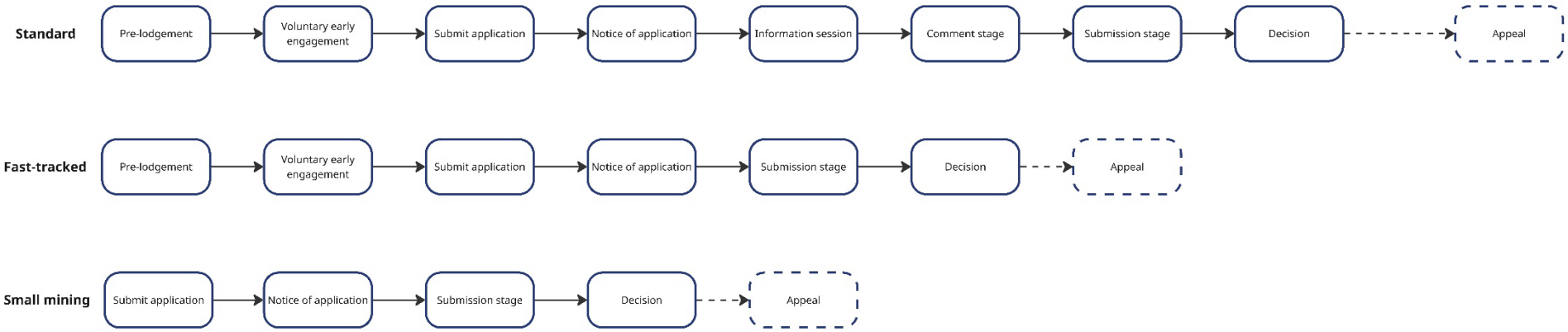
OPTIONS PAPER (FOR APPROVAL)
This document was provided to the Commission but not decided on.

Options for reform – Participation

Note to the Commissioners:

This options paper sets out draft recommendations that would, together, give effect to a non-adversarial participation process. This participatory approach would replace the current Land Court objections hearing process. It would create opportunities for decision-makers to gather information to properly inform their decision-making. Specifically, information generated and given to decision-makers in the participatory process would support decision-makers to properly consider the statutory criteria – existing and recommended new criteria – which is the foundation for their decision-making.



Note to diagram:

- A legislated minimum participation process is discussed at 3, below.
- A fast-tracked process for applications that have engaged in pre-lodgement and voluntary early engagement is discussed in draft recommendation 4.2, below.
- A modified process for small mining applications is discussed in draft recommendation 3.7, below.

Key topics

1. Duty to consult

Draft recommendation 1.1: A duty to consult that must be exercised by decision-makers, at least in relation to Aboriginal peoples and Torres Strait Islander peoples, should be given effect through reforms to legislation governing mining lease and associated environmental authority applications

Key considerations (and relevant implications)

- The mining lease application process is a Government process dealing with decision-making about public resources having regard to the public interest. Although statutory requirements for proponents to undertake stakeholder consultation (see below) serve an important function – including to support the building of relationships with communities and providing opportunities for the identification of risks and opportunities – it is not the responsibility or duty of a proponent to ensure participation of Aboriginal peoples and Torres Strait Islander peoples, other affected persons, or the broader public in the decision-making process.

Current requirements

- Currently, neither decision-maker holds a duty to consult with Aboriginal peoples and Torres Strait Islander peoples or any persons (even those directly affected) that may be impacted by a mining lease and associated environmental authority application.
- There are statutory obligations for proponents subject to environmental impact statement (EIS) and progressive rehabilitation closure plan (PRCP) requirements to undertake consultation with 'interested persons' or 'stakeholders' (ss 41(3)(c) and 126C(1)(c)(iii) of the Environmental Protection Act 1994). These statutory requirements are not characterised as 'duties' and are separate to direct and public notification requirements under the Mineral Resources Act 1989 and the Environmental Protection Act 1994.
- Community participation in the decision-making process currently occurs through processes that are adversarial in nature and adjudicative in style – a person must make a written objection to a mining lease application or associated environmental authority and this gives rise to a right to be an active party to a Land Court mining objections hearing.
- Under the Mineral Resources Act 1989, there is no direct requirement for the Minister of Natural Resources and Mines, Manufacturing, and Regional and Rural Development (the Minister) to consider all objections. The Environmental Protection Act 1994 does, however, require the chief executive of the Department of Environment, Tourism, Science and Innovation (the chief executive) to consider all submissions (a precursor to an objection) in deciding an associated environmental authority under the 'standard criteria'. The Land Court objections hearing process affords a right to be heard, as an active objector, to any person who makes a valid objection under the Mineral Resources Act 1989 or Environmental Protection Act 1994. This process gives effect to procedural fairness and natural justice. Few people who make a written objection will become an active party to a Land Court hearing, typically because of the resources required.
- Currently, neither decision-maker has an obligation to consult the relevant local authority for the region in which the mining activity is proposed. There are no explicit processes by which the relevant local government can be involved in the decision-making processes for mining lease and environmental authority applications in their region. There are some avenues where the local government may be involved or consulted in the development of a mining proposal, for example, where a social impact assessment is required as part of an EIS. However, the process is limited in the opportunity for genuine evaluation or engagement by relevant local governments. Similarly, while decision-makers may choose to informally consult local government as part of their decision-making, the only formal avenue for participation in the decision-making process is by making an objection and participating in an objections hearing.

Nature of the duty and why it is required

- The duty to consult would be a substantive and procedural duty that seeks to ensure opportunities:
    - for Aboriginal peoples and Torres Strait Islander peoples and other persons affected by or interested in a mining lease and associated environmental authority application to participate in the decision-making process, consistent with and proportionate to their recognised rights and interests (eg, under statute and common law) and participation principles (see 2, below)
    - for decision-makers to gather information to properly inform their decision-making, which would be founded upon consideration of existing and recommended new statutory criteria, one of which would be the rights of Aboriginal peoples and Torres Strait Islander peoples (see Options paper – Decision).
- The duty would be distinct from a duty that is imposed by the rules of natural justice or the principles of procedural fairness.
- Unlike in the UK (see R (on the application of Moseley) v Haringey London Borough Council [2025] 1 All ER 495 ('Mosley')), a duty to consult does not exist in Australia at common law. In Mosley, the UK Supreme Court endorsed that a public authority may hold a duty to consult interested persons before taking a decision that affects the public. In circumstances where the duty applies, consultation is required at formative stages in decision-making and must be genuine and conscientiously consider public input.[1] In Mosley, the Court stated that a public authority's duty to consult may arise through or be generated by:
    - statute [23]
    - a legitimate expectation of consultation, 'usually arising from an interest which is held to be sufficient to found such an expectation' [35]
    - a promise or practice of consultation [35], or
    - a common law duty of procedural fairness [23].
- There are several legal bases upon which a duty to consult might arise in deciding a mining lease and associated environmental authority application. Discussion of potential legal foundations is incorporated into the sections below.
- Aronson, Dyer and Groves consider a duty to consult suitable where polycentric decisions impact the public, or large sections of the public, and adjudicative style procedures are inappropriate.[2] Decisions made in relation to mining lease and associated environmental authority applications are distinctly polycentric in nature and have the potential to impact the public in most circumstances. Aronson, Dyer and Groves posit, however, that 'the High Court of Australia is likely to be reluctant to develop any general law requirement of consultation, the breach of which results in invalidity'.[3] Codification of a duty to consult in statute would provide certainty and clarity of the existence of such duty in the context of mining lease and associated environmental authority applications. Statutory provisions could also expressly state the consequences of a breach of a duty to consult (eg, penalty, invalidity and/or appeal right).
- A duty to consult has been codified in Australian work health and safety laws at the Commonwealth and state/territory level (eg, ss 47-49 of the Work Health and Safety Act 2011), providing an example of how a duty to consult might be codified (see discussion below).
- The nature of a statutory duty to consult, in the context of mining lease and associated environmental authority applications, would need to take into careful consideration to whom the duty would be owed, and who would hold the duty, which are discussed below.

To whom the duty would be owed

- A key decision for the Commission, if it recommends a duty to consult, is to consider to whom the proposed duty to consult would be owed.
- The draft recommendation proposes that the duty apply *at least to Aboriginal peoples and Torres Strait Islander peoples*. The framing of this draft recommendation recognises that:
    - there is a clear and strong legal basis for this duty to be owed to Aboriginal peoples and Torres Strait Islander peoples

- there is a legal basis that supports the duty being owed to other persons or groups who are recognised under the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to be affected persons or interested persons in the deciding of mining lease and associated environmental authority applications.

- Each of these 'groups' is considered in turn.
- The Aboriginal peoples and Torres Strait Islander peoples and organisations we heard from note their strong and unique connection with Country and interest in engaging in decision-making processes that affect it. They generally supported proposals that will require transparent, evidence-based decision-making informed by the right people for Country (Background paper 4 [27]; Hopevale Congress Aboriginal Corporation; Queensland South Native Title Services). There was also support, specifically, for enhancement of the participatory rights of Aboriginal peoples and Torres Strait Islander peoples and communities, including for peoples who do not have native title (Background paper 4 [117]).
- There is clear legal basis for directing a duty to consult towards Aboriginal peoples and Torres Strait Islander peoples grounded in the global and domestic recognition of the rights of Aboriginal peoples and Torres Strait Islander peoples. This recognition is evident in the following international and domestic legal instruments that set out State obligations towards Indigenous peoples:
  - The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly in 2007 and formally endorsed by Australia in 2009. UNDRIP enshrines the right to self-determination, the right to free, prior and informed consent (FPIC), the right to maintain, control, protect and develop cultural heritage, traditional knowledge and traditional cultural expressions and associated intellectual property, and the right to maintain and strengthen distinctive spiritual relationships with traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources. Article 18 of UNDRIP specifically enshrines the right of Indigenous peoples to 'participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own decision-making institutions'.
  - Section 28 of the Human Rights Act 2019 protects cultural rights held by Aboriginal peoples and Torres Strait Islander peoples and recognises the particular significance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination, as reflected at international law (eg, art 27 of the ICCPR; arts 3, 8(1), 25, 29(1) and 31(1) of UNDRIP).
  - The Parliament of Queensland has legislated to reframe the relationship of Government and Aboriginal peoples and Torres Strait Islander peoples in Queensland. Section 21(2)(e) of the Public Sector Act 2022 includes a legislative mandate for the Queensland public sector to work in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, in particular when making decisions directly affecting them.
  - The Queensland Legislative Handbook, under fundamental legislative principles, recognises the value of undertaking significant consultation with Aboriginal and Torres Strait Islander representative bodies on proposed legislation which impact on Aboriginal tradition or Island Custom [Queensland Legislative Handbook [7.2.10]).
- Robert McCorquodale, a member of the UN Working Group on Business and Human Rights, has identified in his examination of group rights held by Indigenous peoples, that:

  > … there is a specific right of consultation that is considered to be essential for protecting indigenous peoples, which finds its origin in self-determination and has been recognized as a general international law obligation. This right of consultation of indigenous peoples about decisions affecting their land arises because of their particular economic and social characteristics, such as their practices, culture, traditions, and capacity to sustain themselves in their vulnerable situation, in relation to development of land. This understanding has been consolidated into a right of indigenous peoples of free, prior, and informed consent.[4]

- Authoritative statements and jurisprudence from the Human Rights Committee suggest that States may be required to take 'positive legal measures of protection and measures to ensure the effective participation' of Aboriginal peoples and Torres Strait Islander peoples in decisions which affect them, including in relation to development activities (General Comment No 23 [7]; (*Poma Poma v Peru* [7.6]). Lack of participation as a limitation on s 28 of the Human Rights Act 2019 was considered by the Queensland Minister for Natural Resources, Mines and Energy in relation to the *Human Rights Certificate: Water Resource (Whitsunday) Plan (Postponement of Expiry)*

Notice 2020 (Qld). That s 28 confers an obligation on public entities to take positive measures to ensure participation (eg, in fulfillment of obligations under ss 58 and 13 and with respect to s 28 of the Human Rights Act 2019) could be clarified by statute that affirms the requirement of positive legal measures and posits this in a duty to consult.

