QRC Submission

Mining Lease Objection & Appeal Process

6 September 2021

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T 07 3295 9560 F 07 3295 9570 **E** info@qrc.org.au
www.qrc.org.au

QUEENSLAND resources COUNCIL

ME_188032873_1

INTRODUCTION

This submission has been prepared by the Queensland Resources Council (**QRC**) in support of the Queensland Resources Industry Development Plan (**QRIDP**) process. The Queensland mining sector has concerns with several aspects of the current process for hearing and determining objections to the grant of an Environmental Authority (**EA**) and Mining Lease (**ML**).

This paper sets out the Queensland resources industry's perspective on the status, efficiency and effectiveness of the current system, and discusses ideas for reform which would draw from experience in other jurisdictions in order to better facilitate:

- timelier approvals;
- the removal of procedural duplication;
- a decrease in cost to all stakeholders; and
- increased clarity and certainty with respect to avenues for review of decisions.

OBJECTIVE

Although recent reviews of the Land Court's processes have resulted in updated rules and practice directions to make the ML objection process more efficient and consistent, the resources industry considers that broader reform is required.

State consideration of "*bigger picture*" reforms to the objection process presents an opportunity to:

- improve decision-making by setting fixed timeframes and clear and transparent criteria for all decision-makers in the approval process; and
- remove duplicative opportunities for review,

thereby addressing widespread industry concern with respect to the overall objections process, the efficiency of the system and cost effectiveness for all participants in the process, including landholders, environmental groups, proponents, and community. This submission therefore explores fundamental changes that might be considered to the mining lease objection and appeal process.

This submission comprises two parts; firstly, a detailed examination of the particular concerns of industry with respect to the current objections process and secondly, presents characteristics of the revised process which industry considers to be essential.

PREVIOUS SUBMISSION

QRC has made various submissions to the Government on concerns with the objection and appeals process; the most recent comprehensive version is QRC's submission entitled *'Improving resource approval efficiency'* dated 8 October 2018 (attached). In this document, QRC outlined a number of key concerns that industry has experienced with the current legislative framework. Those concerns remain relevant and have been exacerbated following the introduction of the Progressive Rehabilitation and Closure Plan (PRCP) framework.

Executive Summary

The assessment and approval process for an ML and EA has developed into one often involving each of the following:

- a comprehensive Environmental Impact Statement (**EIS**) process requiring thorough technical assessment of all environmental impacts of the proposal and detailed stakeholder consultation and opportunities for comment, which itself often takes years to complete. Depending on the EIS process undertaken, the result of the EIS process is either a recommendation report by a senior administrative officer of Government containing recommended conditions to be included on the granted EA, or a Coordinator-General's evaluation report which can state conditions that must be imposed on the ML and EA;

- a Progressive Rehabilitation and Closure Plan (for mining) which effectively duplicates the entire EA application process, including consultation and avenues for comment and review, with the added requirement, if the company is proposing a non-use management area rehabilitation outcome on public interest grounds, of an independent Public Interest Evaluation;

- a fully litigated objections hearing in the Land Court into one or more of the draft EA, the PRCP and the ML calling for extremely costly replicated expert opinions on technical matters that have already been the subject of expert technical assessment as part of the EIS. The result of the Land Court objections process is an administrative recommendation to the ultimate decision-maker made by a Court performing an administrative function, which is susceptible to judicial review; and

- ultimate decisions on the EA, PRCP and ML by the relevant decision-makers, all of which are also generally exposed to judicial review processes.

A range of additional approvals requiring decisions made under different Acts are also often necessary for a project to proceed, including for example under the *Water Act 2000* (Qld) (**Water Act**) and the *Regional Planning Interests Act 2014* (Qld) (**RPI Act**). Each such decision is generally susceptible to merits or judicial review.

The objections hearing functions as a time intensive and costly duplication of the EIS process. Both the EIS process and the objections hearing process require technical assessments by highly qualified experts and both processes ultimately result in non-binding recommendations made by bodies performing an administrative function, completed in sequential processes before the final decision-maker may act.

In this submission, industry has:

- proposed a number of essential features that are considered necessary aspects of the reformed Land Court process; and

- should the process be changed to an appeals-based process, identified fundamental features which are considered necessary in order to avoid the potential for outcomes adverse to Queensland's interests.

Industry Observations

GENERAL INDUSTRY OBSERVATIONS

Over the last 10 years in particular, the resources industry has become increasingly concerned with the current objection process. Industry has observed over that period that:

(a) the number of objections made by Non-Governmental Organisations (**NGO**) or environmental groups has increased, whereas previously objections were more likely to only come from persons (such as landowners) who have personal interests directly impacted by the proposed mine. In fact, organisations have been formed that have the sole or primary purpose of objecting to proposed resource projects;

(b) there are increasing examples of "mega litigation" cases (such as Wandoan, Carmichael, and New Acland), which involve increasing complexity, technicality, length and cost. Cases of this type were not previously experienced by the courts or tribunals charged with hearing objections.

(c) recent trends indicate that the Land Court is becoming just one "battleground" in long, coordinated campaigns which may take many years to resolve;

(d) the objections hearing process has evolved over time from relatively simple hearings dealt with quickly by the Land and Resources Tribunal to, for example:

(i) the "Wandoan" case in 2011, where the objections hearing ran for 8 days. An appeal was commenced by Friends of the Earth in the Land Appeal Court, but was subsequently discontinued such that the objections hearing was the final significant step towards the grant of the EA (issued in August 2012) and ML (delayed until August 2018 for unrelated reasons, and the subject of separate land owner compensation proceedings);

(ii) the "Carmichael" case in 2015, where the objections hearing ran for approximately 5 weeks;

(iii) the "New Acland" case in 2016, which involved an initial an objections hearing which ran for almost 100 hearing days, the result of which has triggered at least five additional hearings in three different courts;

(e) there has been a parallel increase in the complexity, detail, time and cost of the application process itself. For example, where an **EIS** requirement applies to a project, the studies, assessment and scrutiny has never been more rigorous and thorough, yet the ML applicant, despite undertaking extensive work at the EIS stage to demonstrate that the project will have acceptable benefits and impacts, will then often be required to lead expert and lay evidence (at exorbitant cost) in order to promulgate the very same matters again through the Land Court objection hearing process.

(f) Queensland is seeing exponential exploration growth which one day will hopefully translate into our future producing mines. Much of this growth is seen in the mineral sector for commodities such as gold, copper and new economy minerals. The State's ambitions for the development of these commodities are aligned with industry's and therefore a range of initiatives and reforms are required to improve the efficiency of Queensland's existing rigorous assessment framework. It is QRC's view that in future mineral projects will

be just as targeted as new coal projects, frustrating and delaying development. There is opportunity to make improvements to the process for both the coal and mineral industry.

INDUSTRY CONCERNS WITH CURRENT OBJECTION PROCESS

Industry has a number of concerns with the current process:

(a) **Timeliness**: the increasing amount of time required to complete the Land Court objection process and the resultant project uncertainty and cost of delay that comes with such timeframes. It is now common for an objection process to take at least 12 months from when it is referred to the Land Court. This disregards timeframes associated with potential judicial review of the Land Court recommendation or the approval decision itself;

(b) **Complexity**: the unnecessary complexity of the approvals process is a common subject of feedback from the industry, given that there are a number of resources acts, environmental acts and corresponding subordinate legislation. For example, owing to the abundance of legislation which applies to any given proposed project, interested stakeholders may need to respond to numerous public notifications. Not only does this render compliance both laborious and difficult, but it also repeats processes that should only have been performed once.

(c) **Unnecessary duplication:** proponents are required to incur significant cost and expenditure of resources just to comply with parallel processes for ML and EA project pathways. Similarly, there is a duplication in the number of opportunities to object, with potential objections to the ML, the EA and the relevant required planning approvals. The recent amendments requiring the additional approval of a PRCP introduced even further duplication and complexity and further grounds for environmentally-related objections to be heard and decided.

(d) **Cost**: the increasing cost associated with the objection hearing process for MLs and associated EAs. It is not uncommon for objections to cost millions of dollars in litigation and opportunity costs.

