carry out mining activities relating to a mining lease.⁴⁵ An environmental authority imposes conditions on the miner to help to avoid or address the environmental impacts of mining. All activities that form part of a mining project must be approved in one environmental authority.⁴⁶
- 58 There are 3 types of environmental authorities that may be issued for mining projects:
- 'standard': this is for low-risk mining activities that fit the eligibility criteria and standard conditions for the relevant type of mining activity apply⁴⁷
 - 'variation': this is for mining activities that meet the eligibility criteria but where the standard conditions for the relevant type of mining activity need some changes. The Department of Environment and Science must assess the likely environmental impact of the mining activity on environmental values⁴⁸
 - 'site-specific': this is for mining activities that do not meet the eligibility criteria in effect for the relevant type of mining activity.⁴⁹ Mining activities requiring a site-specific environmental authority usually have a relatively high level of complexity or environmental risk and require whole-of-project assessment. The miner must develop and submit a progressive rehabilitation and closure plan and schedule, which states how and where the mining activity will be carried out in a way that maximises the progressive rehabilitation of the land to a stable condition. It also states the condition to which the land must be rehabilitated before the environmental authority may be surrendered.⁵⁰ Where the miner proposes that part of the land is not rehabilitated to a stable condition (called a 'non-use management area'), the Department of Environment and Science must obtain a public interest evaluation report.⁵¹ Where the mining activity involves the exercise of underground water rights, the environmental impacts of this exercise must also be assessed.⁵²
- 59 The assessment process for applications for environmental authorities can include the following stages:⁵³
- application stage
 - information stage
 - notification stage and
 - decision stage.

- 60 Not all stages, or parts of a stage, apply to all applications.⁵⁴ There is significant variation in the length and timing of the assessment process depending on the type of application and complexity of the project.
- 61 Mining activities with a relatively high level of environmental risk may require an environmental impact statement.⁵⁵ Environmental impact statements assess the potential adverse and beneficial environmental, economic and social impacts of a project and consider ways to reduce or avoid environmental impacts, including residual impacts. The information provided during the environmental impact statement process helps the Department of Environment and Science to decide the environmental authority application.⁵⁶
- 62 An environmental impact statement may be:
- requested by the Department of Environment and Science as part of the information stage of the environmental authority application for:⁵⁷
 - a site-specific application for an environmental authority for a mining lease
 - a major amendment to an existing environmental authority for a mining lease
 - a project likely to have a significant impact on a matter of national environmental significance declared a ‘controlled action’ and assessed in accordance with a bilateral agreement between the State and Commonwealth governments
 - required for a ‘coordinated project’ under the State Development and Public Works Organisation Act 1971⁵⁸
 - voluntarily obtained before or during the application for the environmental authority.⁵⁹
- 63 The environmental impact statement process supplants the information and public notification stages of the environmental authority application process (if the environmental impact statement remains complete and current).⁶⁰

Applications

- 64 To apply for an environmental authority for a mining lease, a person (an adult or a company) must have applied for a relevant resource authority.⁶¹ All activities associated with a mining lease must be covered in one environmental authority application.⁶²

Information about the environmental impact of the project

- 65 The purpose of the information stage of the assessment process is to give the Department of Environment and Science the opportunity to request further information needed to assess the application.⁶³ The information stage only applies to variation and site-specific applications and does not apply if an environmental impact statement process for the application is complete and current.⁶⁴

Public notification and objections

- 66 The miner must give public notice of the environmental authority application.⁶⁵ However, if there is an environmental impact statement, public notification and the opportunity to make submissions is provided through that process instead (provided the environmental impact statement remains complete and current).⁶⁶ Any member of the public can make a

submission about the application in the timeframe allowed.⁶⁷ A submission made about the environmental impact statement is taken to be a submission about the environmental authority application.⁶⁸

- 67 It is open to the person making a submission on the environmental authority application or the environmental impact statement to state the grounds for their submission. While the Environmental Protection Act prescribes conditions that must be met for a submission to be 'properly made', there is no legislative criteria for what the submission must address.⁶⁹ The Department of Environment and Science may accept a submission even if it is not properly made.⁷⁰
- 68 The Department of Environment and Science decides the application and gives the miner and any submitters written notice of the decision.⁷¹ If approved, a draft environmental authority is issued and given to the miner and any submitters, along with the draft schedule for the progressive rehabilitation and closure plan (if any).⁷²
- 69 Any person who has made a submission can ask for their submission to be taken as an objection to the environmental authority application in the timeframe allowed.⁷³ The objection notice must state the grounds for the objection.⁷⁴