- Law reform inquiries in other jurisdictions have recommended that a participation duty is warranted in relation to particular groups, including Aboriginal peoples and Torres Strait Islander peoples. The Australian Human Rights Commission, in its Free and Equal Final Report 2023 and in the context of a proposed Commonwealth Human Rights Act, recommended that a participation duty apply to public authorities 'where decisions of public authorities will affect the rights of First Nations peoples and communities' (p. 59). The Australian Human Rights Commission's recommended participation duty draws on international human rights law standards and common law procedural fairness principles to address inadequate engagement with Aboriginal peoples and Torres Strait Islander peoples whose rights are directly or disproportionately affect by decisions (or policies).
- The province of British Columbia in Canada provides a relevant comparative example of a duty to consult owed by the province to Aboriginal peoples. In Haida Nation v British Columbia (Minister of Forests) [2004] 3 S.C.R. 511, the Supreme Court of Canada considered whether the Crown has a duty to consult and accommodate Aboriginal peoples prior to making decisions that might adversely affect their as yet unproven Aboriginal rights and title claims. The Court expanded the province's duties to consult with Aboriginal peoples about not only established 'proven' rights, but also asserted or 'claimed' rights when considering activities or conduct that might impacts them and compensate for those impacts if required. In the case of 'claimed' or 'asserted' Aboriginal Rights and Title, the scope of consultation is based on an assessment of the strength of claim, and the seriousness of potential impacts upon the asserted rights. In the case of proven Aboriginal Rights or Treaty rights (grounded as Constitutional rights), the scope of consultation is based on the seriousness of the potential impact on the right. The extent of consultation required will be proportionate to the circumstance and determined by the nature of the interest impacted and degree of that impact. The duty requires a commitment to a meaningful process of consultation in good faith and for the process to be fair – this includes allowing Aboriginal peoples to be informed and afforded reasonable time to respond.
- In Queensland, the Environmental Protection Act 1994 is to be administered, as far as practicable, '***in consultation with***, and having regard to the views and interests of … Aboriginal peoples and Torres Strait Islander peoples under Aboriginal tradition and Island custom…' (s 6). Under the Mineral Resources Act 1989, registered native title bodies corporate (RNTBC) and registered native title claimants (RNTC) hold a right to be notified, to object to, and **to be consulted with respect to 'the creation of a right to mine'**, pursuant to s 24MD(6B) of the Native Title Act 1993 (Cth) and in alignment with freeholder rights.[5] For a mining lease to be granted, requirements set out in the future acts regime, under the Native Title Act 1993 (Cth), must be met. Under s 38 of the Environmental Protection Act 1994, RNTBCs, RNTCs, representative Aboriginal and Torres Strait Islander bodies, trustees of DOGIT, Aboriginal land and Torres Strait Islander land, and lessees of land under the Aboriginal and Torres Strait Islander Holding Act 2013 are 'affected persons'. More broadly, both decision-makers must already consider the cultural rights of Aboriginal peoples and Torres Strait Islander peoples (not just peoples with native title rights and interests) and whether these rights may be limited by the granting of a mining lease application (ss 28, 58 and 13 of the Human Rights Act 2019).
- Implementation of the Commission's recommendation that each decision-maker consider a new statutory criterion on the rights of Aboriginal peoples and Torres Strait Islander peoples (see Options paper – Decision) would necessitate decision-maker access to information, through engagement with Aboriginal peoples and Torres Strait Islander peoples, to support informed decision-making.
- There is a legal basis that supports the duty to consult being owed more broadly.
- Firstly, s 6 of the Environmental Protection Act 1994 requires administration of the Act, as far as practicable, '***in consultation with***, and having regard to the views and interests of … interested groups and persons and the community generally'. This statement of law may be sufficient to create a legitimate expectation of consultation for not only Aboriginal peoples and Torres Strait Islander peoples, but also interested persons and the community generally.
- A legitimate expectation of consultation could also arise from specific interests or rights 'held to be sufficient to found such an expectation'. The Mineral Resources Act 1989 and Environmental Protection Act 1994 provide clear indication of persons and groups who would hold a legitimate expectation of consultation arising from their rights and interests which would be directly impacted by a mining lease application and associated environmental authority. This includes persons or groups who are regarded as 'affected persons' and others:

  - Land owners (as defined in sch 2 of the Mineral Resources Act 1989) of subject land, land necessary to access subject land, or adjoining land: considered 'affected persons' under the Mineral Resources Act 1989 must be directly notified of a mining lease application (s 252A of the Mineral Resources Act 1989). A mining lease application cannot be granted unless compensation for a land owner of subject land or owner of land necessary to access subject land has been determined (s 279(1) of the Mineral Resources Act 1989). They are also considered 'affected persons' under s 38 of the Environmental Protection Act 1994 and directly notified of EIS terms of reference under s 43.
  - Interested persons: to be identified by a proponent under s 41 of the Environmental Protection Act 1994 in relation to the terms of reference for an EIS. An example of an interested person, provided under s 41, is 'an unincorporated community or environmental body with a financial or non-financial interest in the local government area that the operational land is in'. Interested persons are afforded a right to direct notification in relation to EIS draft terms of reference under s 43.
  - Relevant local government: considered an 'affected persons' under s 252A of the Mineral Resources Act 1989 and s 38 of the Environmental Protection Act 1994, creating a right to direct notification.
  - Other persons decided by the chief executive: afforded a right to direct notification in relation to EIS draft terms of reference under s 43 of the Environmental Protection Act 1994.
  - Public: express consideration of the public interest is required by both decision-makers (ss 271 and 269(4)(k) of the Mineral Resources Act; under the 'standard criteria' in sch 4 of the Environmental Protection Act 1994).
- The framing of this draft recommendation is intentionally open – the Commission could, but is not required, to decide on to whom the duty would be owed in addition to Aboriginal peoples and Torres Strait Islander peoples.

Who holds the duty

- Given that both decision-makers hold obligations to be properly informed in deciding whether to approve a mining lease or associated environmental authority application, it would be appropriate that each hold a duty to consult.

Scope of the duty

- There are several ways in which the scope of the duty to consult could be qualified. For example:
  - by the phrase 'so far as is reasonably practicable'. This approach is reflected in s 47 of the Work Health and Safety Act 2011 and requires the level of consultation to be proportionate to the circumstances.[6]
  - the approach taken in British Columbia is proportionate to the strength of the relationship (or right claimed) by an Aboriginal community to the place of the proposed activity, enabling a spectrum of consultation approaches to be implemented.[7]

Implementation considerations

- Prior to implementation, consultation about the proposed duty to consult would be required with Aboriginal peoples and Torres Strait Islander peoples to give effect to FPIC rights and s 21(2)(e) of the Public Sector Act 2022. The Queensland Legislative Handbook, under fundamental legislative principles, recognises the value of undertaking significant consultation with Aboriginal and Torres Strait Islander representative bodies on proposed legislation which impact on Aboriginal tradition or Island Custom [Queensland Legislative Handbook [7.2.10]).
- We heard concerns from Aboriginal peoples and Torres Strait Islander peoples and organisations about how a participatory-based process would effectively identify the right people for Country (Background paper 4 [27]; Hopevale Congress Aboriginal Corporation; Queensland South Native Title Services). It would be beneficial for Government to undertake work to ascertain who are the cultural authorities who can speak for Country, in particular, where there is no native title determination, no native title claim in place, or a negative determination. Spatial data held by the Department of Resources and the National Native Title Tribunal could support the identification of land in which there are Aboriginal rights and interests, and conversely, where rights and interests have not yet been claimed or determined. Policies and processes used to

identify cultural authorities who can speak for Country would need to respect and give effect to the cultural rights of Aboriginal peoples, under s 28 of the Human Rights Act, and rights to self-determination and FPIC, which are held not only by native title holders or claimants. Such policies and processes should be developed in consultation with Aboriginal peoples (s 21 of the Public Sector Act 2022). The Traditional Owner Representative Institution (TORI) draft model, which was co-designed with the First Nations Heritage Alliance, could provide an appropriate model for identifying cultural authorities who can speak for Country.[8] The TORI model was identified as appropriate in submissions (eg, Queensland South Native Title Services).

- A duty to consult may create a burden on Aboriginal peoples and Torres Strait Islander peoples and organisations to participate in the decision-making process. Appropriate resourcing of participation was identified as a need by Aboriginal and Torres Strait Islander organisations in consultations and submissions (Background paper 4 [127]; Queensland South Native Title Services).
- Consideration of the consequences of a failure to adequately carry out this duty would be required (eg, penalty, invalidity of decision and/or appeal right).
- The Work Health and Safety Act 2011 provides example of how a duty to consult might be codified:
  - Section 47 established the duty to consult. The scope of the duty is limited by the qualification 'so far as is reasonably practicable'.
  - Section 48 sets out the nature of consultation, which includes requirements to share relevant information with workers, provide workers with a reasonable opportunity to express their views on relevant matters and contribute to the decision-making process, and advise workers consulted on the outcome of the consultation.
  - Section 49 specifies when consultation is required. This includes in relation to certain decisions.

Arguments in support	**Counter-arguments**

• Clarifies the responsibility of Government to ensure participation of persons impacted by decisions in Government decision-making process.
• Provides a legal mechanism to fulfil legitimate expectations of consultation, proportionate to the rights and interests held by persons impacted by mining lease and associated environmental assessment applications.
• Works in concert with statutory criteria to provides a legal basis for decision-makers to gather information to properly inform their decision-making, particularly with respect to the recommended new statutory criterion on the rights of Aboriginal peoples and Torres Strait Islander peoples.
• Supports consideration of human rights, pursuant to obligations under ss 28, 58 and 13 of the Human Rights Act 2019.
• Gives effect to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples protected under s 28 of the Human Rights Act 2019, to self-determination and the right to FPIC which are recognised under international law and are best practice.
• Supports implementation of s 21 of the Public Sector Act 2022 which seeks to reframe the relationship between the public sector and Aboriginal peoples and Torres Strait Islander peoples. This includes working in partnership with
	• An implied duty exists under:
	  • s 6 of the Environmental Protection Act 1994, or
	  • s 28 of the Human Rights Act 2019, or
	  • at common law.
	• An express duty to consult is not required to support decision-makers to gather information to properly inform their decision-making.
	• Proponents already hold statutory obligations to conduct consultation with some groups and in some circumstances which is sufficient to satisfy any need for consultation.
	• It is unnecessary and duplicative for both decision-makers to hold a duty to consult. The duty should rest with only one decision-maker.
	• There only exists a strong legal basis for a duty to consult to be owed to Aboriginal peoples and Torres Strait Islander peoples, not other persons. The recommendation should be narrowed.

Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, in particular when making decisions directly affecting them (s 21(2)(e)). • Aligns with law reform proposals at the Commonwealth level for a participation duty that applies to public authorities in relation to Aboriginal peoples and Torres Strait Islander peoples who are disproportionately impacted or directly affected by a decision.	
Alternatives not proposed	
• Implied duty under s 6 of the Environmental Protection Act 1994. • Implied duty in s 28 of the Human Rights Act 2019. • Implied duty at common law. • Limiting the duty to apply to only one Government decision-maker.	

Delegation

Draft recommendation 1.2: The duty to consult held by decision-makers can be delegated in defined circumstances
Key considerations (and relevant implications)
To whom the duty may be delegated • Decision-makers would have the discretion to delegate procedural aspects of the duty to consult to each other, or the Coordinator-General (where they are overseeing an EIS process), or the proponent. • In British Columbia, Canada, the province may delegate some procedural aspects of its duty to consult with Aboriginal peoples to the proponent. This may require a proponent to seek input from the relevant Aboriginal peoples regarding potential impacts to Aboriginal interests from the proposed project. In association with these requirements, proponents will need to 'establish an agreed upon consultation approach with Indigenous peoples for obtaining the necessary information from appropriate knowledge-holders',[9] where possible. Proponents are also required to 'consider, as appropriate, any requests from Indigenous peoples for capacity funding, traditional use, project impact studies or other studies'.[10] *When the duty may be delegated* • It may be necessary or promote efficiency for the Minister to delegate procedural aspects of the duty to consult to the chief executive or the Coordinator-General in circumstances where they are overseeing an EIS process, which already incorporates some consultation (proponent-driven). • It may also promote efficiency for decision-makers to delegate procedural aspects of the duty to consult to the proponent, where the proponent is required to undertake consultation through an EIS process, or in relation to PRCP consultation requirements.

- Where procedural aspects of the duty to consult are delegated to another decision-maker or the proponent, the other decision-maker or proponent would not be liable for failing to discharge the duty-holder's duty to consult.[11]

Implementation considerations

- There may be challenges in delegating procedural aspects of a duty to consult – owed to Aboriginal peoples – to a proponent in circumstances where there is no native title determination, no native claim, or a negative native title determination.[12] Given the complexities and sensitivities that would be involved, and the duty owed, it may be more appropriate for Government to initiate, lead, or carry out in full, consultation with Aboriginal peoples in such instances.
- In relation to mining lease applications that require a standard criteria environmental authority, which may be for small-scale mines, it is unrealistic that the miner will have the information or capacity to engage with Aboriginal peoples or Torres Strait Islanders peoples.

Arguments in support	**Counter-arguments**
• Delegation of procedural aspects of the duty to consult to other decision-makers or the proponent in appropriate circumstances (eg, where there are EIS or PRCP consultation requirements) is practical and promotes efficiency. • Exercise of a discretion to delegate can take into consideration other relevant circumstances, including the capacity and resources of another decision-maker, or a proponent, to undertake consultation with Aboriginal peoples and Torres Strait Islander peoples, including in cases where there is no clear cultural authority who can speak for Country. • There is international precedent for delegation of procedural aspects of a duty to consult to a proponent (eg, British Columbia, Canada).	• The duty holder should be fully responsible for discharging their duty to consult.

Alternatives not proposed

- Imputing liability to other decision-makers or the proponent for failing to discharge the duty to consult held by a decision-maker.
- Discretion to delegate the duty to consult only to another decision-maker, or only to a proponent.
- Discretion to delegate the entire duty to consult (not only procedural aspects) to another decision-maker, or only to a proponent.

2. Principles to guide meaningful participation

Draft recommendation 2: Government should embed the following principles for meaningful participation into the design and implementation of a new participation process:

- **Informative: transparent and accountable**
- **Open: inclusive, responsive and well-resourced**
- **Just: impact and opportunity focused and equitable**

Key considerations (and relevant implications)

- A principles-based approach to law reform has been taken in this review. We stated in Consultation paper 1 that we aim to develop recommendations to ensure the processes are 'fair, efficient, effective and contemporary' ([18]).
- This draft recommendation seeks to ensure that the proposed non-adversarial participatory process associated with deciding mining lease and associated environmental authority applications is outcomes and principles based and best practice. The principles for meaningful participation proposed in the draft recommendation incorporate the review principles and their elaborations, as set out in Consultation paper 1, to the greatest extent possible and as appropriate.

Current approach

- In Consultation paper 1, we identified a lack of early, non-adversarial opportunities to participate in the development of mining proposals to support mutually beneficial outcomes for people with a range of interests ([68]). This is despite s 6 of the Environmental Protection Act which states that the Act 'is to be administered, as far as practicable, in consultation with, and having regard to the views and interests of, industry, Aboriginal peoples and Torres Strait Islander peoples under Aboriginal tradition and Island custom, interested groups and persons and the community generally'. We also identified in Consultation paper 1 that a lack of participation limits a miner's ability to understand interests, concerns and opportunities and can lead to increased costs and interests ([68]).
- While principles of environmental policy, the proportionality principle and the principle of primacy of prevention inform the administration of the Environmental Protection Act 1994 broadly (see s 6A), they do not guide participation and consultation in decisions for environmental authority applications.
- There are no provisions equivalent or analogous to ss 6 and 6A of the Mineral Resources Act 1989, and no requirements for mining lease applicants, or the Minister, to undertake consultation with Aboriginal peoples and Torres Strait Islander peoples, affected persons, or the public under that Act.

Meaningful participation

- Meaningful participation goes beyond seeking 'buy-in' to a project and is more than a 'tick-box' process. It acknowledges the value of building relationships and of informed community engagement to informed decision-making.
- Meaningful participation of the public in decision-making regarding projects affecting the environment is recognised as a right under the Aarhus Convention[13] – this right is tied to a right to a healthy environment. The Aarhus Convention sets minimum standards for public participation rights in environmental decision-making. Australia is not bound by the Aarhus Convention. However, the Convention provides guidance on best practice public participation. This includes that 'the public affected need to be ensured a possibility to early and effectively participate in the decision-making on environmental matters, such as project proposals or plans, and the outcomes from such participation must be taken account in the decision-making process' by a public authority.[14]

- Meaningful participation and consultation can also be characterised as being genuine and respectful. This can mean that opportunities to participate in a decision-making process are fit for purpose, that people's time, expertise and contributions are valued, that a reasonable amount of time is allowed for people to participate in the process, and that people engaged are provided feedback that closes the loop.[15]
- As acknowledged in Consultation paper 1, meaningful participation has special significance for Aboriginal peoples and Torres Strait Islander peoples, who have a distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters, coastal seas and other resources which they are connected with under Aboriginal tradition and Ailan Kastom (Preamble, Human Rights Act 2019). The rights of Indigenous peoples connected to land, waters, seas and resources are recognised at international law (UNDRIP), under s 28 of the Human Rights Act 2019 and under native title. The right to self-determination and the right to free, prior and informed consent (FPIC) are particularly fundamental to meaningful participation in decision-making that may affect rights.[16]
- The independent review of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) led by Professor Graeme Samuel AC (the 'Samuel review') recognised the importance of valuing Indigenous environmental, economic and social knowledge and of ensuring decision-makers have access to this information to inform decision-making (p. 159). The Samuel review recommended amendments to the EPBC Act and new National Environmental Standards (NES) to promote the participation of Aboriginal peoples and Torres Strait Islander peoples in shared decision-making in a way 'that promotes the rights, obligations, ecological knowledge and cultural protections afforded to Indigenous Australians under law, including the right to self-determination and in accordance with the principle of free, prior and informed consent' and protects rights to Indigenous data sovereignty (p. 63). The Samuel review also recognised 'the right for Indigenous people to derive benefit from the sharing and use of their knowledge, and the provision of support and resources to Indigenous Australians where engagement is required as part of a statutory process' (p. 6).
- In recognising the distinct rights, obligations and knowledge held by Aboriginal peoples and Torres Strait Islander peoples, the recommended NES provides an appropriate principles-based framework for facilitating early engagement of Aboriginal peoples and Torres Strait Islander peoples in decision-making processes. It recognises:

  > … the longstanding custodianship of land, freshwater and sea management in Australia by Indigenous Australians and their ongoing role in protecting and managing the environment and maintaining their cultural responsibility and connection to Country. It provides a set of principles to empower Indigenous Australians to actively participate in decision-making with governments, and enable greater consideration of their land, freshwater and sea management knowledge … These principles are intended to be consistent with the UN Declaration on the Rights of Indigenous Peoples and the Convention on Biological Diversity (UN 2007) and have drawn on existing guidelines recognised as best practice (Samuel review, pp. 62-63).

Why a principles-based approach to meaningful participation is important

- The Queensland Public Sector, and public sectors more broadly, recognise the importance of taking a principles-based approach to engagement and participation in decision-making. Several of the principles listed in the draft recommendation have been declared fundamental to good public administration. Section 4 of the Public Sector Ethics Act 1994 sets out four key ethical principles that are fundamental to good public administration: integrity and impartiality; promoting the public good; commitment to the system of government; and accountability and transparency. In relation to promoting the public good, the Queensland Ombudsman has articulated this principle, in part, as public sector entities and officials accepting and valuing their duty to engage the community when developing and implementing public sector decisions (p. 1).
- We first presented the principles of participation embedded in the draft proposal to ensure meaningful participation is the foundation of a new participation process in Consultation paper 1. These principles are reflected in international standards, including principle 10 of the Rio Declaration,[17] and aim to promote meaningful participation. Elaborated in the context of mining lease and associated environmental authority applications, these principles seek to ensure that participation is:
  - Informative:
    - *Transparent*: appropriate and timely access to information concerning a mining lease application and associated environmental authority, including any potential environmental and social impacts. Information is made widely available and in a format that is accessible to Aboriginal peoples and Torres Strait Islander peoples, other affected or interested persons, and the public more broadly.
    - *Accountable*: decision-makers and the proponent are accountable to Aboriginal peoples and Torres Strait Islander peoples, other affected or interested persons, and the public more broadly in designing and implementing participatory processes and consultation opportunities that enable informed

participation. The participation process and consultation are outcomes-based and underpin informed decision-making. Decision-makers hold a duty to consult with, at least, Aboriginal peoples and Torres Strait Islander peoples. Rights to Indigenous data sovereignty are respected and protected.

- Open:
  - *Inclusive*: decision-makers and the proponent identify and include the full diversity of people affected by decisions in the participation process and in consultation opportunities. The correct cultural authorities to speak for Country are identified. Various opportunities for consultation are afforded across the entire participation process, beginning with early and effective engagement that can help to inform consultation design and the applications. The participation process and consultation value Indigenous knowledges, are culturally responsive to Aboriginal peoples and Torres Strait Islander peoples and give effect to cultural rights.
  - *Responsive*: the participation process and consultation opportunities are proportionate to the nature, scale and impact of a proposed mine. Expertise and information shared by Aboriginal peoples and Torres Strait Islander peoples, other affected or interested persons, and the public more broadly through the participation process are taken into account in the decision-making process. People engaged are provided feedback that closes the loop.
  - *Well-resourced*: the participation process and consultation are well-resourced proportionate to the nature, scale and impact of a proposed mine. Aboriginal peoples and Torres Strait Islander peoples, including their representative institutions (eg, RPBCs), are properly resourced to enable their participation in the statutory decision-making process. The right for Aboriginal peoples and Torres Strait Islander peoples to derive benefit from the sharing and use of their knowledge is respected and reflected in consultation practices.
- Just:
  - *Impact and opportunity focused*: the participation process and consultation opportunities focus on the environmental and social impacts of a mine and opportunities for mitigating and managing these impacts. Benefit sharing opportunities for Aboriginal peoples and Torres Strait Islander peoples are also a focus.
  - *Equitable*: people or communities who will be disproportionately impacted, are vulnerable, or under-represented are identified and involved early in the participation process. Aboriginal peoples' and Torres Strait Islander peoples' right to self-determination, right to FPIC and cultural rights are given effect through the participation process and consultation.