Current land court model

CURRENT LAND COURT MODEL

a) Characteristics

Currently, all objections to MLs and associated EAs are heard by the Land Court in objections hearings. Such hearings have been characterised as non-judicial, and are administrative in nature. The outcome of an objections hearing is that the Land Court in turn makes a recommendation to the relevant decision-maker. In making a decision whether to grant the ML or EA, the decision-maker must give consideration to the Land Court recommendations, although is not bound by them. Both the Land Court recommendation itself and the ultimate decision are susceptible to challenge by way of judicial review (involving the initiating of proceedings in the Queensland Supreme Court). A judicial review is distinct from a merits review, such that it is limited to whether or not the recommendation (of the Land Court) or decision was lawfully made. Judicial review applications were once rare in this context, but are becoming more prevalent. The Supreme Court's decision can then be appealed to the Queensland Court of Appeal, and then to the High Court of Australia. The process is lengthy and can sometimes take many years. Even if successful, judicial review challenge will merely set aside or nullify the challenged recommendation or decision, such that the recommendation or decision will need to be remade. A judicial review will not result in a replacement of the decision and for this reason there is an extra element of increased length of proceedings until a final, unchallenged decision is made. For example, in the Alpha Coal case, although the complainant environmental NGO was ultimately unsuccessful in its application for special leave to appeal to the High Court, the process took considerable time to complete.

The Land Court objection process is currently very broad in its scope, such that:

(i) any person can object to a mining lease application (whether they reside in Queensland or not and whether or not they are directly impacted by the proposed mine) and an EA application;

(ii) the statutory criteria is very broad meaning grounds of objection are very broad and include objections based upon the 'public interest' and, for the mining lease, whether there is 'any good reason' to refuse the grant of the mining lease. An objection can also be made to an ML on environmental grounds, with essentially the same objections made in respect of the EA associated with the ML, although technically the objections are considered in the context of the *Mineral Resources Act* and the *Environmental Protection Act* respectively, which have different objectives and criteria against which the objection should be considered.

The Land Court objection process is a 'one size fits all' model and so objections to very large mines as well as very small mines all fall within the Land Court's objection jurisdiction. The Land Court objection process also applies regardless of the rigour that has been applied to the ML assessment process prior to reaching the Land Court. As such, projects already subject to a comprehensive and detailed EIS assessment still need to be presented before the Land Court before any decision can be made to allow the project to proceed, and issues considered in those robust processes must be re-agitated, utilising a new set of expert witnesses.

The result is that the end product of the EIS process (namely, a draft EA) and the Land Court objection process (namely, a recommendation on the form of the EA) is essentially the same thing. Both are recommendations made by bodies performing an administrative function.

Neither are generally binding. Both are made at the conclusion of back to back of extremely lengthy and thorough expert-driven environmental impact assessment processes.

Whilst the Court is not bound by technical rules of evidence and has its own investigation powers, the Land Court process runs very much like a judicial process in terms of how cases are presented and considered.

Due to the unlimited breadth of persons who may object on any grounds, mining projects are increasingly facing objections as a matter of course, often from more than one party and with multi-faceted grounds of objection. Many of the grounds raised by objectors are technical in nature and require the preparation of extensive expert evidence to address them adequately.

b) Positive attributes of the Land Court model to be retained in any future structure:

Whilst industry has a number of concerns with the current process, it also appreciates that the current system offers a number of benefits, which include that:

I. the Land Court provides a known and established forum for resolving objections to MLs and EAs, and one variant or the other of the current Land Court process has been in place for decades;

II. the Land Court provides an independent forum for addressing objections to MLs and EAs which is an essential, valuable, and fully public process;

III. the current Land Court process is largely supported by other various stakeholder groups (eg. land owners/farmers and community/environmental groups), and therefore maintaining the Land Court's involvement in the objection process (however it may be reformed) is a preferred outcome for the mining industry rather than other models which have been canvassed in the past which would involve more significant structural change or the elimination of the Land Court altogether;

IV. being a Court of public record, the Land Court provides a transparent process to the public at large (although it is noted that the EIS process also performs a similar public function).

Ideas for reform

ESSENTIAL FEATURES OF A REFORMED PROCESS

Industry considers there are a number of improvements that could be made to existing process or if there is the appetite to do so, more fundamental changes to the objection and appeal process. QRC provides the following position that any change to the objection and appeal process must incorporate each of the following essential features:

A) **Fixed timeframes for all stages in the assessment and approval process:** There are a number of critical path stages in the assessment and approval process that are not the subject of fixed timeframes. Importantly, both the overall time required for the Land Court hearing process and the time allowed for the Court to deliver its recommendation are exposed to potentially lengthy delays. The Land Court should be resourced such that it is enabled to finalise its hearing within no more than 6 months of the matter being referred to the Court, and to deliver all decisions in no more than 3 months from the last day of the hearing. This would give all parties certainty of process and timeframes, with a maximum of 6 months from referral to decision.

   In addition to imposed timeframes on the Land Court, the QRC has consistently advocated for timeframes to be imposed on the final decision maker of a ML, whether that be the Minister or a delegate under the reformed process. Timeframes for decision are standard across the Environmental Protection Act and this should be consistent across the entire approval process. This recommendation was detailed further in QRC's 2020 Streamlining Report with an overall key theme of set timeframes across the full approval process.

   Every step in the overall approval process should have a fixed timeframe and should not be exposed to potentially lengthy delays.

B) **Change the scope of grounds for objection** – The grounds of objection that can be made in an objection against an ML application are basically unlimited – they can be made on any environmental ground, or for "any good reason" that the ML should not be granted, or due to the "public interest". The reasons for making a properly made submission on an EIS are equally open, leading to significant overlap and no effective constraint on the matters that the legislation allows a Court to consider. These type of broad, sweeping grounds could be refined to have more specific targeted grounds. Duplication of grounds available for objection between the *Mineral Resources Act 1989* and *Environmental Protection Act 1994* processes should also be removed.

   Logically, the permissible grounds of objection should be shaped to have some nexus to the parties that are able to make an objection. This would mean grounds of objection could be more targeted to those concerns directly related to the potential impact of the project, and the nature of the impacts that Parliament considers is relevant to the Land Court's jurisdiction. The protection of stakeholder interests, for example of a landowner or neighbour concerned about direct or indirect impacts or of an NGO with a legitimate interest seeking to protect Queensland's biodiversity, would be preserved.

C) **Change the mandatory considerations of the Court** – Each of the Land Court and the decision-makers on ML and EA applications have the potential to refuse a mining project. This means that in making a recommendation on either or both a ML or EA

application, it is essential that the Land Court must be required to give proper weighting to the benefits of the project as well as its other impacts.

Clearly articulated criteria to give properly weighted regard to these considerations should be set out in legislation for the Land Court in performing its function. For example, the economic benefits to the State of Queensland and to the region or community hosting the mining project are key reasons why mining should take place, yet under the legislation as it stands those objectives are not clearly stipulated as key considerations. This has the potential to produce unbalanced results contrary to the objects of the underlying legislation. Irrespective of which option is adopted, the criteria for decisions of the Court should be crystallised, resulting in an appropriate focus on both the economic benefits and sustainability of the developments.

The objects of the resources legislation could also be reviewed to ensure they are consistent, and provide clear direction for the Land Court and other decision-makers in performing their functions.

D) Streamlined public notification and Court processes for all approvals required for a project

The public notification and objection processes can be long and duplicative. This is a source of frustration for the industry, who are required to issue multiple different public notifications over a period of time adding delays, costs and uncertainty to their projects. The multiple public notice requirements require significant resources in terms of preparation of documentation for notification and advertising for submissions. The multiple public notices result in duplication of submissions and appeal processes, including in different courts (Land Court for EA and PRCP, ML and Associated Water Licence), Planning and Environment Court for a Regional Interests Development Application and the Federal Court for *the Environmental Protection and Biodiversity Conservation Act 1999*. This duplication results in significant delay and use of resources, both for the assessing agencies, the Courts and the proponent. It also imposes significant burden on objectors who feel that they need to remake submissions. The current process enables vexatious objectors to systematically undertake a lawful process to delay and frustrate resource decisions as objections are made under each legislative process. Industry suggests public notifications are streamlined so projects and the community only need to publicly notify and respond at one point in the project timeline. It follows that a single Court process should be available to hear all objections or appeals.