Land Court hearing and recommendation

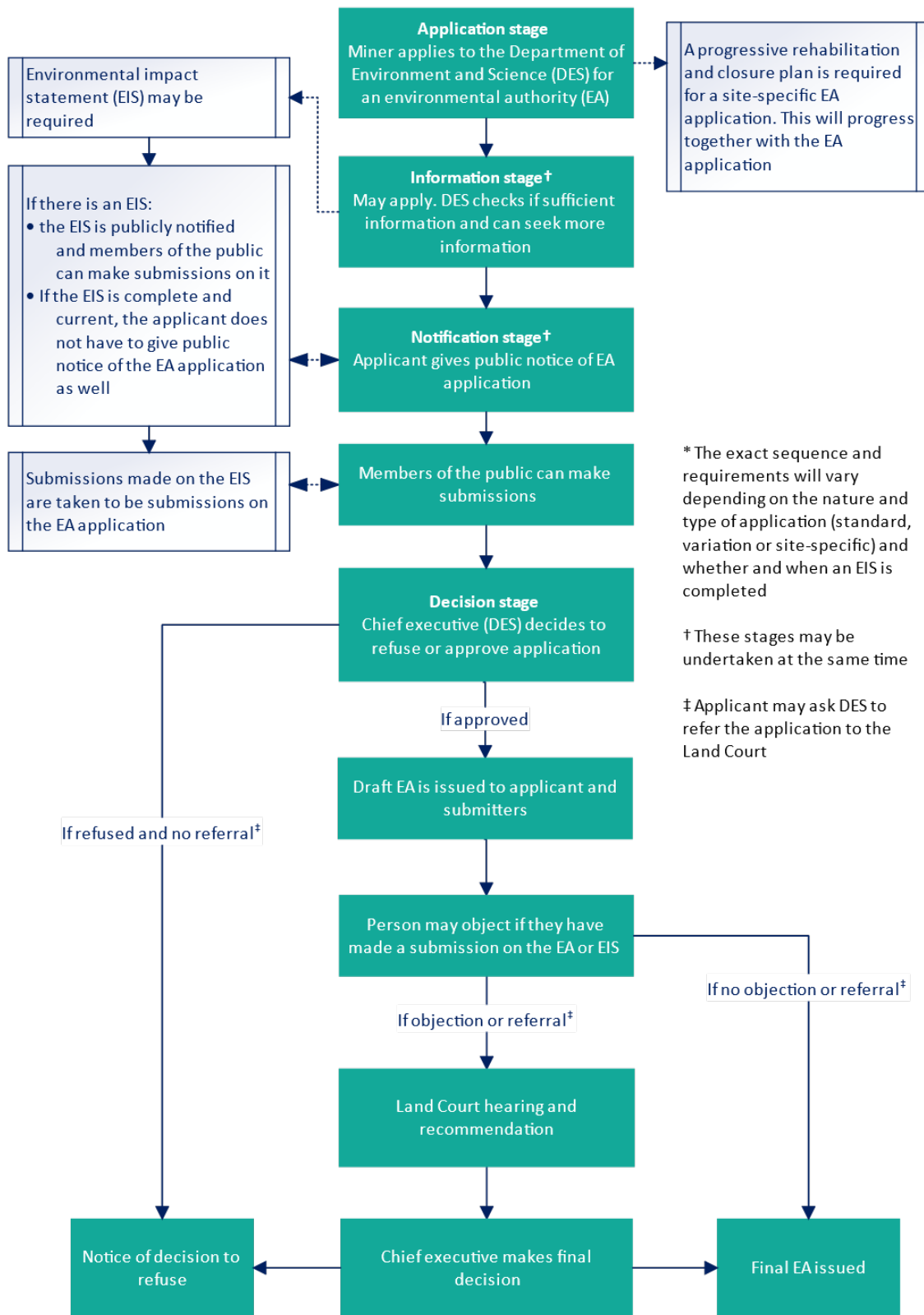
- 70 If one or more objections are made, the Department of Environment and Science must refer the environmental authority application to the Land Court.⁷⁵ The miner may also request that the Department of Environment and Science refer the application to the Land Court.⁷⁶
- 71 The Department of Environment and Science is a party to the Land Court hearing, along with the miner, any objector and anyone else decided by the Land Court.⁷⁷ The role of the Department of Environment and Science is to assist the Land Court, not to advocate for a particular decision.
- 72 The Land Court hears the application and objections and makes a recommendation to the chief executive of the Department of Environment and Science and the Minister for Resources.⁷⁸
- 73 In making its recommendation, the Land Court must consider:⁷⁹
- the application
 - any response given to an information request
 - any standard conditions that apply to the mining activity
 - any draft environmental authority or draft project rehabilitation and closure plan schedule
 - any objection notices
 - any relevant regulatory requirements
 - the 'standard criteria', including:
 - principles of environmental policy
 - any relevant Commonwealth or State government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development
 - the character, resilience and values of the environment