How the principles relate to the duty to consult

- In exercising their duty to consult (see draft recommendation 1, above), decision-makers would be responsible for embedding the principles for meaningful participation into the design and implementation of the participation process.

How the principles relate to proponent-led consultation

- Proponents would also be responsible for embedding these principles into their consultation with Aboriginal peoples and Torres Strait Islander peoples, other affected or interested persons and the public more broadly. In practice, this would mean that each participation principle is visible in, and given effect through the implementation of a consultation plan and reported against in a consultation report (see draft recommendations below).

Implementation considerations

- Prior to implementation, consultation about the proposed participation principles would be required with Aboriginal peoples and Torres Strait Islander peoples to give effect to FPIC rights and s 21(2)(e) of the Public Sector Act 2022. The Queensland Legislative Handbook, under fundamental legislative principles, recognises the value of undertaking significant consultation with Aboriginal and Torres Strait Islander representative bodies on proposed legislation which impact on Aboriginal tradition or Island Custom [Queensland Legislative Handbook [7.2.10]).

- Policy guidance that elaborates the principles for meaningful participation could be developed to support decision-makers and proponents. This guidance could also specify outcomes that need to be met through the participation process and consultation (eg, fit-for-purpose, effective use of resources). Such guidance would need to be developed in consultation with Aboriginal peoples and Torres Strait Islander peoples.
- Tensions between allowing adequate time for building relationships and effective consultation and efficiency would need to be considered in the design of the participation process. In the context of the review principles, Australian Energy Producers pointed to an inherent tension between the principles of fairness and efficiency.
- More broadly, Energy Resources Law, while it supported the review principles, expressed concern about the prospect of realising these principles through the proposed process.
- Parallax Legal noted the importance of ensuring that the principles translate into treatment of the rights and interests of Aboriginal and Torres Strait Islander peoples, communities and nations in a way that is no less favourable than those of non-Indigenous persons.

Arguments in support	**Counter-arguments**
• Would ensure that participation processes and consultation are meaningful and genuine and go beyond seeking 'buy-in' to a project and are more than a 'tick-box' process. • Would provide clarity to decision-makers on the exercise of the duty to consult. • Would provide clarity to proponents on what is valued in consultation. • Would improve a proponent's ability to understand interests, concerns and opportunities though a non-adversarial process. • Would support a participation process and consultation that is proportionate to the circumstances, while ensuring that key principles and outcomes are met. • Would support the implementation of s 6 of the Environmental Protection Act 1994. • Would support informed community engagement and the building of relationships which would, in turn, support informed decision-making. • Aligns with international law and standards and domestic law and reflects best practice, including the right to participate in environmental decision-making and right to a healthy environment. • Would respect, protect and give effect to the rights of Aboriginal peoples and Torres Strait Islander peoples, including participation rights, the right to self-determination, the right to FPIC and cultural rights. • Aligns with recommendations made in the Samuel review regarding meaningful participation of Aboriginal peoples and Torres Strait Islander peoples in environmental decision-making.	• Not prescriptive enough to provide clarity to decision-makers and proponents. • Unresolved tension between efficiency and effective consultation. • Unachievable for small miners.

Alternatives not proposed
• Reliance on guiding principles of review set out in Consultation paper 1. • Focus on mechanisms, rather than principles of meaningful participation and consultation.

3. Legislative minimum requirements for participation

Proposal 3: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to insert a new non-adversarial integrated participation process for mining lease and associated environmental authority applications
Key considerations (and relevant implications) for all draft recommendations
Current process • Currently, the main way to participate in decisions about mining proposals is through the mining lease objections process. There are additional participation mechanisms available through the environmental authority process, including the ability to provide submissions on the application, and comments and submissions through any EIS process. • The current process is integrated at key points, including joint public notification of mining lease and associated environmental authority applications and a combined objections hearing where applicable. • These formal participation mechanisms are accompanied by other forms of consultation and engagement, including consultation required in developing any PRCP or additional voluntary engagement by the miner with the community. *Consultation feedback* • The recommendation to remove the mining lease objections hearing requires careful consideration of how procedural fairness and natural justice would be afforded where a right to be heard is no longer available. • In consultation we proposed a new non-adversarial integrated participation process. Consultation on this proposal was generally supported by all stakeholders, except industry bodies. • This draft process would require the minimum participatory methods to be set out in legislation to provide clarity and certainty of process. This process builds on the existing notification and submissions process but is expanded to reflect the above principles and provide for early, ongoing and meaningful engagement. The requirements are expanded below. *Implementation considerations* • This approach would require increased inter-governmental coordination between the Department of Resources and the Department of Environment. Lack of coordination and integration between different departments within the State Government is already an identified an issue by key stakeholders (for example, see QRC Streamlining Report) so internal governance of a process with increased integration is critical for ensuring the efficiency of the process.

- It is acknowledged that this recommendation would require a capability uplift, particularly of Department of Resource assessment staff, who currently are not required to consider submissions or information from the public.
- This approach would need to be supported by appropriate statutory timeframes for each stage to allow for meaningful engagement while providing certainty of assessment timeframes.

Arguments in support	**Counter-arguments**
• The opportunity to participate in the Government's decision-making processes is fundamental to instilling community confidence that the resources industry is well-regulated and that the State's resources are developed in the public interest. • Early and ongoing participation will help identify and mitigate concerns and reduce the need for dispute resolution by way of appeal. The iterative nature of the process will enable community to more readily view how their concerns have been addressed. • An integrated approach enables effective participation by allowing a holistic consideration of impacts and allows for all relevant issues to be resolved in combined forums rather than fragmented processes.	• Participation in decision-making processes should be limited to those with a direct interest in the project as broad-based approaches may lead to unintended delays, increased costs and uncertainties. • Engagement requirements should be flexible and allow industry to adopt place-based and tailored approaches that they deem fit for the operation.

Alternatives not proposed

- Alternative methods of participation that were presented in the consultation paper include community advisory committees or reference groups, community leader councils, public meetings or hearings. There was little support for these methods.
- Establishment of an Aboriginal and Torres Strait Islander Advisory Committee was proposed during consultation. While the underlining principles of this proposal did have some support in consultation, the mechanism itself was not supported.
- Removal of the mining lease objections hearing without provision of additional participation mechanisms beyond the existing submission stage.

Draft recommendation 3.1: Amend the Mineral Resources Act 1989 and the Environmental Protection Act to require a public information session for the mining proposal to be held during the initial phase of the participation process

Key considerations (and relevant implications)

- Currently, community is made aware of a mining proposal through the public notification stage, at which point they are provided with a full suite of application documents that are often lengthy, technical and complex documents. They are then generally provided a period of 20 days during which to review the documentation and provide a written response. The 'one-off' approach is a barrier to meaningful participation. It encourages objections as this is the only opportunity to participate in the assessment process.
- In consultations, one of the options presented for a re-imagined participation process was an information session or open house that would occur early in the application process. Stakeholders expressed general support for information sessions or open houses as part of the new participation process.
- It is recommended that the sessions be attended by both the proponent and representatives from the Department of Resources and Department of Environment. It would provide an early opportunity to raise awareness and explain details of the mining proposal and decision making-process. This procedural element is a critical element of the proposal, and what distinguishes this from other voluntary proponent information sessions that may currently occur.
- Sessions should be held both in-person and online to support increased attendance and allow the public to attend in ways that are most accessible to them.
- Consideration should be given to who should ultimately be responsible for hosting the session, including the potential role of local government.
- While the primary focus is to inform the community, the sessions could enable the identification of high-level issues. A summary record of the session would then be published and provide information that must be considered by both the proponent in their consultation report (discussed further at 3.6, below) and the decision-maker in complying with the new statutory criteria to consider the information generated through the participation process.

Arguments in support	**Counter-arguments**
• Effective information sessions can help ensure transparency, foster ongoing community engagement, and ultimately assist in building trust and acceptance in the process. • Early engagement can help identify community concerns that can be mitigated in the continued development of the mining proposal and reduce the need for issues to be escalated to appeal.	• This would result in additional costs and delays to application times. • The resources devoted to these sessions could be better utilised elsewhere and the information could be shared through alternative means, such as the online portal.

Draft recommendation 3.2: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to insert a commenting stage that invites all interested persons to submit comments on the initial application documents

Key considerations (and relevant implications)

- Currently, an application for an associated environmental authority is published and any person can make a written submission on the application. Where an EIS is required, the draft EIS is published and any person can make a written submission on that document, which is later taken to be a submission on the EA application for the purposes of providing objections rights.
- The submissions are an opportunity to raise issues or concerns with the proposal which can be considered by the proponent and may result in changes to the proposal.

- Properly made submissions must be considered by the decision-maker in deciding the application. They also provide the submitter with a right to object should an environmental authority application be approved.
- There is currently no ability to make a submission or otherwise comment on the mining lease application. The only method of public participation is lodging an objection which automatically triggers the referral of the application to the Land Court for a mining lease objections hearing.
- With the proposed removal of the mining lease objections process, we consulted on various methods that could enable community input into the decision-making process. The value of maintaining a formal written submission period for the environmental authority application and introducing the ability to make a submission on the mining lease application, in addition to other methods, was consistently supported during consultation.

Arguments in support	**Counter-arguments**
• Commenting period enables the identification and consideration of issues. • Public commenting periods increase transparency and allow for independent scrutiny of information. • Maintains the integration of issue identification and mitigation that occurs through a combined mining lease objection hearing.	• Public comments should be restricted to the environmental authority application, with comments on the mining lease application limited to directly affected persons. • Comments should provide appeal rights, to reduce the burden on interested persons from engaging at multiple points of the application process.

Draft recommendation 3.3: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to provide the right, for at least Aboriginal peoples and Torres Strait Islander peoples, to request a site visit and giving of information on Country as part of the commenting stage.

Key considerations (and relevant implications)

Current process

- Section 62(1) of the Environmental Protection Act 1994 provides that where there is an EIS, the chief executive may seek information from the proponent or **another person**. Where there is no EIS, the power is limited to only requesting information from the proponent, not third parties (s 140). A similar power exists under section 286J of the Mineral Resources Act 1989, which allows the decision-maker to request information about the application from the proponent, with section 386J(1)(c) allowing the chief executive to require the proponent to give information by a third party (note: this does not allow the chief executive to gather information independently of the proponent).
- The Protocol for First Nations Evidence in the Land Court states that, where practicable and relevant, it may be beneficial to hear evidence about traditional laws and customs on Country in different types of matters, including but not limited to matters under the Aboriginal Cultural Heritage Act 2003, the Torres Strait Islander Cultural Heritage Act 2003 and mining objection matters.
- The ability of the Land Court to take information on-Country from Aboriginal and Torres Strait Islander witnesses may give effect to cultural rights protected under section 28 of the Human Rights Act by enabling First Nations peoples to speak collectively for Country, share traditional knowledge on their traditional lands, and maintains the integrity of cultural practices.