E) Limiting the number of avenues for judicial review

Under the current model, the objections hearing effectively functions as a full merits review of the outcome of the EIS process. Judicial review avenues are also available of the Land Court's recommendation and generally of the subsequent decisions on relevant approvals required under the MRA, EP Act and related legislation.
A simple reform to remove the duplication of the two avenues for judicial review, without compromising the veracity of the overall process, would be to remove the availability of judicial review of the Land Court's recommendation following an objections hearing. There is no policy reason to retain this avenue for review in circumstances where any procedural flaw in the Land Court's approach could be considered by way of judicial review of the subsequent decision to approve or reject the application.

F) Necessary elements of an appeal-based model

QRC understands one model suggested by stakeholders is a model that would:

- retain the current role of the Land Court to hear objections;

- have the Land Court hear objections in a similar way to how the Planning and Environment Court hears appeals for the *Planning Act 2016*, being that the Land Court:

    - conducts a full merits appeal;
    - acts judicially, rather than administratively, where the decision of the Court is final (subject to merits appeal and not judicial review);
    - provides a process for expert evidence to be received by the Court;
    - provides for rules as to costs.

For the purposes of this submission, we have proceeded on the basis that the relevant Court involved will be the Land Court, with its jurisdiction subject to amended legislation and court rules.

This submission does not deal in detail with PRCP approval requirements. It is assumed that any changes to the EA application and decision-making process would be reflected with respect to PRCPs.

If this reform is to be considered, each of the points made at paragraphs A – E above are considered essential. Industry considers that devolving the ultimate decision on a mining project from an elected official or delegate to a Court may give rise to potentially undesirable outcomes for Queensland. As a result, industry:

- emphasises the importance of the comments at paragraphs A and B above to any appeal-based process; and

- considers that the Minister or a delegate should retain a step-in power to bring to an end any appeal and make a final and binding decision which is immune from judicial review (similar to the existing power of the Coordinator-General in respect of certain projects) where appropriate.

BENEFITS OF PROPOSED MODELS

Industry considers the above features would achieve the following extensive benefits for all parties (industry, directly affected parties and the broader community) involved in the process:

a) **More timely decisions**: As stated above, one of industry's biggest concerns with the current approach is the amount of time it takes to obtain relevant decisions. By fixing clear criteria for the Land Court to consider in performing its function and linking it to clearly stated legislative objectives, and by providing the Land Court with sufficient resources to enable it to meet strict legislative timeframes on the hearing process itself and on the Land Court's decision, all parties would have clarity as to timeframes from the outset.

b) **Vast reduction in procedural and technical duplication**: The reformed process would see the removal of elements of the system that are currently being duplicated, such as a reduction in the detailed duplicated expert involvement associated with both the EIS process and the current Land Court objection hearing process. Efficiency of delivery of outcomes would increase and promote greater accessibility to and effectiveness of the objections process. Availability of court transcripts to the public would also increase transparency of outcomes to the broader community.

c) **Increased clarity regarding avenues of review**: A certain and predictable appeal and review process is a desirable component of a functional and user-friendly system.

d) **Reduction in Cost**: An important beneficial outcome of the proposed reduction in duplication would be the resultant decrease in cost to all participants in the process. A public interest function that has the potential to cost millions of dollars in legal and consulting fees (as well as holding costs) can be prohibitive for many participants or a deterrent for otherwise willing parties.

The Queensland Resources Council would be willing to discuss any aspect of this submission.

QRC Submission

Improving resource approval efficiency

Industry feedback on the assessment and approvals processes for mineral and energy resources projects

8 October 2018

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T 07 3295 9560 F 07 3295 9570 **E** info@qrc.org.au
www.qrc.org.au

QUEENSLAND resources COUNCIL

Table of Contents

Introduction

The Queensland Resources Council (QRC) welcomes the opportunity to provide an industry view on the assessment and approvals process for mineral and energy resources projects, focusing on duplication and inefficiency. QRC understands this initiative has been borne out of an election commitment to the Association of Mining and Exploration Companies (AMEC), for Minister Lynham to "*investigate options to improve the efficiency and timeliness of resource approval processes and, where possible, reduce the duplication between assessing agencies*".

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The QRC Secretariat applauds the open manner in which the Department has engaged with industry. However, QRC is concerned about the short consultation period. As Government would appreciate, the approvals process is complex, and consideration of the entire framework is a broad exercise. Canvasing member views on such a large process is not a simple or quick task. As such, our submission is not a comprehensive representation of industry's concerns with the process. For a complete picture of industry's concerns over the years, please see QRC's previous submissions on the approvals process, including (but not limited to):

- QRC submission to Barry Walsh on the Land Court objections process, December 2016
- QRC submission to the Productivity Commission's inquiry into *Major Project Development Assessment Processes*, March 2013
- QRC submission to Coordinator-General re: fast tracking approval processes, Mary 2012
- QRC submission to Greentape Reduction Project, July 2011
- *Supporting Resource Sector Growth,* Industry Proposals for Streamlining Queensland's Approval Process, April 2010

Beyond this submission, and in keeping with the Department's commitment to good regulatory practice, QRC is keen to establish regular meetings with the Department to discuss this work. Open consultation at the early stages of development is key to enduring policy solutions that can be effectively implemented. As the scope of the request includes the entire resource approval process, feedback in this submission is not confined to the Department of Natural Resources, Mines and Energy. As such, the development of ideas, legislation and policy will need the involvement and cooperation of all relevant departments.

Executive Summary

Overall, QRC members have numerous issues with the approvals process. These include broader concerns about the framework, and specific issues regarding policy, interpretation and operational concerns. QRC understands the focus of this consultation is on the identification of duplication and efficiency.

A clear way to evidence the impact of duplicative and inefficient processes is through the cost of delays. In 2013, in the Productivity Commission's Inquiry Report into Major Project Development Assessment Processes[1] estimated that for a generic major project, a one-year delay could result

[1] Productivity Commission (2013) 'Inquiry into Major Project Development Assessment Processes). Accessed at http://www.pc.gov.au/inquiries/completed/major-projects/report/major-projects.pdf [261].

in societal costs in the order of $26 to 59 million dollars. In 2014, the BAEconomics report[2] found that reducing project delays by one year would add a total of $160 billion to national output for 2025 and create an additional 69,000 jobs.

In 2014, in the context of major gas projects, the Queensland Competition Authority (QCA) said:[3]

> *Using a broadly accepted methodology and data obtained from NRM, APPEA and the PC, the QCA estimates the average potential loss in industry revenue from an approval delay of one day is approximately $300,000. That is, potential industry savings of around $36 million per annum are implied from reduced delay costs*.

Delays in approvals process have a significant impact on industry (and Government) in terms of cost, in both administration and project delay. QRC believes there are many opportunities to streamline the approvals process through legislation, policy and operational change.

To be clear, QRC is not suggesting assessment processes should be less rigorous. Resource projects are a major undertaking, with the aim to allow access to resources that belong to the people of Queensland, and assessment should reflect this. However, the complexity and duplication of the current frameworks is counter to good regulatory management and does not deliver a globally competitive resources industry for the benefit of Queenslanders.

Disconnected legislation

QRC members often provide feedback on the overall complexity of the approval process. The complexity is somewhat evidenced by the many and varied approvals required under different legislation for resource projects. There are currently 5 resources acts, and an abundance of subordinate and complementary legislation. Navigating this legislation is a taxing and time-consuming task. For a mining project, proponents may need to obtain the following approvals:

- State Resource Authority (tenure/land access/native title requirements)
- State Environmental Authority
- Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) process and inlcuding referal to the Independent Expert Scientific Committee
- State requirement for Regional Interest Development Approval (**RIDA**) under *Regional Planning Interests Act 2014* (**RPI Act**)
- State water approval/licence

These approvals operate independently and are subject to Court proceedings, including the Land Court objections process. Fundamentally, the complexity of the process creates a lack of transparency and consistency as it relates to decision criteria and decision-making processes. A symptomatic case study of the complex and disconnected nature of the legislation is provided by a QRC member in Annexure 1.

Transparency International, as part of their report into the corruption risks in mining approvals,[4] developed some flow-charts of the approvals process in Queensland (reproduced on pages 5-7). While the charts are not perfect in their content, the length and complexity of the process is clearly evidenced.