- all submissions made by the miner and other submitters
- best practice environmental management for activities under any relevant or proposed instrument
- financial implications
- the public interest
- the status of the mining lease application.

Chief executive's decision

- 74 The chief executive makes the decision whether to approve, approve with conditions or refuse the application for the environmental authority and any progressive rehabilitation and closure plan schedule for the authority.⁸⁰
- 75 In deciding the application, the chief executive must consider factors including:⁸¹
- any Land Court recommendation for the application
 - advice given by the Minister for Resources or the State Development Minister (if the project is a coordinated project)
 - if a draft environmental authority is given or conditions stated for the draft progressive rehabilitation and closure plan schedule – the draft environmental authority and conditions
 - if a draft environmental authority is not given or conditions for the draft progressive rehabilitation and closure plan schedule are not stated – the environmental authority application, the standard conditions that apply to the mining activity, the response given to information requests and the standard criteria.

Figure 3: Simplified overview of the current environmental authority application and objection process for mining leases*



Other relevant laws

- 76 The Mineral Resources Act and the Environmental Protection Act are part of the broader regulatory framework that applies to mining projects.
- 77 Laws regulate the management of mining activities that may impact cultural heritage and native title:
- Aboriginal Cultural Heritage Act 2003 and Torres Strait Islander Cultural Heritage Act 2003 – establish a cultural heritage duty of care, requiring miners to take all reasonable and practical measures to ensure their activities do not harm Aboriginal and Torres Strait Islander cultural heritage.⁸² Where a mining project requires an environmental impact statement, miners must first develop a ‘cultural heritage management plan’ detailing how the project will manage the impact on cultural heritage.⁸³ Cultural heritage includes a significant Aboriginal or Torres Strait Islander object or area in Queensland.⁸⁴
 - Native Title Act 1993 (Cth) – sets out requirements that must be met before a mining lease can be granted if the activities will affect native title rights and interests. The two main pathways to address impacts on native title rights and interests by mining leases are Indigenous Land Use Agreements and the right to negotiate process.⁸⁵
- 78 Mining projects may be declared a ‘coordinated project’ by the Coordinator-General, which changes the assessment and approval processes that apply:
- State Development and Public Works Organisation Act 1971 – the miner can apply for a mining project to be a coordinated project, or the Coordinator-General can independently make a declaration.⁸⁶ A mining project can be declared a coordinated project if it has complex approval requirements, strategic significance, significant environmental effects or significant infrastructure requirements.⁸⁷ Coordinated projects require either an environmental impact statement (this is usually required for mining) or an impact assessment report as part of the environmental assessment process.⁸⁸ An environmental impact assessment process undertaken under this Act supplants the process under the Environmental Protection Act.⁸⁹ The Coordinator-General can state conditions for the proposed environmental authority or any proposed progressive rehabilitation and closure plan schedule relating to the environmental authority for the mining project.⁹⁰
- 79 Additional assessment and approval requirements under Australian law apply to mining projects that impact a matter of national environmental significance:
- Environment Protection and Biodiversity Conservation Act 1999 (Cth) – if a mining project impacts a ‘matter of national environmental significance’ (including plants, animals, habitats and places, such as World Heritage areas, protected wetlands, and the Great Barrier Reef) the project must be assessed under Queensland environmental laws.⁹¹ This assessment can include an environmental impact statement by either the Department of Environment and Science or, for coordinated projects, the Coordinator-General. The assessment report is given to the Australian Government and the Commonwealth Minister decides whether to approve or refuse the mining project.⁹²