- However, despite the operational existence of the Protocol for First Nations Evidence in the Land Court, there are difficulties accessing the current process and the discretion to hear evidence on-Country is rarely exercised in practice.

New process

- This draft recommendation is multifaceted, considering a right of 'affected' persons to request a site visit and for the giving of information on-Country as part of the commenting period to form part of a non-adversarial participatory approach.
    - a provision to allow persons who are likely to be impacted by a mining proposal, including landholders, to request a site visit as part of the commenting period (giving effect to the right to be heard as part of procedural fairness in decision-making)
    - maintaining and enhancing the discretionary power to provide for the giving of information on-Country to decision-makers by Aboriginal peoples and Torres Strait Islander peoples who are likely to be impacted by a mining proposal to give effect to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.
- The discretionary power to provide for the giving of information on-site or on-Country would facilitate and support the decision-makers' duty to ensure specific stakeholders who may be affected by a mining lease application or environmental authority application, such as Aboriginal peoples and Torres Strait Islander peoples (or Recognised Traditional Owners, Registered Claimant groups, RNTBCs, or Representative Bodies) are appropriately consulted with to support the fulfilment of the decision-makers' duty to consult (see recommendation 1, above) and be informed and satisfied prior to making a decision.

Implementation considerations

- Where this power would sit in the existing legislation, noting the primary focus of the existing powers is to request information relating to the application from the proponent.
- Whether this right should be extended to directly impacted landholders, noting our consideration of private and communal rights holders and the particular impacts the removal of the mining lease objections hearing may have on them.

Arguments in support	**Counter-arguments**
• The ability of the Land Court to take information on-Country from Aboriginal and Torres Strait Islander witnesses reflects best practice, as hearing information from Aboriginal peoples and Torres Strait Islander peoples on-Country respects a cultural and holistic approach to gathering information. This mechanism facilitates an environment where affected Aboriginal peoples and Torres Strait Islander peoples can speak collectively, participate in ceremonial aspects of traditional knowledge transmission, and present information in the most authentic and meaningful way, which may give effect to cultural rights protected under s 28 of the Human Rights Act, self-determination and FPIC. In doing so, the giving of information on country as part of the commenting period may be characterised as a positive measure that reinforces and protects these rights. • The ability of the Land Court to take information on-site from affected persons such as landholders may give effect to right to be heard in the proposed process, which is currently given effect through the land court objections hearing process.	• The giving of information on Country may involve disproportionate costs. • Current mechanisms such as videoconferencing and written submissions already allow information to be provided remotely. • The QLRC has previously identified that Aboriginal peoples and Torres Strait Islander peoples have finite resources and engaging in adjacent processes can limit their ability to engage in on-site or on-Country giving of information. • 'Affected' persons right to be heard is currently given effect through the Land Court's objection hearing process. • Aboriginal peoples and Torres Strait Islander peoples impacted by a mining proposal may currently give evidence on-Country pursuant to the Protocol for First Nations Evidence in the Land Court, which may give effect to cultural rights (as seen in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 5) [2022] QLC 4).

• Supports the decision-makers to fulfil their duty to consult specific persons who may be affected by a mining proposal (see recommendation 1, above) and be informed and satisfied prior to making a decision. It further allows the decision-maker to obtain a deeper understanding of the impacts on 'affected persons', including the connection between Aboriginal peoples and Torres Strait Islander peoples and their lands, contextualising the potential impacts the granting of a mining lease application or environmental authority application.	

Draft recommendation 3.4: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to require the decision-makers to publicly notify the final mining proposal, including proposed conditions for the mining lease and associated environmental authority. The public notice would invite formal written submissions and stipulate that the making of submissions on the final mining proposal creates standing to appeal the final decisions on the applications.

Key considerations (and relevant implications)

Current process

- Currently, the ability to provide input into the decision-making process for the mining lease is a 'one-off' process, whereby the making of the objection automatically refers the application to the Land Court, after which the recommendation is provided to the decision-maker. There is no ability for the public to formally raise issues and allow the proponent to address them outside of the objection process.
- The current process for the environmental authority provides a two-step process, whereby submissions can first be made on the application documents, after which the final proposal is reviewed and a decision is made whether to refuse, approve or approve with conditions. A copy of the decision and a draft environmental authority is then provided to any submitters, notifying them of their right to object to the decision. This multi-stage process enables submitters to consider whether the issues raised in their original submissions have been addressed or whether they consider there to be outstanding issues.
- Proposed conditions of the mining lease are not known at the notification stage (cf the environmental authority application) and are not published once the mining lease is granted.

Proposed approach

- This draft recommendation would provide an opportunity for iterative engagement and refinement of issues as the mining proposal develops. It is critical that the final mining proposal clearly demonstrates how issues and concerns previously identified through the comment stage, or other forms of consultation, have been addressed.
- The making of a submission at this point of the new participation process would provide appeal rights. This is justified on the basis that engagement at this final formation of the mining proposal will ensure that parties to the appeal have a genuine interest in the matter and have contributed to the discourse surrounding the proposal in an attempt to resolve their issues. It will also confine the focus in any appeal to concerns with the developed mining proposal.
- For the mining lease (as it is a Ministerial decision), the draft decision would be made by the chief executive or their delegate and this would go to the Minister for consideration. This is an issue that could be further explored at the Inter-Departmental workshop.

Implementation considerations

- Consideration should be given to what form the final mining proposal should take. For example, whether it should be a draft assessment report or evaluation report. Should it contain a draft environmental authority to provide clarity as to the final proposed conditions? What about the conditions of the mining lease?

- Consideration must be given to the potential implications for the Department of Resources associated with this recommendation, given there is currently no indication provided by the Department of its assessment prior to the making of the final decision.
- Currently the approval of the associated environmental authority is a pre-requisite for the mining lease decision. Given this recommendation requires a joint publication of an initial indication of the final decision, it will be necessary to consider the timing and staging of these assessments. There is the potential for internal coordination to occur between the Department of Resources and the Department of Environment.
- The Minister currently has power to refuse the application at any time if they consider it is not in the public interest. The proposed reforms do not suggest changing this, but the section would need to be amended to remove reference to referral to the Land Court. If the decision is made to refuse the application, consideration must be given to how this decision should be notified or whether notification should only occur if the draft decision is to grant on proposed conditions. This has implications for the ability to engage in the process through the making of a written submission that creates standing to appeal.

Arguments in support	**Counter-arguments**
• The ability to raise issues on the final mining proposal will enable identification of unresolved issues prior to the final decision and allow resolution of those issues. • The proposed conditions for both the mining lease and the environmental authority can be included in the final mining proposal, increasing transparency of the assessment process. • The proponent would be able to demonstrate how the views expressed during consultation on the applications have been taken into account in the final mining proposal and the proposed conditions of the mining lease and associated environmental authority. • This in turn will reduce the need to escalate issues through appeal.	• This will extend assessment timeframes and cause unnecessary delay. • This provides an additional step that can be weaponised as a delay tactic by organisations who will still utilise 'lawfare' to appeal the decision based on philosophical opposition to mining rather than on specific unresolved issues. • This should only apply for the environmental authority.

Draft recommendation 3.5: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to require a consultation plan to form part of the application requirements for mining proposals

Key considerations (and relevant implications) for all

Current process

- Currently, there is no requirement for a mining lease or associated environmental authority application to be accompanied by a consultation plan.
- There are requirements to develop a consultation plan as part of an EIS under both the Environmental Protection Act 1994 and the State Development and Public Works Organisation Act 1971. There is also a requirement for a consultation plan to be developed as part of the PRCP that is required for all site-specific environmental authority applications associated with a mining lease.
- These requirements generally include details of any consultation about the project, including, for example, consultation taken and any documented response to, or result of, the consultation and details about proposed consultation about the project's relevant impacts.

Purpose of draft recommendation

- During consultation, we heard concerns with the 'tick and flick' approach of current consultation and the lack of collaborative development on the plan. The current approach does not embed the principles of participation as set out above and does not encourage meaningful engagement.
- An eligible person who intends to apply for a mining lease under s 232 of the Mineral Resources Act 1989 must develop a consultation plan which is to be submitted as part of both the mining lease and associated environmental authority application.
- The high-level requirements of the consultation plan should be set out in the legislation and supported by additional policy guidance.
- When considering information generated through the new participation process (as required through the recommendation to insert new statutory criteria), decision-makers for the mining lease application and associated environmental authority must consider the consultation plan. This could include:
    - whether the consultation plan was informed by early engagement with Aboriginal peoples and Torres Strait Islanders peoples, including through their representative institutions, and other affected persons and communities
    - the extent to which consultation was:
        - place-based
        - fit-for-purpose
        - an efficient use of resources
        - fair and equitable and outcomes-based.
- Engagement done prior to the application being made can be taken into account in deciding the scope of the consultation plan. This is designed to incentivise early, meaningful engagement.
- Natural resource management groups could provide advice about community consultation.

Implementation considerations

- Further consideration is required to determine what the consultation plan must include. For example, in the Draft National Standard for Community Engagement and Consultation, requirements of stakeholder engagement are that:
    - The Stakeholder Engagement Plan must:
        - identify stakeholders;
        - outline the opportunity/ies for engagement;
        - allow opportunities for persons to seek clarification of the relevant information to facilitate the provision of relevant and informed feedback;
        - outline how engagement will be publicised to ensure maximum visibility;
        - include at least:
            - one public online meeting
            - one alternative engagement activity that is relevant to the proposal and its location, for example a public hearing, workshop, community discussion or survey.
    - The Stakeholder Engagement Plan should:
        - provide for multiple opportunities for engagement, using different methods
        - provide for additional time for of public comment when:
            - there are material accessibility considerations
            - the proposal contains complex information
            - there are significant community concerns raised prior to or during the engagement process.

- The consultation plan should complement the notification activities undertaken as part of the participation process.
- The consultation plan should be consistent with, and avoid duplication with, the documentation required as part of the EIS process and progressive rehabilitation and closure plan. An option is to create a single integrated consultation plan that addresses all consultation requirements.
- Should developments at the Cth level see the introduction of National Environmental Standards, consultation plan requirements should be updated to reflect any requirements. This will ensure ongoing accreditation of State processes is available.
- As noted above, in the current process neither decision-maker has an obligation to consult the relevant local authority for the region in which the mining activity is proposed. The consultation plan could impose a requirement to consult with the relevant local authority.

Arguments in support	**Counter-arguments**
• Provides the mechanism for further embedding the principles of meaning participation. • Will drive meaningful consultation by ensuring actions are principles-based and outcomes-focused. • Requirements for consultation plans will promote transparency and accountability and will strengthen ESG credentials. • This is consistent with current Government policy to make future renewable energy projects subject to mandatory community consultation.	• Consultation plans are already required for large and complex sites under the EIS. This requirement would result in duplication. • Extending the requirement to all applications places an unnecessary burden on smaller and low risk sites. • Unless there are binding requirements for co-designing the consultation plan, or an approval decision on the consultation plan, it will not provide the strength needed to change industry behaviour.

Draft recommendation 3.6: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to require a consultation report to be submitted to the decision-makers following conclusion of the commenting period on the applications to inform the decision-makers in completing their assessment report

Key considerations (and relevant implications)

Current process

- Currently, under the processes for the mining lease and associated environmental authority, there is no requirement for a proponent to document the issues and concerns raised through submissions or other forms of consultation.
- There are requirements through the EIS and PRCP processes which require proponents to provide details of any consultation about the project including, for example, any documented response to, or result of, the consultation. For an EIS under the Environmental Protection Act 1994, the proponent must provide the decision-maker with a statement of the proponent's response to public submissions and list any amendments made to the submitted EIS because of submissions made.