---

[2] Sourced from the Minerals Council of Australia pre-budget submission 2017-18, accessed here: https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-052_Minerals-Council-of-Australia.pdf

[3] http://www.qca.org.au/getattachment/aaaeab4b-519f-4a95-8a65-911bc46cc1d3/CSG-investigation.aspx

[4] https://transparency.org.au/tia/wp-content/uploads/2017/09/M4SD-Australia-Report_Final_Web.pdf

Mining Lease *Mineral Resources Act 1989* (Qld)

Source

Mineral Resources Act 1989
Mineral Resources Regulations 2013
Environmental Protection Act 1994
Minerals and Energy Resources (Common Provisions) Act 2014
Department of Natural Resources and Mines guidelines

Lodge application online in MyMinesOnline or Form MMOL -14 by mail or in person at Mines Lodgement Office *ss 245, 386O(2) reg 94*

Inital assessment by either the Mineral Assessment Hub or Coal Assessment Hub, and application referred to other agencies

Environmental authority lodged with Department of Environment and Heritage Protection (DEHP)

Environmental authority assessed

Advises compliant and public notifications can occur

Native Title Process triggered where NT not extinguished - Right to Negotiate, Private ILUA, State ILUA, or existing ILUA

Mining Proposal or initial development plan[1] *ss 231C(e), 318DP-318DX*

Issue of mining lease notice to applicant if application is eligible and complies with Act *s 252*

Field assessment and inspection

Applicant notifies affected persons[1] *s 252A(1)*

Applicant publishes in approved newspaper a copy of mining lease notice *s 252(3)(4)*

Applicant provides a statuary declaration that the application has complied with *s 252*

Mining Lease notice posted on Department of Natural Resources and Mines (DNRM) website

Overlapping requirements where coal and petroleum overlap[2] *Mineral and Energy Resources (Common Provisions) Act 2014 Ch 4*

20 days to object to Mining Lease or Environmental Authority using Form MRA - 20 and serve notice on applicant *s 260*

Application and objections referred to Land Court s 265(2) (10 days)

DEHP considers objections to environmental authority and refers to DNRM *Environmental Protection Act 1994 ss 261, 185*

Work program and initial development plan finalised

Land Court
applications and objections heard, objections upheld or dismissed
s 268

Land Court recommends to Minister that application be granted or rejected in whole or part or subject to conditions *s 269*

Compensation finalised[3] *ss 279- 282*

Decision documentation prepared for Minister

DEHP issues environmental authority

Minister grants or rejects application or refers back to the Land Court to conduct hearing or further hearing
s 271

RTN agreement reached, or Private ILUA registered, or existing or State ILUA verified

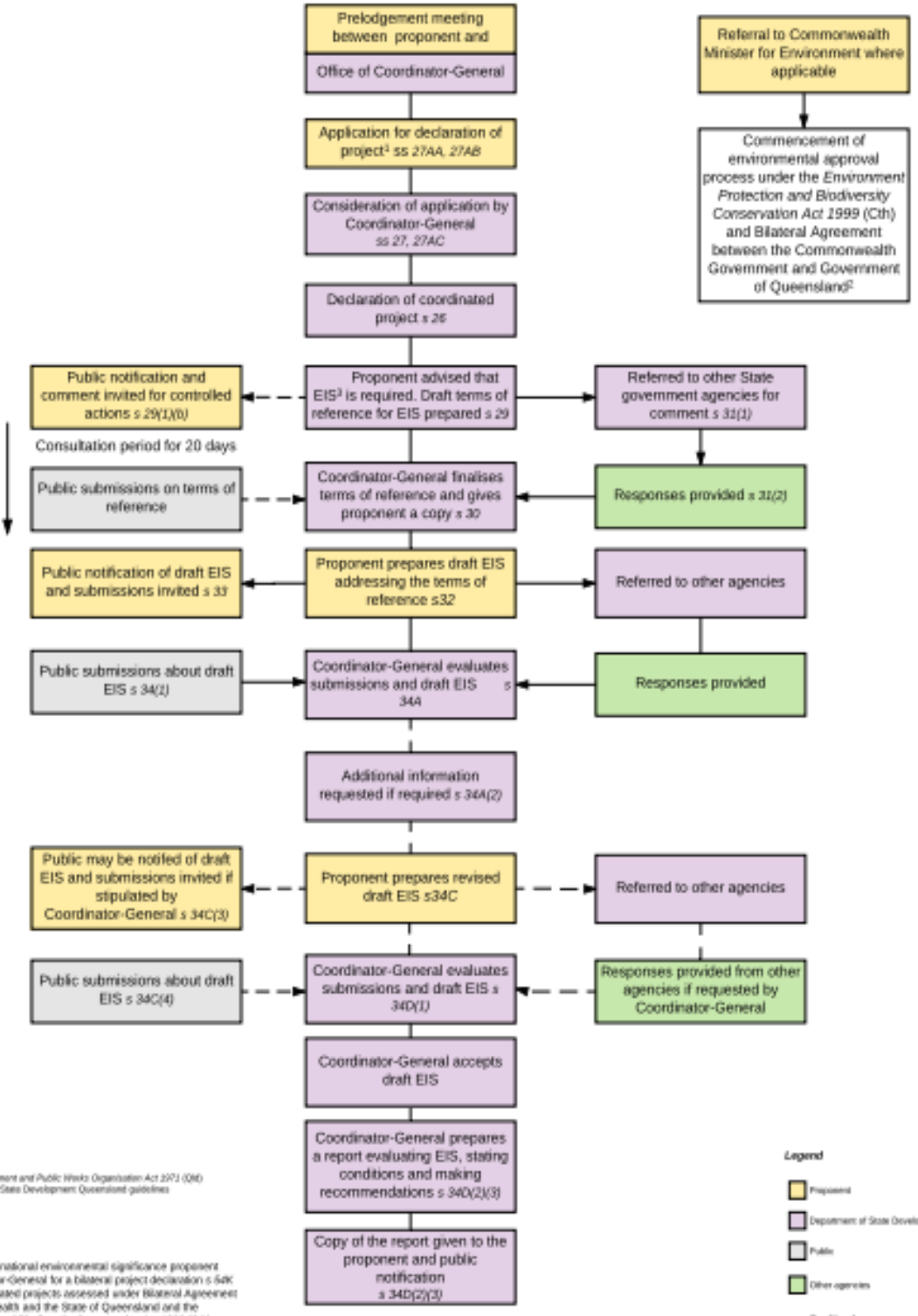
Legend

- Proponent
- Department of Natural Resources and Mines
- Minister Natural Resources and Mines
- Department of Environment and Heritage
- Public
- Land Court

1. Mining program submitted for all minerals except coal. Initial development plan submitted for coal.
2. Additional consents and agreements are required for coal and petroleum applications where they overlap.
3. Compensation finalised by lodging signed agreement between the affected landowners and the applicant or a Land Court decision.