- 80 Laws relating to water use and monitoring may also apply to mining projects:
- Water Act 2000 – prescribes assessment and reporting requirements to manage the impacts on underground water caused by the miner exercising their rights under a mining lease to use underground water.⁹³ A miner may also need to apply for a water licence for other water use.⁹⁴
- 81 Laws relating to planning development and assessment may also apply to mining projects:
- Regional Planning Interests Act 2014 – a regional interests development approval is required to carry out mining activity in an ‘area of regional interest’ (for example, high quality agricultural land or a priority living area).⁹⁵ The miner must submit an assessment report with their regional interests development approval application that outlines the proposed mining activity’s impact on the area.⁹⁶ Ordinarily, submissions may only be made to the Government about a regional interests development approval application that relates to a mining lease in a ‘priority living area’.⁹⁷ Decisions under this Act are subject to appeal to the Planning and Environment Court, not the Land Court.⁹⁸
 - Planning Act 2016 – regulates non-mining development in Queensland. Non-mining development must have any necessary development approvals from the local government.⁹⁹ Activities authorised under a mining lease do not require approval under this Act.¹⁰⁰
 - Local Government Act 2009 – establishes the framework for local government responsibilities and powers. Under this Act, local governments are responsible for the ‘good rule’ of their local government area, including the construction and maintenance of roads.¹⁰¹ Local governments are given notice of proposed mining leases and when mining leases are granted or renewed.¹⁰² Decisions about mining projects may impact local government responsibilities, including the maintenance of roads and local government planning.

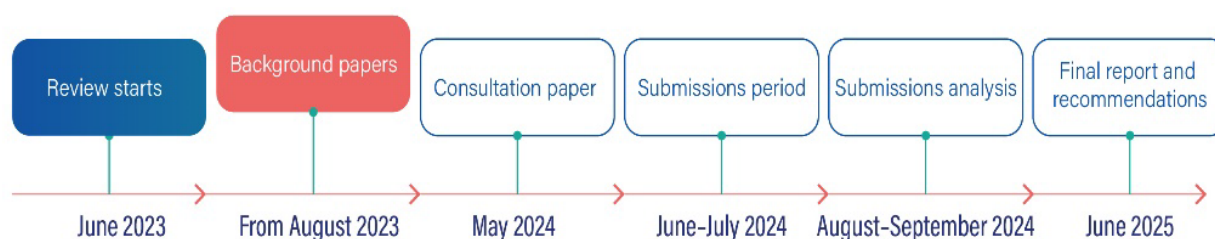
Key issues for our review

82 Informed by the terms of reference, we have identified the following key issues to focus on in reviewing and making recommendations about the mining objection process:

Defining the key elements	<ul style="list-style-type: none">• Identifying the key steps, stages, timeframes, procedures, and decision-making and participation responsibilities of government agencies
Maximising efficiency	<ul style="list-style-type: none">• Making the process as coherent and timely as possible, while ensuring the relevant matters are considered at the appropriate stage of the process
Ensuring effective community involvement and participation	<ul style="list-style-type: none">• Providing landholders, First Nations peoples and community members with sufficient information and suitable opportunities to participate in decision-making and have their voices heard
Maintaining integrity and rigorous merits assessment	<ul style="list-style-type: none">• Providing independent and specialist merits and legal assessment and review
Conforming to the wider legislative context	<ul style="list-style-type: none">• Interacting appropriately with other relevant laws and legal processes, including the Human Rights Act 2019, and accommodating future developments in policy and industry
Facilitating consistency	<ul style="list-style-type: none">• Considering whether the process should apply to other resource production tenures

Our next steps

Figure 4: Review timeline



- 83 Work on our review started on 5 June 2023. This is the first of a series of background papers we are releasing. They are intended to give relevant information for our review, including about alternative approaches elsewhere.
- 84 We have not developed any proposals for reform at this early stage. We encourage you to give us your views, including about our principles and the key issues. 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.
- 85 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.
- 86 Our final report with recommendations will be given to the Government by 30 June 2025.
- 87 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 register by emailing QLRCCcommunications@justice.qld.gov.au