Purpose of draft recommendation

- Issues and concerns about the lack of meaningful engagement from the proponent, including that undertaken as part of the EIS process, have consistently been raised by stakeholders throughout this review.

- To ensure that proposed changes to the participation process result in substantive, as well as procedural, impacts on decision-making processes, we have previously recommended that a new statutory criterion be inserted to both the Mineral Resources Act 1989 and the Environmental Protection Act 1994 which would require the decision-makers for both the mining lease and the associated environmental authority to consider information generated through the new participation process.
- To link that new criterion to the expanded participation process and principles proposed in this options paper, we recommend that mining lease applicants must develop a consultation report, which is to be given to decision-makers for both the mining lease application and associated environmental authority.
- The consultation report would set out details of consultation undertaken and explain how the participation principles have been meet and the outcomes achieved.
- When considering information generated through the new participation process, decision-makers for both the mining lease and associated environmental authority application would be required to consider the consultation report.

Implementation considerations

- Specific consideration is required for determining what the consultation report should include. For example, in the draft National Environmental Standard for First Nations Engagement, the proponent must prepare and submit to the decision-maker a written summary of First Nations Engagement while must include:
    - A statement outlining how engagement on the proposal meets the requirements of the First Nations Engagement Standard, including:
        - where the proponent has accessed the supported engagement service, advice on the Traditional Owners identified for the proposal
        - evidence of the outcomes of the invitation to engage made to Traditional Owners and a summary of the agreed method of engagement where relevant
        - the relevant information
        - a summary of the steps proposed by the proponent to avoid or mitigate impacts
        - evidence of any agreement made with Traditional Owners about proposed steps to avoid or mitigate impacts, including a summary of the terms of any agreement.
    - A Traditional Owner Statement about the proposal, if Traditional Owners have chosen to engage with proponents and if they wish to make such a statement. The Statement must include a summary of the Traditional Owners views about the proposed steps to avoid or mitigate impacts.
    - The Draft National Standard for Community Engagement and Consultation also provides suggestions for reporting on community engagement and consultation. A summary document is to be provided to the decision-maker that includes:
        - a statement outlining how engagement on the proposal meets the requirements of the Community Engagement and Consultation standard, including;
            - reasons for the timing, number of opportunities for engagement and methods of engagement
            - how persons were informed about the engagement process
        - the key themes and issues raised in response to the invitation to comment on the proposal and how the proponent has considered and responded to each one;
        - all feedback on the proposal, including written comments;
        - any confidential information submitted to the proponent or excluded from the relevant information as an appendix, so that it can be excluded from publication. This should also outline the reason for determining confidential information.
- Consideration must be given to how to effectively link consideration of the consultation report to the final decision, specifically in terms of satisfying the recommended new statutory criteria. For example, decision-makers may need to consider:
    - whether the consultation plan was informed by early engagement with Aboriginal peoples and Torres Strait Islanders peoples, including through their representative institutions, and other affected persons and communities
    - the extent to which consultation was:
        - place-based
        - fit-for-purpose
        - an efficient use of resources

▪ fair and equitable and outcomes-based. • Consideration must be given to respecting and protecting rights to Indigenous data sovereignty (see draft recommendation 2, above).	
Arguments in support	**Counter-arguments**
• Closes the loop on consultation feedback and demonstrates to community and decision-makers how issues have been considered and addressed. • Visibility and information on how community issues and concerns have been addressed will reduce the likelihood of issues being escalated to appeal.	• Consultation reporting requirements are already required for large and complex sites under the EIS. This requirement would result in duplication. • Extending the requirement to all applications places an unnecessary burden on smaller and low risk sites.

Draft recommendation 3.7: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to provide a modified participation process for small and/or low risk mining projects	
Key considerations (and relevant implications)	
• See diagram above (third participation process). • Currently every mining proposal goes through the same participation process, with submissions on the environmental authority and the possibility of a Land Court objection hearing. However, where an EIS is required, there are additional processes available whereby the public is invited to provide comments on the draft Terms of Reference. This increased participation reflects the increased complexity and risk of projects subject to the EIS. • In recommending a more comprehensive participation process as set out above, it was necessary to consider whether having a uniform process for all mining proposals would be appropriate or whether participation processes should differ depending on the project. • We consulted on various criteria that could be used to categorise projects. In consultation, significant concerns were raised around the current operation of the EIS triggers, and the opportunity they provide for industry to 'game' the system. The use of community concern as a trigger was also cautioned against. • This draft recommendation proposes that certain projects should be subject to a modified and more streamlined participation process, which would remove the requirement for an information session and commenting period. These applications would still be subjected to public participation through the publication of the final mining proposal and invitation to provide a submission. • These applications would be open to appeal to the Land Court by the proponent or any person who made a submission. *Implementation considerations* • Further consideration is required to determine what projects should be subject to the modified approach. Potential examples include applications subject to a standard environmental authority applications or applications in regions where there has been a zone-based approach to planning.	
Arguments in support	**Counter-arguments**

• Risk-based approach that maintains participation rights while responding to the highly variable nature of mining projects. • Provides certainty to community and industry by legislating the modified process, rather than relying on Government discretion. • Avoids unnecessary cost and delay for low-risk projects.	• Excludes the ability to fully assess and quantify the potential impacts of projects. • Increased complexity and uncertainty of multiple participation pathways.

4. Incentivising early and ongoing engagement

Draft recommendation 4.1: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to provide an expanded voluntary pre-lodgement process

Key considerations (and relevant implications) for all draft recommendations

- Currently, both the Department of Resources and the Department of Environment strongly encourage pre-lodgement meeting(s) before any formal applications are made for a resource project.
- Existing sessions are designed to allow the proponent to discuss pre-design concepts and feasibility and to seek information to understand if their proposed application will meet legislative requirements. It can also be used to initiate discussion around expected timeframes and the quality of information necessary for the application process.
- Pre-lodgement was regularly raised during consultation meetings. In their 2024 Streamlining Report, the Queensland Resources Council proposed improving pre-lodgement meetings as a way to streamline approvals, reduce misunderstandings and improve clarity on requirements and foster a collaborative environment for innovative solutions that balance economic and environmental outcomes.
- The purpose of an expanded pre-lodgement process is to support and promote:
    - early engagement between the proponent and relevant departments and with Aboriginal peoples and Torres Strait Islanders peoples, including through their representative institutions, and other affected persons and communities likely to be impacted by a mining lease application
    - development of a consultation plan that utilises and reflects the outcomes of early engagement.
- A key consideration is ensuring that the process supports a balanced and inclusive approach to consultation in this phase, that does not selectively target and represent particular interests. The proposals to introduce requirements for consultation plans (draft recommendation 3.5, above) and consultation reports (draft recommendation 3.6, above) are designed to ensure transparency and accountability in this regard.

Arguments in support	Counter-arguments
• Promote early identification and mitigate of issues. • Increase clarity and certainty, improve application documents which would reduce assessment timeframes.	• A voluntary pre-lodgement process is already available and encouraged by Government. Legislative reform for a voluntary process is unnecessary and would result in redundant administrative steps. • Pre-lodgement cannot provide the assurances and certainty needed by industry to justify the resources associated in participating in an expanded process.

• Encourage relationship building and the development of a collaborative approach for identifying issues and generating innovative solutions. • Enables flexibility and recognises the significant variation within mining projects.	• Legislating the process, albeit voluntary, may create the appearance of additional layers, which may make Queensland less attractive for investment.
Alternatives not proposed	
• Legislating a mandatory pre-lodgement process. • Maintaining the status quo.	

Draft recommendation 4.2: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to allow decision-makers, in the exercise of their discretion, to exempt applications from information session and commenting stage requirements where the application contains a consultation plan and completed consultation report that meets legislative requirements

Key considerations (and relevant implications) for all draft recommendations

- Currently, all mining lease and associated environmental authority applications are subject to the same participation process. This ensures that all applications relating to a mining lease are subject to public participation.
- In recommending a more comprehensive participation process as set out above, it was necessary to consider whether a uniform process for all mining proposals would be appropriate or whether participation processes should differ depending on the project.
- We consulted on various criteria that could be used to categorise projects. In consultation, significant concerns were raised around the current operation of the EIS triggers, and the opportunity they provide for industry to 'game' the system. The use of community concern as a trigger was also cautioned against. However, there was support for some form of tailoring.
- We have separately recommended legislating a modified participation process for small or low risk projects.
- This draft recommendation proposes that certain large and more high-risk projects, that meet set criteria, should be able to apply to the decision-maker for approval to utilise an expedited participation process. The expedited process would recognise early engagement undertaken by the proponent and if the legislative requirements are satisfied it would remove the requirement for an information session and commenting period.
- These applications would still be subject to public participation through the publication of the final mining proposal and invitation to provide a submission. They would continue to be open to appeal to the Land Court by the proponent or any person who made a submission.

Arguments in support	**Counter-arguments**
• Encourages early and meaningful engagement. • Provides avenues for fast-tracking which will streamline approval timeframes.	• This will enable industry to 'game' the system and avoid compliance with the new participation process. • The requirement to apply for the exemption creates unnecessary burden and delays. The legislation should include an automatic exemption.

• Reduces consultation fatigue by recognising the outcomes of early engagement that meets the principles of participation.	
Alternatives not proposed	
• Automatic exemption for certain projects • Maintain the status quo	

5. Notice

Proposal 5: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to expand notice requirements to require notification at the time of application and at commencement of both the commenting period and the submission period for the final mining proposal.
Key considerations (and relevant implications)
Current process • In the current process, public and direct notification serves to inform people that an application has been made and that a submission or objection may be made to the application. Except for where an EIS is required (in which case there will be notification of the draft terms of reference and the submitted EIS), notification is a 'one-off''. • In the current process, there is only a short time period from notification to the closing of the opportunity to make a submission (15 days for a mining lease application, ordinarily 10 days for an environmental authority that does not require an EIS and 30 days for an EIS). This was raised during our consultations and in submissions as a significant access to justice issue, with people often given large documents that requires substantial time and legal resources to process and understand. *Purpose of draft recommendation* • A reformed process would disconnect notice of an application from the right to participate in the decision-making process about the application. Instead, the process would provide rolling notification of relevant information throughout the application process. Rolling, or ongoing, notice of application developments would implement the principles for a new participation model (see recommendation 2, above) and enable both directly affected people and interested members of the public more information and time to engage in the process. • Legislative requirements to provide direct and public notice can be supported by the central online portal (see Options paper – Participation part 1), but notification obligations would not be deemed as having been met by publishing information on the central online portal. • Rolling notification would also preserve the standing rights that are associated with making a final submission on the mining lease application. *Key considerations* • The main consideration is when notice is required in the application process. This proposal identifies at least three potential points in the application timeline. Other notification requirements could include where there is any material change or update to information. This would need to be balanced against the costs associated with providing notice, and distinguishing when use of the portal for information-sharing would be sufficient.