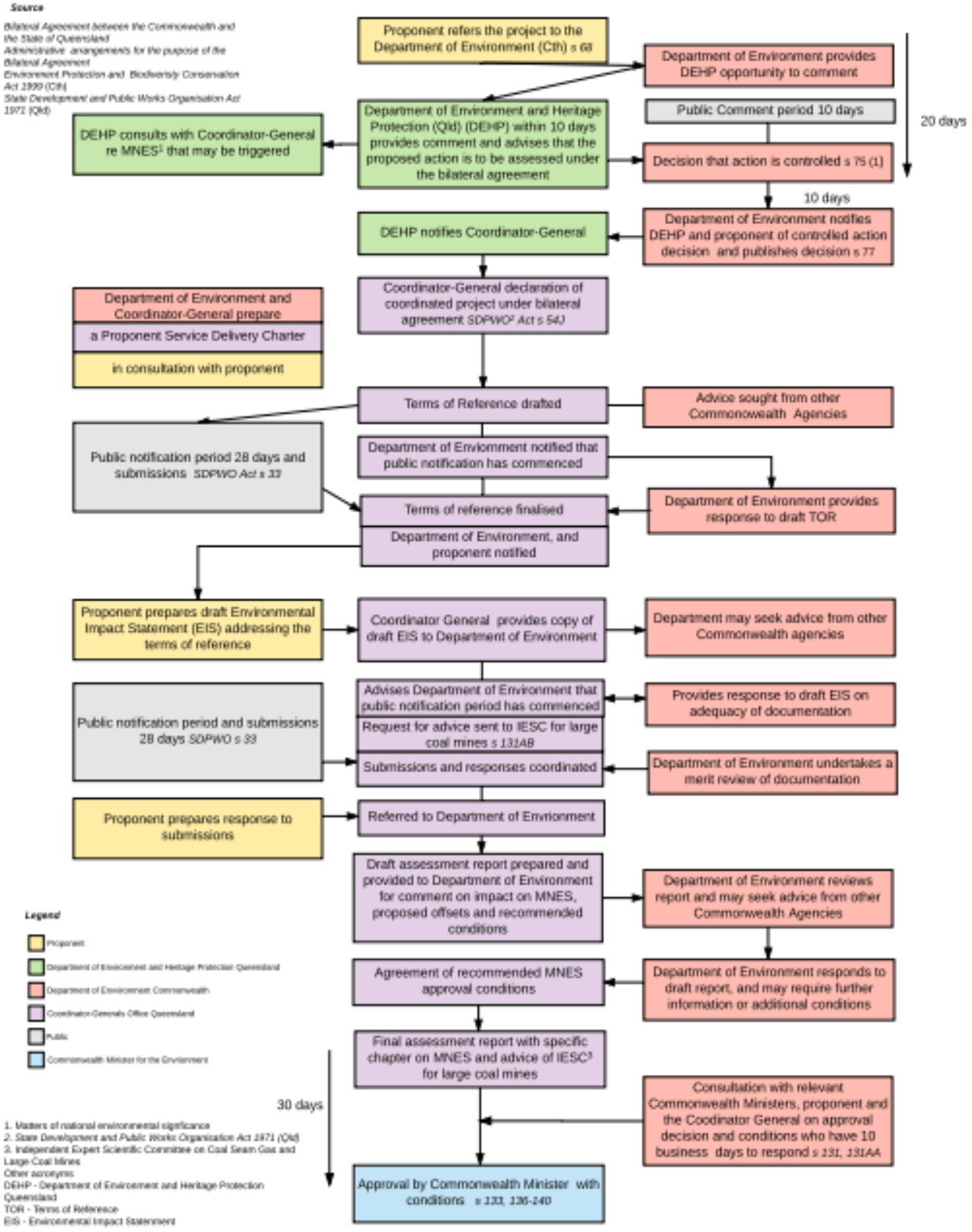
Acronyms
DEHP - Department of Environment and Heritage Protection
DNRM - Department of Natural Resources and Mines

Coordinated Projects Queensland - *State Development and Public Works Organisation Act 1971 (Environmental Impact Statement Process)*



1. If there are matters of national environmental significance proponent applies to the Coordinator-General for a bilateral project declaration s 54K
2. See flow chart Coadinated projects assessed under Bilateral Agreement Between the Commonwealth and the State of Queensland and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
3. Environmental Impact Statement
4. Coordinator-General seeks advice from ecther agencies in particular the Department of Environment and Heritage Protection and the Department of Natural Resources and Mines

Coodinated projects assessed unde the Bilateral Agreement Between the Commonwealth and the State of Queensland under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)



QUEENSLAND resources COUNCIL

Changes to legislation during approval process

In addition to the existing complexity, proponents can be subject to changes during the assessment process itself. Because the approval process can take many years, there is a real risk of government policy change during the assessment of a project. These changes can create acute challenges for proponents undertaking the approval process. For example:

- Changes to the *Water Act 2000* (**Water Act**) whereby the QRC were required to protect the existing rights of approval holders to create the Associated Water Licence (**AWL**)
- The introduction of a Commonwealth water trigger under the EPBC Act

To reduce uncertainty, Government could instate a policy in which applications are assessed under the laws in place at the time an application is lodged (not when it is assessed). This is similar to how planning law operates.

DUPLICATION BETWEEN ASSESSMENT PROCESSES

Resource Authority and Environmental Authority

There is duplication between the assessment criteria for resource authority (**RA**) applications and other application processes (which can include the Land Court objection process). For example, for a coal project:

- Both Environmetnal Authority (**EA**) and and Mining Lease (**ML**) processes require consideration of environmental impacts and the public interest.[5] Both Acts have different objects and different considerations under these criteria. For coal projects, the Land Court is put in the position of having to balance these legislative criteria against the different objects of both sets of legislation in providing a recommendation. This results in complexity in the assessment process and duplication of submissions and evidence.
- Similarly, there is duplication insofar as *the Environmental Protection* Act (**EP Act**) requires consideration of a proponent's environmental record to determine whether the proponent can be a registered suitable operator and section 269(4) of the *Mineral Resource Act 1994* (**MRA**) requires consideration of an applicant's past performance.
- Public interest is considered at length through the Environmental Impact Statement (**EIS**) process for a mining lease. This includes consideration of social and economic impacts. There should be no need to additionally consider public interest in assessing the EA and ML, where this has been considered during an EIS. Where those matters are re-litigated in the Land Court, a Court is being asked to determine considerations which are substantially matters of public policy.

Water

There is duplication in the requirement for assessment of groundwater issues both within State (EP Act, the AWL process and Chapter 3 of the Water Act) and also between the State and Federal approval processes.[6] Given the obligations on mining tenement holders under the Water Act to mitigate its underground water impacts (including "make good obligations"), there is little value in assessing and proving the impacts on groundwater at the time of issue of the ML, AWL or EA.

[5] E.g. under s.269(4) of the MRA and the standard criteria listed in Schedule 4 of the EP Act pursuant to s. 176 (2) and s.191(g) of the EP Act

[6] See State and Federal Overlap Section

Solutions:

- The criteria RA and EA assessments should be streamlined to avoid duplication and inconsistency. For example past performance should be removed as an MRA criteria or limited to past performance in complying with the MRA.
- The EIS conclusions on public interest should not require reassessment for the EA and ML, with the EIS assessment report findings on those matters to be accepted for the purposes of the EA and ML.
- Groundwater impacts should be assessed under one process.
- The EP Act (and Land Court's) jurisdiction to consider groundwater impacts should be limited to considerations of environmental impact and compensation.

PUBLIC NOTIFICATIONS

Resource projects are required to give numerous public notifications under the following legislation:

- Regional Planning Interests Act 2014 (Qld) (where applicable),
- Environment Protection and Biodiversity Conservation Act 1999 (Cth)
- Water Act 2000 (Qld)
- Environmental Protection Act 1994 (Qld)
- Mineral Resources Act 1989 (Qld)

There is unnecessary duplication between the public notice periods required for the multiple approvals necessary for resource projects. In addition to the EA and ML public notice period, a mining project also requires public notice of the AWL, public notice of the regional interest's development approval (**RIDA**) and public notice of any EIS. Further duplication will be introduced with the progressive rehabilitation and closure planning (**PRCP**) process which will also require public notification. Additionally, if an EPBC Act referral and approval is required, public notice of the referral and assessment documentation is also required.

The multiple public notice requirements require significant resources in terms of preparation of documentation for notification and advertising for submissions. The multiple public notices result in duplication of submissions and appeal processes, including in different courts (Land Court for EA, ML and AWL), Planning and Environment Court for RIDA and Federal Court for EPBC Act. This duplication results in significant delay and waste of resources, both for the assessing agencies, the Courts and the proponent. It also imposes significant burden on legitimate objectors who feel that they need to remake submissions.

To streamline public notice requirements, we suggest:

- If an EIS has been notified then no further public notice under any process should be required, unless the project has significantly changed since the EIS was notified. While section 150 of the EP Act currently includes such a provision, the test for not notifying relies on the "environmental risks not having changed" since the EIS. This is a very difficult test to meet. It also does not apply to the ML process, AWL process or RIDA process.
- A single public notice period should be sufficient to meet the requirements of the ML, EA, AWL and RIDA process.
- A single Court should have jurisdiction on mining projects, as this will allow applications to be heard together.

REGIONAL PLANNING INTERESTS ACT 2014

As briefly noted above, the RPI Act culminates in an entirely separate approval requirement, a RIDA. There is unnecessary duplication between the criteria for deciding MLAs and applications for RIDAs, as both processes require consideration of the appropriate land use. Section 269(4)(m) of the MRA requires consideration of whether the proposed mining operation is an appropriate land use, taking into consideration the current and prospective uses of the land. As part of that assessment the relevant regional plans are considered.