References

- 1 Queensland Law Reform Commission, 'Current reviews', last updated 19 June 2023 <https://www qlrc.qld.gov.au/current-reviews>.
- 2 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.
- 3 Judicial Review Act 1991 (Qld) s 4; *New Acland Coal Pty Ltd v Smith & Ors* [2018] QSC 88 at [6]; *Arcturus Downs Limited v Peta Stilgoe (Member of the Land Court of Queensland) & Ors* [2019] QSC 84 at [27].
- 4 Planning Act 2016 (Qld) s 229(1), sch 1 table 2, item 2; Planning and Environment Court Act 2016 (Qld) ss 7(1), 43, 46(2)(a), 47.
- 5 See e.g. Department of Natural Resources and Mines (Qld), Mining lease notification and objection initiative: Decision regulatory impact statement, 2014; Department of Natural Resources, Mines and Energy (Qld), Resource authority regulatory efficiency and duplication: Investigation, outcomes and actions, 2019; Department of Resources (Qld), Queensland Resources Industry Development Plan, 2022.
- 6 Mineral and Energy Resources (Common Provisions) Act 2014 (Qld) (as passed) s 438; Explanatory Notes, Mineral and Energy Resources (Common Provisions) Bill 2014, p 158.
- 7 Mineral and Other Legislation Amendment Act 2016 (Qld) s 90; Explanatory Notes, Mineral and Other Legislation Amendment Bill 2016 (Qld), p 44.
- 8 Department of Natural Resources, Mines and Energy, Resource authority regulatory efficiency and duplication: Investigation, outcomes and actions, 2019, p 11.
- 9 Department of Resources (Qld) Queensland Resources Industry Development Plan 2022, pp 45-47.
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- 16 Land Court Act 2000 (Qld) s 52C. See also Land Court of Queensland, 'Practice Direction No 6 of 2017: Costs in recommendatory matters', 28 August 2017.
- 17 Mineral Resources Act 1969 (Qld) s 2.
- 18 Mineral Resources Act 1989 (Qld) s 8.
- 19 Mineral Resources Act 1989 (Qld) ss 234(1)(a), 235-236.
- 20 Mineral Resources Act 1989 (Qld) ss 5 sch 2 (definition of 'specific purpose mining lease'), 234(1)(b).
- 21 See also Mineral Resources Act 1989 (Qld) ss 232(2), 248.
- 22 Mineral Resources Act 1989 (Qld) s 245; Mineral Resources Regulation 2013 (Qld) sch 5 pt 5 item 2. See also Department of Resources, Mining Lease application guide, June 2023; Business Queensland, 'Application process for resource authorities', 1 August 2023 <https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/applying/process>; and 'Forms for Mining and Resources', 2 March 2023 <https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/forms>.
- 23 Mineral Resources Act 1989 (Qld) s 246, ch 6 pt 1A, ch 8 pt 9; Mineral Resources Regulation 2013 (Qld) s 97A sch 2A. See also Department of Resources, Mineral mining lease development plan guideline, July 2023; and Initial and later development plan guideline for coal mining leases, 2023.
- 24 Mineral Resources Act 1989 (Qld) s 252. See also ss 5 sch 2 (definition of 'eligible person'), 232-233A, 245-246, 250.
- 25 Mineral Resources Act 1989 (Qld) s 252A(1)-(4), (7).

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<https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/applying/mining-lease-application>.
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- 28 Mineral Resources Act 1989 (Qld) s 265.
- 29 Mineral Resources Act 1989 (Qld) s 268(3).
- 30 Mineral Resources Act 1989 (Qld) s 268. See also Land Court of Queensland, 'Practice Direction No 4 of 2018: Procedure for mining objection hearings', amended 7 April 2020; Procedural Assistance Service (Land Court of Queensland), 'Mining Objection Hearings', viewed 13 July 2023
<https://www.courts.qld.gov.au/courts/land-court/procedural-assistance-service/mining-and-resources/mining-objection>.
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- 50 Environmental Protection Act 1994 (Qld) ss 125(1)(n), 126B, 126C, 126D.
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- 59 Environmental Protection Act 1994 (Qld) ch 3 pt 2.
- 60 Environmental Protection Act 1994 (Qld) ss 139, 150.
- 61 Environmental Protection Act 1994 (Qld) ss 116–117.
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- 63 Environmental Protection Act 1994 (Qld) s 137.
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