• Other key considerations, including how notice is provided, to whom notice is provided and the accessibility of information attached to a notice are considered below.	
Arguments in support	**Counter-arguments**
• Moving from one-off notification connected with participation rights to rolling notification is consistent with the new participation model designed to meaningfully engage stakeholders at an earlier stage, address barriers to participation, and improve the information before the decision-maker. • Key access issues this proposal addresses include the challenges, particularly for individuals, of processing large amounts of information in restricted time frames. • Allowing affected persons and the public to engage with notified information at more opportunities, with sufficient time and information to support meaningful engagement, improves the fairness and transparency of the process.	• The requirement to notify people at more stages will require additional resourcing. • Information released at various points in the process could overwhelm affected persons and the public. This could be addressed by accessibility proposals (see below 'accessibility of notice'). • Information can be shared through other means, such as the online portal.
Alternatives not proposed	
• Maintaining the status quo • Differing notice requirements for when public compared to direct notice is provided.	

Direct notice

Draft recommendation 5.1: Amend the Mineral Resources Act 1989 and the Environmental Protection Act 1994 to broaden the direct notice requirements for mining proposals by: • **requiring direct joint notification for both the mining lease and associated environmental authority** • **amending the definition of 'affected person' to include additional interested persons.**
Key considerations (and relevant implications)

Current process
• Direct notification of mining leases occurs through the Mineral Resources Act 1989. The chief executive will consider whether the proponent is eligible to apply for a mining lease and has complied with the relevant requirements. If satisfied, the chief executive will give the proponent a mining lease notice with prescribed content (s 252). Within 5 business days, the proponent must give a copy of the mining lease notice and the application (excluding sensitive material) to 'affected persons' (s 252A). They are defined as:
  • owner of subject land
  • owner of land necessary for access to subject land
  • owner of adjoining land
  • relevant local government

- entity that provides infrastructure wholly or partially on the subject land.

- Note that there is a broad definition of 'owner' in sch 2 and the Department of Resources has recognised the obligation to notify registered native title parties.
- For the environmental authority, direct notification is only required where an EIS is required by the Environmental Protection Act 1994 (but not for EISs prepared under the State Development and Public Works Organisation Act 1971). The proponent must directly notify the draft terms of reference for the EIS (s 43) and the EIS (s 51) to affected persons, interested persons and any other person decided by the chief executive.
    - An 'affected person' includes various owners of operational and adjoining land, native title parties and the local government for the operational land.
    - An 'interested person' includes anyone nominated by the proponent as having an interest in the project (may include community or environmental body).

Proposed reforms

- The definition of 'affected persons' in the Mineral Resources Act 1989 does not expressly include native title parties. However, the Department of Resources Mining Lease Application Guideline published September 2024 states that notice must be given to registered native title parties (a claimant or registered native title body corporate) in accordance with obligations under s 10 of the Racial Discrimination Act 1975 (Cth). It is proposed that the definition of "affected person" be extended to include at least the following:
    - any registered native title claimants and registered native title bodies corporate in the area of the application
    - any relevant representative Aboriginal and Torres Strait Islander bodies
    - any other proprietary interest holders in the area covered by the application
    - any person whose interests may be affected by a determination or decision in relation to the application.

Arguments in support	**Counter-arguments**
• Broadening direct notice requirements will enhance and support information sharing practices and address identified barriers to participation in the current processes, including the inadequacy of notice, lack of awareness of projects, difficulties finding relevant and current information and difficulties understanding the nature and extent of the project and participation rights. • The current definition of 'affected person' in the Mineral Resources Act 1989 excludes persons whose interests may be affected, such as Aboriginal peoples and Torres Strait Islander peoples with an interest in the land, registered native title parties, or nearby landholders who may be affected by dust or noise from the mine. • Giving notice to any registered native title claimants and registered native title bodies corporate in the area of the application may support and facilitate contact with Traditional Owners. This approach complies with the Racial Discrimination Act 1975 (Cth) and reflects the recent approach adopted by the Department of Resources in their Mining Lease Application Guideline. • Providing notice to 'any relevant representative Aboriginal and Torres Strait Islander bodies' addresses the concern that finding the appropriate traditional owners or appropriate groups to notify of a new application can often be a complicated and multi-layered process. Notifying the respective Native Title Representative Bodies (NTRBs) or Native Title Service Providers (NTSPs) allows	• Extension of the definition of 'affected person' to native title parties is already given effect through the departmental guidelines and is operational in practice. • The extension of the definition of 'affected person' may incur additional costs and be resource intensive.

applicants to then connect with the respective Traditional Owners and broader Aboriginal and Torres Strait Islander community in the area [see AIATSIS policy].	

Alternatives not proposed

- Maintain the current direct notification requirements for mining lease applications under the Mineral Resources Act 1989 and Environmental Protection Act 1994 processes.

Public Notice

Draft recommendation 5.2: Amend Mineral Resources Act 1989 and Environmental Protection Act to expand existing methods of public notification for mining proposals

Key considerations (and relevant implications)

Current process

- Public notice of the mining lease is affected by the proponent publishing the documents in an approved newspaper circulating generally in the area of the subject land (s 252A). A newspaper is 'approved' if deemed by the chief executive. Consultation indicates that the newspaper does not have to cover the entire area of the proposed mining lease. The chief executive may decide an additional or substitute way of giving public notice — for example, through publication on the proponent's website and/or on the Department of Resources' website.
- Public notice of the environmental authority is dependent on the type of application.
- For environmental authorities that do not involve an EIS, the proponent must publish a notice simultaneously with and by the same method of a mining lease (s 152). If notice is not required for a mining lease (for example, where an environmental authority is amended with no new mining lease), then public notice is given by publication in a newspaper circulating generally in the area where the activity is proposed to be carried out (s 152). The Environment Department may decide an additional or substituted way of publishing documents — for example, they publish environmental authority notices on their website.
- For environmental authorities involving an EIS, a two-stage notification process applies. The chief executive must publish the terms of reference (s 43) by exhibiting it on the Environment Department's website (s 558) and in a newspaper circulating throughout Australia or Queensland (reg 8). The proponent bears the responsibility of publicly notifying the EIS, which must be done by publishing it on their website (s 51) and in a newspaper circulating throughout Australia or Queensland (Reg 8). The chief executive may require another method of publication (s 51) — for example, they publish EISs on their website.
- For environmental authorities assessed by EIS under the State Development and Public Works Organisation Act 1971, a different public notification process applies. The Coordinator-General has a discretion to publicly notify the draft terms of reference (s 29). This is affected by publishing the notice in a newspaper circulating throughout Australia or Queensland (Reg 6). A proponent must then publicly notify the EIS (s 33). This is done by publication in a newspaper circulating throughout Australia or Queensland (Reg 6). If an EIS needs to be resubmitted, the Coordinator-General may require republication (ss 34B–34C) by the same method (Reg 6). The Coordinator-General also publishes information about coordinated projects on their website.

Proposed reforms

- It is recommended that public notification requirements are expanded, to increase accessibility and transparency of mining proposal applications. Public notification should be required:
  - on the proposed online portal

- in the Koori Mail, irrespective of whether native title is recognised in the area
- in another form (for example, radio, social media community pages, websites) in the area of the mining lease application
- in a local/regional newspaper covering the entire area of the mining proposal
- physically on a notice board located at a centrally accessible place in the local community.

Implementation considerations

- Whether s 150 of the Environmental Protection Act 1994 should be repealed to require public notice under both MRA and EP Act regardless of whether there has been a prior EIS process, or amended so that s 150 only applies to an EIS that has been recently completed (for example, within the last 2 years), noting that changes may occur within that time?

Arguments in support	**Counter-arguments**
• Enhancing and supporting information-sharing practices by requiring public notice is intended to address identified barriers to participation in the current processes, including the inadequacy of notice, lack of awareness of projects, difficulties finding relevant and current information and difficulties understanding the nature and extent of the proposed project and participation rights. • Despite the benefits of an online portal, maintaining and building upon forms of physical notice are needed to increase awareness and information-sharing regarding proposed activities, specifically in remote or rural areas. • Stakeholders have raised concerns as to lack of public notice and the removal of notification in the newspaper, noting that many rural areas have limited network coverage and rely on physical publications in the newspaper, community notice boards and the postal service. • This approach will provide interested/affected parties with the information necessary to support their opportunity to comment on the act or class of acts and provide a submission for the Minister to consider in deciding whether to accept the mining lease application.	• The extension of public notice to other methods, including an online portal, the Koori Mail, display on community notice board and another form of media (e.g. social media, website or radio) may incur additional costs. Concern has already been raised as to the cost of duplicate notification requirements under different legislative processes. The cost of duplicate notification requirements averages $2400 per application, with approximately $240,000 industry wide per year – see report here. Legislatively requiring additional methods of public notice will likely incur additional costs. • Introduces additional administrative burden. • Introducing broader public notification requirements pursuant to the Mineral Resources Act 1989 and Environmental Protection Act 1994 may reinforce the discontinuity between that legislation and the State Development and Public Works Organisation Act 1971.

Alternatives not proposed

- Maintain the current public notification requirements for mining lease applications under the Mineral Resources Act 1989 and Environmental Protection Act 1994.

Accessibility of notice information

Draft recommendation 5.3: Amend section 252A(3) of the Mineral Resources Act 1989 (Qld) to expand the scope and accessibility of information published through methods of public notice.

Key considerations (and relevant implications)

Current process
• For mining leases under the Mineral Resources Act 1989, only the mining lease notice prepared by the chief executive (s 252) and a map or sketch, if included, are publicly notified (s 252A). The mining lease notice includes:
  • the number of the mining lease
  • the date and time the application was lodged
  • specified documents or information that must be given to affected persons
  • where the application and any additional documents given to the chief executive about the application may be accessed
  • the last day on which objections can be made to the application.
• For an environmental authority that does not involve an EIS, public notification must state (s 153):
  • a description of the activity
  • the land on which the activity is to be carried out
  • (if applicable) where standard conditions for the activity may be obtained
  • where application documents may be accessed
  • where copies or extracts of application documents may be obtained
  • that any entity may make a submission during the relevant period
  • how to make a properly made submission.
• For an environmental authority that involves an EIS, the terms of reference for the EIS and the EIS are publicly notified. Notice for both must state (ss 42, 52; reg 7):
  • a description of the project (including title and location)
  • the name of the proponent
  • the protected matters for the project under the Environment Protection Biodiversity Conservation Act 1999 (Cth)
  • that the proponent has prepared the terms of reference or EIS
  • how the terms of reference or EIS may be accessed or inspected
  • that comments (terms of reference) or submissions (EIS) may be made in the relevant period
  • how to make a properly made submission (for EIS only).
• For an environmental authority that involves an EIS under the State Development and Public Works Organisation Act 1971, the draft terms of reference for the EIS may be publicly notified by the Coordinator-General (s 29) and the EIS will be publicly notified by the proponent (s 33). Both must state (reg 6):

- the title of the project
- the proponent's full name
- the name of the entity intending to undertake the project
- a brief description of the project
- the location of the project
- the protected matters for the project under the Environment Protection Biodiversity Conservation Act 1999 (Cth).

Key accessibility considerations

- In our consultations and submissions, stakeholders expressed concerns that the complexity and lack of clarity in current notification and information-sharing processes can result in community members missing the opportunity to put forward their views on a mining project (see Your thoughts on a reimagined process, p 17).
- Reforms that may increase accessibility include:
  - Notice of a mining lease application should be written in plain English to ensure it can be understood by as broad an audience as possible, regardless of cultural and linguistic background, education or language barriers. Simple, clear and plain English may also assist with maintaining reader engagement and facilitate comprehension of key information and messaging.
  - The new process should reflect 'information sharing' best practices to address stakeholder concerns regarding the complexity and lack of clarity in the current process.
  - The public notice and additional documents should be uploaded and shared via the online portal (see Online Portal option, above).
  - Information required for public notice should be included in other appropriate documentation.
  - The information sheet/summary of the mining lease application and likely impacts should be written in plain English.