The same sort of duplicative considerations apply for significant environmental values under the Strategic Environment Area Regional Interest and the interaction with the EP Act and *Nature Conservation Act 1992,* as well as local governments and Priority Living Areas which are now largely captured under the requirements of the *Strong and Sustainable Communities Act 2017*.

During the development of the RPI legislation in 2014, QRC made it clear that the government had disregarded all other parts of the approval system that could adequately deal with the Regional Interests identified under the Act (e.g. cropping land). The (then) Government did not express interest in considering how the desired outcomes could be achieved within the existing regulatory systems, (even if improvements were required), and as a result, industry has to obtain yet another approval, and, if applicable, go through yet another court process.

QRC is still of the view that the regional interests identified in the RPI Act could be integrated into other regulatory mechanisms, especially as with legislative changes since 2014 (as noted above) the duplication has become even more pronounced. This is why QRC suggests that, at the very least for mining, the RIDA requirement should be removed.

Land Court objections process

The Queensland mining sector has concerns with several aspects of the current process for hearing and determining objections to mining leases, which is principally the responsibility of the Land Court. Industry's concerns with the objections process are broad and fundamental. While this feedback attempts to highlight several duplications and inefficiencies in the current process, consideration of options for broader reforms is necessary. If Government has an appetite to consider broad reform to the objections process, QRC would request to be part of that conversation.

Please note that QRC's members are keen to ensure that any reforms do not take away the legitimate rights of people who are directly affected by resources projects, to be involved in addressing real, site-specific and project-specific questions. These are legitimate questions of how a project's impact will be measured, managed and mitigated. QRC is acutely aware of the need to maintain this right in order to maintain the industry's social licence to operate.

Industry concerns

Over the past 10 years, the resources industry has become increasingly concerned with the lack of efficiency or effectiveness of the mining lease (ML) objection process. Over this period, industry has observed:

a) A trend of an increasing number of objections to MLs and Environmental Authorities (EAs), to the point where it is almost expected to receive objections to a new project, particularly in the coal sector;
b) The rise of objections made by NGO or environmental groups, which will often have philosophical objections to the mining industry, whereas previously objections were

more likely to only come from persons (such as landowners) that have personal interests directly impacted by the proposed mine;[7]

c) The Land Court becoming just one "battleground" in coordinated campaigns involving a combination of litigation, political lobbying, commercial pressure, publicity campaigns and protests against a project and from an industry perspective is seen as providing an avenue for waging "lawfare" against a project to delay and frustrate the project proponent, even if the objections are ultimately not successful;[8]

d) An across the board increase in the time taken to deal with objections through the court process - for example, the "Newlands" case in 2007, which involved the first climate change objection brought by an NGO (the Queensland Conservation Council) against a coal mine as part of the mining lease objection process, took approximately 3 months from the close of the objection period until a recommendation was made by the then Land and Resources Tribunal. Compare that to the similar timeframes for the recent Carmichael case (approximately 18 months, including approximately 5 weeks for the actual hearing) and the New Acland case (approximately 20 months, including almost 100 hearing days); and

e) In parallel, an increase in the complexity, detail, time and cost of the assessment and aproval process itself. Where an Environmental Impact Statement (***EIS***) requirement applies to a project, the studies, assessment and scrutiny that applies to such a process has never been more rigorous and thorough, yet the ML applicant will, despite undertaking such work to demonstrate to the government that the project will have acceptable benefits and impacts, will then often simply find itself arguing and demonstrating the same matters again through the Land Court in response to objections.

An example of the above is provided through the recent New Acland and Adani Land Court objection cases.

New Acland

The New Acland Stage 3 Project was first referred to the Land Court for an objections hearing in October 2015. It is now 3 years since that time and the matter is still before the Land Court. The original Land Court hearing took over 100 days of Court time, involved over 2000 exhibits, over 2000 pages of submissions and 26 technical experts on the issues that had been canvassed in the previous EIS.

Since that original hearing the project has been the subject of Judicial Review proceedings (5 days in the Supreme Court) and is now back before the Land Court. An appeal has also been lodged by an objector which will be heard by the Court of Appeal in February 2019. Notwithstanding this significant judicial scrutiny and the opportunity that objectors have had to litigate their issues, the project now is required to undertake public notice of the AWL and faces the potential for more submissions and Land Court challenges.

Adani

Since 2015, the Adani Carmichael Coal Mine has been subject to numerous challenges throughout the National Native Title Tribunal, Federal Court of Australia, Full Federal Court of Australia, Queensland Land Court, Supreme Court and Court of Appeal. As recently as February 2018, Adani Mining successfully defended an interlocutory injunction application from an individual native title claimant.

---

[7] Refer to QRC submission to Barry Walsh for further information on this point.

[8] NGOs specifically campaigned for funds to launch lawfare against resource projects - http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2016/5516T761.pdf

DUPLICATION BETWEEN OBJECTIONS AND APPROVAL PROCESSES

The Land Court objection process also applies regardless of the rigour that has been applied to the mining lease assessment process prior to reaching the Land Court – i.e. projects subject to Coordinator General assessment or EIS assessment still go before the Land Court and issues considered in those processes can be re-prosecuted. Industry is concerned that when combined with other approval processes, and public scrutiny (including the need for the detailed EIS processes where public submissions are invited) there is significant duplication resulting in unnecessary delays and costs.

QRC suggests broader consideration needs to be given to the overall objection process and the roles of both the courts and government. We are now at a point where the objection hearings are re-examining the Government's assessment of projects which have been undertaken by credible, unbiased professional experts in the public service. Allowing unfettered objection to Government approvals and conditions by objectors who are not qualified to assess environmental impacts and mining techniques is inappropriate and inefficient. The Productivity Commission's Inquiry Report into Major Project Development Assessment Processes[9] outlined this same issue in 2013 -

> *Major project primary approval decisions require the decision maker to balance environmental, heritage, social and economic values. Chapter 7 recommends that Ministers — who are accountable to constituents in a way that unelected officials are not — are the most appropriate officials to make these values-based decisions. Given this, the question becomes whether it is appropriate for merits review tribunals — who are not accountable to constituents — to reconsider the decisions of a Minister, or whether this risks creating a* ***duplicate approvals process.*** (emphasis added)

DUPLICATION OF OPPORTUNITIES TO OBJECT

For a resource project there are four separate approvals and potentially three separate avenues for objection:

1) the Mining Lease,
2) the Environmental Authority, and
3) the development approvals needed under planning law (such as accommodation villages, upgrades to airports etc).

Queensland remains one of the only jurisdictions in Australia (including the Federal jurisdiction) to provide for objections to mining projects as well as judicial review appeal opportunities.

For ML projects, any person can lodge an objection to the ML application under the *Mineral Resources Act 1989*.[10] In addition, that person can also make a submission (which can be taken as an objection) to the related EA application under the *Environmental Protection Act 1994*.[11] A hearing regarding these issues may be heard separately. The result is that a project can have been through a full environmental impact statement process, been assessed, approved and conditioned and then have these same issues effectively re-examined in the Land Court. This re-examination is often through expert witnesses, who have been engaged to specifically raise as many issues as possible.

---

[9] Productivity Commission (2013) 'Inquiry into Major Project Development Assessment Processes). Accessed at http://www.pc.gov.au/inquiries/completed/major-projects/report/major-projects.pdf [261].

[10] *Mineral Resources Act 1989* s 20.

[11] *Environmental Protection Act 1994* s 160.

The Land Court objection process is currently very broad in its scope:

i) Any person can object to a mining lease (whether they reside in Queensland or not and whether or not they are directly impacted by the proposed mine).
ii) The grounds of objection are very broad and include objections based upon the 'public interest' and whether there is 'any good reason' to refuse the grant of the mining lease. An objection can also be made to an ML on environmental grounds, with essentially the same objections made in respect of the EA associated with the ML, although technically the objections are considered in the context of the *Mineral Resources Act* and the *Environmental Protection Act* respectively, which have different objectives and different criteria against which each objection should be considered.

In most jurisdictions, standing to bring legal challenge on merits grounds is limited to persons whose interests are directly affected by the project. For the Land Court, this would include landowners or directly affected neighbours or persons who have a legitimate interest in the outcome of the proceeding. For example, under the EPBC Act standing to bring legal challenge is confined to persons who, in the two years prior to a challenged decision, have engaged in the protection or conservation of, or research into, the environment or where the objects or purposes of the organisation bringing proceedings includes protection or conservation of, or research into, the environment.