Arguments in support	**Counter-arguments**
• Enhancing and supporting information-sharing practices will address identified barriers to participation in the current processes, including the inadequacy of notice, lack of awareness of projects, difficulties finding relevant and current information, and difficulties understanding the nature and extent of the proposed project and participation rights. • Despite the benefits of an online portal, maintaining and building upon forms of physical notice are needed to increase awareness and information-sharing regarding proposed activities, specifically in remote or rural areas. • This approach will provide interested/affected parties with the information necessary to support their opportunity to comment on the act or class of acts and provide a submission for the Minister to consider in deciding whether to accept the mining lease application.	• May incur additional costs and be resource intensive. • May introduce additional administrative burden.

Alternatives not proposed
• Maintain the current public notification requirements for mining lease applications under the Mineral Resources Act 1989 (Qld) and Environmental Protection Act 1994 (Qld) processes.

Draft recommendation 5.4: Amend section 252A(1) of the Mineral Resources Act 1989 (Qld) to expand the scope and accessibility of information directly notified to 'affected persons'.

Key considerations (and relevant implications)

Current process

- A proponent must give each affected person for a mining lease (s 252A):
  - a copy of the mining lease notice (see s 252 and above table)
  - a copy of the mining lease application (see s 245 for content), other than any part that states the proponent's financial and technical resources or is commercial in confidence
  - any other documents required to be in the mining lease notice for that particular application.

Key accessibility considerations

- In our consultations and submissions, stakeholders expressed concerns that the complexity and lack of clarity in current notification and information-sharing processes can result in community members missing the opportunity to put forward their views on a mining project (see Your thoughts on a reimagined process, p 17).
- Consideration should be given to expanding the scope and accessibility of information given to 'affected persons' to effect direct notice. Similar to the above, reforms that may increase accessibility include:
  - Notice of a mining lease application should be written in plain English to ensure it can be understood by as broad an audience as possible, regardless of cultural and linguistic background, education or language barriers. Simple, clear and plain English may also assist with maintaining reader engagement and facilitate comprehension of key information and messaging.
  - The new process should reflect 'information sharing' best practices to address stakeholder concerns regarding the complexity and lack of clarity in the current process.
  - The information sheet/summary of the mining lease application and likely impacts should be written in plain English.

Other key considerations:

- Consideration should be given to the suggestion raised in consultations with the agricultural sector that mining lease applicants should be required to finance independent legal advice for 'landholders'.
- The information contained in the direct notice must be correct and complete, as it may be relevant for compensation negotiations.

Arguments in support	**Counter-arguments**

• The extension of notice is intended to enhance and support information-sharing practices and address identified barriers to participation in the current processes, including the inadequacy of notice, lack of awareness of projects, difficulties finding relevant and current information and difficulties understanding the nature and extent of the project and participation rights.	• May incur additional costs and be resource intensive. • May introduce additional administrative burden. • By introducing explanatory notes or a document to the same effect, affected persons may rely upon it as all-inclusive, without reviewing the entire bundle of materials.
Alternatives not proposed	
• Maintain the current direct notification requirements for mining lease applications under the Mineral Resources Act 1989 and Environmental Protection Act 1994.	

6. Expanding information disclosure requirements for mining lease and associated environmental authority applications

Draft recommendation 6: Introduce targeted reforms to expand information disclosure requirements for mining lease and associated environmental authority applications, including public disclosure of mining lease conditions.

Key considerations (and relevant implications)

Overview

- This recommendation would build on the current level of information publicly disclosed on digital and non-digital platforms. Some of the challenges of engaging with current processes include issues with accessing information. Beyond this, there are information gaps that may impact the transparency and quality of decision-making.
- The Mining Review team has an opportunity in March 2025, during the Inter-Departmental workshop with the key Government Departments involved in the process, to explore a principles-based approach to improving accessibility and transparency and how that can best be given effect.
- There are challenges scoping this issue and developing potential recommendations because of the inherent difficulty of identifying non-disclosed information. This limit may be overcome through inter-department discussions (including the Inter-Departmental workshop) and information requests.
- Under the Mineral Resources Act 1989 and Regulation, information that may not be readily accessible could include mining lease conditions. It is not fully understood how far non-disclosure exemptions to mining lease applications apply.

Current context

- Informational requirements for mining lease and environmental authority applications are found across provisions in Environmental Protection Act 1994, Mineral Resources Act 1989, State Development and Public Works Organisations Act 1971 and their associated Regulations. Examples of information that is required include:
  - Environmental Protection Acts 1994 and Regulations: draft and final terms of reference for EIS, summaries of submissions about EIS, EIS assessment reports, information about environment risks of relevant activity under an EA.
  - Mineral Resources Act 1989 and Regulations: land boundaries, mining lease document ID, whether mining lease application documents attached to the application may be inspected (for example initial development plans for prescribed minerals), reasons why the mining lease should be granted, method of operation, infrastructure requirements necessary, the human, technical, and financial resources proposed to be committed. Guidelines also suggest that as part of the justification statement, applicants should include statements on the economic viability of the proposed mining activities.
- There are some inconsistencies between provisions about disclosing information between the Acts. For example:

- Public information registrars are required to be maintained by the Department of Environment and the chief executive for EIS and EA information, but no such obligations exist under the Mineral Resources Act 1989 or the State Development and Public Works Organisation Act 1971.
- The Environmental Protection Act 1994 includes a purpose provision for the EIS process which includes giving relevant parties enough information to consider and assess proposed projects in order to make informed decisions.
- The Mineral Resources Act 1989 contains a disclosure exemption (s 252A(1)(b)) for mining lease applications where it refers to the proponent's financial and technical resources or the chief executive considers it is commercially privileged. These exemptions are not found in the Environmental Protection Act 1994, noting an EIS assessment report requires information about adequacy of the proponent's management plan to minimise adverse environmental impacts which arguably may reflect information about the proponent's financial and technical resources, or information that is otherwise commercially privileged.
- There are slight drafting variations for non-disclosure exemptions for a mining lease application (s 252A(1)(b)) and application for renewal of a mining lease (s 286(4)). Under s 286(4) there is potentially a higher threshold for non-disclosure whereby the information 'that has a commercial or other value that would be, or could be expected to be, *destroyed or diminished if the information were disclosed*'.
- It is not clear how non-disclosure exemptions apply, ss 252A(1)(b) and 286(4) refers to the capacity for the proponent to withhold information as well as the Minister to decide to exempt information.

Key considerations

- Whether consistency between Acts is a relevant goal with regards to information disclosure requirements. Relevantly, we note the current general Government policy to increase consistency across resource legislation. See for example:
  - Queensland Resource Industry Development Plan, 2022: The Government's policy to improve consistency, transparency and equity to all stakeholders for objection and review mechanisms formed part of the basis for the Terms of Reference to this Inquiry (p 49).
  - Queensland Improved Regulatory Efficiency Consultation Paper, 2023: Proposed consistent mandatory conditions, including consistently and clearly defining confidentiality periods across relevant resources Acts to provide certainty to industry and the community about when information and data collected by the Department will be released (p 6).
  - DESI Regulatory Strategy 2022-2027: Improving consistency by moving commonly applied conditions into legislation or a statutory instrument (action 1.3), improving consistency and efficacy of assessment processes in the Environment Services and Regulation division (actions 2.4, 2.7).
- We also note the recognised benefits of consistency or harmonisation across regulatory frameworks (see the discussion in Consultation Paper 3).
- Any reforms will have to appropriately safeguard commercially sensitive information and consider disclosure exemptions, for example s 252A(1)(b) and s 286(4) of the Mineral Resources Act.
- Any reforms will have to consider how to appropriately safeguard Indigenous data sovereignty and recognise and protect culturally sensitive information.

Arguments in support	**Counter-arguments**
• Consultations have indicated that the information necessary to understand the nature of the project (in particular, its viability and impact over time) is very hard to locate and often too broadly shielded by commercial privilege. • Stakeholders are relying on Right to Information claims to access information that departments and proponents are not making publicly available. This information is usually too late to be able to contribute submissions at key dates. • Governments and departments should be cultivating a culture where the appropriate level of information is proactively provided. The Samuel Review notes how poor project visibility and transparency impacts public engagement and trust and results in decision challenges and inefficiency.	• Difficulty of disclosing information that is related to commercial interests. • Additional resourcing challenges.

Alternatives not proposed
• Maintain the status quo

[1] Robin Creyke, Matthew Groves, John McMillan and Mark Smyth, *Control of Government Action: Texts, Cases and Commentary* (LexisNexis, 7th ed, 2024) [10.1.4].
[2] Mark Aronson, Bruce Dyer and Matthew Groves, *Judicial Review of Administrative Action* (LawBook Co, 3rd ed, 2004) 429-32, cited in Geelong Community for Good Life Inc v Environmental Protection Authority [2008] VSC 185 (Cavanough J) [66].
[3] Ibid 432, cited in Geelong Community for Good Life Inc v Environmental Protection Authority [2008] VSC 185 (Cavanough J) [66].
[4] Robert McCorquodale, 'Group Rights' in *International Human Rights Law*, Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds) (Oxford University Press, 4th ed, 2022) 378.
[5] Harvey v Minister for Primary Industry and Resources [2024] HCA 1, [6]; Business Queensland, *Notification process for mining claims and leases* (Webpage) <https://www.business.qld.gov.au/industries/mining-energy-water/resources/landholders/notification-process>.
[6] Work Health and Safety Bill 2011, Explanatory Note, 40.
[7] C Allard and D Curran, 'Indigenous influence and engagement in mining permitting in British Columbia, Canada: Lessons for Sweden and Norway?' (2023) 72(1) *Environmental Management* 4.
[8] See, National Native Title Council, *Regional and national representation: A Traditional Owner led model* (Discussion paper, n.d.) <https://nntc.com.au/wp-content/uploads/2021/01/Regional-and-national-representation-a-traditional-owner-model_Final.pdf>.
[9] Environmental Assessment Office, British Columbia, *Guide to Involving Proponents when Consulting First Nations in the Environmental Assessment Process* (December 2013) 12.
[10] Ibid.
[11] See, eg, Haida Nation v British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 4.
[12] This would not be an issue on the Torres Strait Islanders given the extent of native title determined.
[13] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, opened for signature 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001).
[14] Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, European Parliament, 'Social and environmental impacts of mining activities in the EU' (PE 729.156, May 2022) 40; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, opened for signature 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001) art 6.
[15] Department of Industry, Science and Resources, Australian Government, 'Principles for engagement and participation' (Web page, n.d.) <https://www.industry.gov.au/publications/aps-framework-engagement-and-participation/principles-engagement-and-participation>.
[16] In relation to the right to self-determination see, International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1; International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 1; United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) arts 3, 5, 18; Human Rights Act 2019 (Qld), Preamble. In relation to FPIC, see UNDRIP art 19.
[17] General Assembly, Report of the United Nations Conference on Environment and Development, UN Doc A/CONF.151/26 (12 August 1992), annex I; Transforming our world: the 2030 Agenda for Sustainable Development, GA Res 70/1, UN Doc A/RES/70/1 (21 October 2015); J-A Everingham et al, Participatory processes, mine closure and social transitions, University of Queensland, 2020, pp 9-11.