GOVERNMENT ROLE IN OBJECTIONS

Undermining Government decision-making

Ministers are elected officials who are accountable to the public for the decisions they make in their role as a public representative. The decision of whether or not to grant an ML is not a legal question, but a decision that involves the weighing up the merits of various factors which need to be balanced, considering both the advantages and disadvantages of an ML proceeding. While acknowledging the role of the Government as part of administrative law, it is not appropriate for a judicial officer (who has not been elected), to make binding decisions about resources which belong to the people of Queensland.

The Productivity Commission's Inquiry Report into Major Project Development Assessment Processes[12] pointed out that Government and Ministers important decision-making role, which is undermined and duplicated by the objections process. The Commission recommended that primary major project approvals should only be subject to judicial review on the strong argument that –

> *Primary major project approval decisions should be made by Ministers. Ministers are accountable to Parliament and the public in a way that an independent body is not. Allowing merits review of ministerial primary approval decisions would allow the decisions of an elected official to be challenged by an unelected body, potentially undermining parliamentary accountability. (The same argument applies to decisions that have been ratified by Parliament.) However, ensuring the legality of, and public confidence in, the decision-making process is important and hence judicial review should be allowed.*

Additionally, often objectors are represented by the Environmental Defenders Office (EDO), which is tax-payer funded. QRC acknowledges that EDO serves the legitimate purpose of empowering

[12] Productivity Commission (2013) 'Inquiry into Major Project Development Assessment Processes). Accessed at http://www.pc.gov.au/inquiries/completed/major-projects/report/major-projects.pdf [261].

the community to use the law to protect the environment. However, the current objection process results in the Government effectively paying to re-examine their own assessment of a project.

Departments

Interestingly in many objection cases, the proponent defends their impact assessments as well as governments-imposed conditions to minimise and offset those impacts. Typically, in objection cases, only officers from the Department of Environment and Science attend and often do not provide any evidence. Given most objections are also lodged to the mining lease administered under the MRA, it is inefficient for the proponent to speak to conditions imposed by Government.

DES should be accountable for its decisions and required to take an active role to defend the decisions it makes. The Planning and Environment Court provides a useful model. Under section 457(2)(m) of the now repealed Sustainable Planning Act 2009, a relevant consideration for a court in considering whether to award costs against a party (including a decision maker) is whether a party should have taken a more active part in a proceeding and did not do so.

Co-ordinator General Conditions

There is an inefficiency regarding the Co-ordinator General's conditions in the objections process. The Co-ordinator General can set conditions for a project which must be adhered to. As part of the Land Court objections process, the Member can give recommendations for conditions on the ML and EA. However, according to a plain reading of the legislation, the Member cannot recommend conditions inconsistent with the conditions set by the Co-ordinator General.[13] This situation raises many questions about the role of the Co-ordinator General's conditions and the efficiency of the objections process.

There is a need for greater certainty around the effect of Coordinator-General conditions and their relationship with the EA process for coordinated projects. In particular, where the Coordinator-General has evaluated an EIS and recommended that a project proceed subject to identified conditions addressing specific maters, it should be made clear that the subject matter of those conditions cannot be re-litigated. It is important that the legislation specifically acknowledge that (being a whole of government assessment) the Coordinator-General assessment should be considered paramount.

In the judicial review of the New Acland stage 3 Land Court objection, Justice Bowskill provided some guidance on in relation to the interpretation of the legislation. Justice Bowskill stated that the proper construction of s 190(2) of the EPA is that it does not operate as a constraint on the discretionary power conferred on the Land Court by s 190(1). While Justice Bowskill's judgement provides some guidance on the interpretation of s 190(2), the inefficiency and opaque intentions of the process and the legislation remains present.

Additionally, the opportunity to streamline some of the coordinated project processes should also be considered. It seems cumbersome to require the specific declaration of prescribed projects and critical infrastructure projects when a state significance assessment has already been undertaken to declare a project as a coordinated project. The Coordinator-General powers to issue progression notices and step in notices should be available for all coordinated projects.

[13] Section 190(2) of the EP Act is clear in that the Land Court must not make a recommendation that is inconsistent with a Coordinator-General condition.

INEFFICIENCIES

Inefficient timing

The timing of different approvals and the Land Court objections process creates certain inefficiencies, such as the issues outlined below regarding water and restricted land consent.

Some approvals, such as associated water licences (AWL) and the federal EBPC 'water trigger' approval are not gained before the objection process. The work that goes into these is critically relevant to any hearing in the Land Court, particularly in relation to groundwater. This information is needed for the Court to have an accurate picture of how the project will address water issues, beyond the predictions in the EA. As seen in the New Acland case,[14] evidence had to be reopened to admit the 2016 IESC advice.

It is also difficult for groundwater modelling to meet the standard of proof required by a Court process. It was acknowledged in the explanatory notes for the *Environmental Protection and Underground Water Management Bill 2016* (Qld) that "there will be uncertainties inherent in predictions of environmental impacts relating to the exercise of underground water rights which are submitted as part of the application for an environmental authority."[15] The timing of the Land Court process is inappropriate and inefficient, in addition to being a duplication of the EIS, water licence and EPBC process.

As briefly mentioned above on pages 8-9, there are some questions to be asked about how water is addressed as an issue in the Land Court. It is understood that water falls under the jurisdiction for the Land Court to consider, particularly as part of the EA. However, given the detailed process in Chapter 3 of *Water Act 2000* (including underground water impact reports and make good agreements) some guidelines around the interaction between Land Court considerations and Chapter 3 processes should be considered.

Additionally, the MRA stipulates that restricted land consent is required from landholders before close of objections. However, restricted land consent is typically tied to compensation (which usually occurs after the objection period). This can result in delays to commencing the public objection period or require new ML applications for restricted land carved out of MLs at grant.

Frivolous/Vexatious claims

The broad nature of standing makes the court process open to manipulation through "lawfare", with objectors running multiple objection grounds to at least delay projects, knowing that this can have significant consequences for the ML applicant. Industry has consistently raised concerns that the Land Court objection process is being strategically used by certain objectors to delay and frustrate project approvals.[16] Whilst it is true that the Land Court has the power to strike out vexatious and frivolous objections, the practical reality is that it is very hard to establish that an objection is frivolous or vexatious in nature. The ability to use the Court in a vexatious way is a significant inefficiency in the approvals process.

The legislation should provide that costs follow the event in Land Court objection hearings. This is generally the case with challenges to EPBC Act approvals in the Federal Court and in the Supreme Court and Planning and Environment Court. Currently there is little disincentive for objectors to run the broadest possible objections, which can cause protracted hearings and put proponents at significant cost when responding to objections. For example, in the New Acland original Land

---

[14] *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection (No. 4)* [2017] QLC 24 (*New Acland Stage 3*)

[15] Explanatory notes, *Environmental Protection and Underground Water Management Bill 2016* (Qld) 13.

[16] This is listed as an explicit strategy in 'Stopping the Australian Coal Export Boom"

Court there were some 26 different expert witnesses required in order to address the issues raised by objectors. This contributed to the significant length of the hearing.

Other than in exceptional circumstances, it should no longer be assumed that objectors are raising issues in the public interest, such that they avoid costs orders when unsuccessful. It should also be noted that numerous legitimate costs orders have also been rendered futile where the objector is an entity created specifically for the purpose of the objection and has no assets.

Process/Administrative concerns

QRC members have raised numerous issues which relate to administration and policies, particularly within the commodity hubs (both DNRME and DES). Issues such as timeframes, consistency of decisions and changing policy interpretations all create inefficiencies which often result in re-work for proponents and Government. Addressing these issues would not require legislative change and would have a real impact on proponents' experience with the assessment and approvals process.

TIMEFRAMES

Petroleum

Unlike the Environmental Protection Act 1994, the Petroleum & Gas (Production and Safety) Act 2004 and associated practice directions do not contain set decision-making timeframes for various components of tenure approval. The unpredictability of decision timeframes results in an inability to execute an effective project schedule, investment security risk, standby costs and ultimately delays gas to market.

In particular, petroleum members have outlined the lack of policy or legislative timeframes for resource authority approvals lodged with the petroleum hub. Long timeframes for 'business as usual' approvals such as PFL renewals or minor amendments to work programs, later development plans and pipeline licence amendment applications result in significant project delays and increased costs.

Members report that approval timeframes can range from 3 weeks to 1 year, with schedule discrepancies between the same and different types of tenure approval. Some examples include:

- ATP later work programs: 4 months through to 12 months
- ATP renewals: 3 months
- ATP special amendment to work program: 1 month to 5 months
- Petroelum Survey Licence applications: 3 weeks through to 3.5 months
- Petroleum Lience later development palsn: 3.5 months to 12 months.

One solution would be set decision making timeframes for various parts of the approval process, either via legislative amendment, practice direction or both. This would allow applicants to plan ahead and create a schedule accordingly. For example, within 10 business days of the application being received, the applicant must be advised of:

- It is a properly made application;
- The reasons DNRME believe it is not a properly made appplication;
- List the actions the applicant must take to address the above;
- A set timeframe for the applicant to provide a response; and
- A rough timeframe as to when the approval may be expected once the applicant has met all the statutory requirements.

However, while consistent timeframes would be an important step in the right direction, even when there are timeframes it doesn't necessarily provide certainty, as the timeframes can be extended by Government. A statutory timeframe that the processing hubs were held to would help provide certainty and efficiency. Such timeframes need to be consistent across all the applicable legislation. Further, to ensure that staff are able to meet those timeframes, there might need to be consideration of resourcing.

Coal

Overall, QRC Coal members give favourable reports of the DNRME Coal hub, stating that the personal interaction with staff has been a positive initiative. There are also opportunities for efficiencies in the Coal hubs. QRC members provided feedback on the following:

- Opportunities for improvement of timeframes to receive feedback or approval notices from DNRME
- Recurring problems with both DNRME and DES being slow to update changes to contact details. This creates a situtaion where requests for information are not received by the correct contact. This limits proponents ability to comply with the limited timeframes to supply information.
- Industry needs upfront certainty on whether an EIS is required. DES cannot make a formal decision on whether an EIS is required until after an EA application is lodged. If trying to demonstrate that an EIS is not required, then detailed technical studies are required before lodging the EA – taking about 12 months.

Internal communication

Members have also raised concern around the 'multiple hands' through which an approval application must progress through. The concern being that at any stage in that process the approval application can be delayed so progression through each stage does not provide any indication of a final decision timeline. Members have expressed frustration at briefing some staff fully only to then have an application delayed or a further request for information (which may be duplicative) because of poor briefing between the staff and decision makers.

One potential solution to this issue might be to introduce a formal escalation process for urgent applications. Currently urgent or priority applications are managed through case management meetings, however members indicate that this has not always been effective. We would hope that a formal escalation process could be used to fast track urgent applications (with adequate reasoning). Depending on the level of delegation for the approval, this may involve the chain of 'approvers' being made aware of the urgency, and DNRME providing a realistic expected completion date with enhanced tracking through the approval chain. In some members experience, despite prioritising certain applications with officers in DNRME, this may not be conveyed to the relevant people in the approval chain and appropriately prioritised. (i.e. as the application progresses up the approval chain, the urgency of the application may not be understood and prioritised).

CONSISTENCY

Inconsistency in decision-making can be caused by several factors. For example, members report some frustration with a lack of continuity and experience in the staff, particularly within DES. This can result in a number of issues, based in a lack of familiarity with the resources sector and sometimes preconceived ideas about its impacts.

An example of where this becomes an issue is when proponents are applying for both minor and major amendments. In the case of minor amendments, the officer might conservatively conclude

that it is actually a major amendment, and for major amendments that it must go through the full public consultation process. In addition, conditions completely unrelated to the amendment application are dropped onto companies who often have no other choice but to reject the proposal, because the conditions are too onerous to be achieved, or not relevant.

CHANGING POLICY INTERPRETATION

QRC members consistently raise the issue of changing or inconsistent policy interpretation and application. Examples of this include:

- Different departmental officers within the same hub, or in different hubs, inconsistently apply the same section of the legislation. For example, the special amendment section of the P&G Act. In many cases this can be a function of the timeframe between lodgement of an application and approval and the changing interpretation of requirements over time.
- Instances where variations lodged at the same time with similar justification having inconsistent approvals – some in the group are approved and others are not.
- Changing interpretation from outcome/performance based, for example EA conditions returning to prescriptive measures

Consistency and clarity of policy and legislative requirements minimises time-consuming reworking of applications and unnecessary delays to approval times.

EFFICIENCIES

There are various opportunities to make administrative processes more efficient. Two examples are outlined below.

EA Amendments

There are various opportunities to make administrative processes more efficient. The ability to expand mining on existing mining tenures or extend surface rights should be simplified. Where additional resource areas become available on an existing mining tenure (as distinct from the new ML), the approval process should not involve a full major EA amendment application if the area has previously been assessed under an EIA process, and the environmental values, and any potential impact on them of the proposed additional area, has not changed.

Major EA amendment application requirements are mandated assessments which involve multiple technical expert reports, is costly and resource intensive. There should be a cascading assessment process, like that under the EPBC Act, such that the extension in appropriate cases could be assessed simply on submitted documentation, without meeting the complete application requirements under the Act.

Existing facilities with a good environmental record should be considered particularly favourably. This not only will ensure continuity of employment, but also allows both the miner and the State to take advantage of the existing facilities and resources.

A related issue is that current triggers for minor EA amendments are restrictive. The full EA amendment process is not warranted in all cases such as the above, where additional areas of existing tenures are able to be utilised and applicable studies have already been undertaken.

Associated Water Licence

Similarly, it is inefficient and unnecessarily resource intensive to require an Associated Water Licence where there are no usable groundwater resources, as determined by appropriate groundwater studies. Where the groundwater quality is such that a full AWL process would be to no advantage a simpler process akin to the issue of a standard EA should be available.

Inter-departmental

QRC has received feedback from members about the need to improve cooperation and information sharing between relevant Departments. There is a lack of coordination between DES and DNRME in facilitating interrelated components of various secondary approvals like environmental authorities, which need to be secured for tenure to be granted. This problem manifests in unforeseen delays associated with administrative issues or conflicting interdepartmental advice at various stages in the approvals process.

INTEGRATION AND INFORMATION SHARING

Much time is wasted in the assessment and approvals process providing the same information to different departments and dealing with the same questions and queries. This could be addressed by some focused integration and information sharing between Departments. Usually, the relevant Departments are the Department of Natural Resources, Mines and Energy and the Department of Environment and Science.

Solutions

1. Conduct an end to end review of processes interrelated secondary approvals (e.g. PL/PPL, EAs,) to determine opportunities for integration across state government departments with industry input.
2. Assign a project manager (like Coordinator General process) to coordinate departmental requirements. This could be facilitated via an MOU between departments.
3. An integrated IT solution, allowing for departments and companies to track a PL application and interrelated approvals throughout the process, providing transparency for all parties (see Connect and MyMinesOnline sections below).
4. Companies to request multi-departmental pre-lodgement meetings for new developments and for government to help facilitate this process.
5. Geoscience Queensland's Data Modernisation Program. This project aims to provide industry with a single program to share and submit data. This is an important initiative, with industry and government benefits including a decrease in industry data loss, decrease in administration for companies, more complete data sets potentially allowing for more reliable reserves classification and more targeted exploration.
6. Electronic systems that allow all departments to see material submitted by companies to another department (e.g. water reports), where not commercial in confidence.

CONNECT

The DES website states that: '*Connect is the department's new digital platform for online services and transactions that allows you to interact with the department 24/7, making it faster and easier for businesses to get on with the job.*'

In summary, from a customer perspective, Connect currently makes it slower and more difficult to undertake approval processes. The system also creates communication errors and is less accessible. The approvals are also likely to be riddled with errors that are caused by the Connect system. The fact that a platform is digital does not automatically make it better. Customers have not yet seen benefits to outweigh the deficiencies of the system.

DES has been informed of the many issues associated with the introduction of the Connect system on multiple occasions but has not made a concerted effort to resolve them. Instead DES is simply adding more matters to Connect without dealing with these issues, more than a few of which have been there since its implementation for the resources sector. Connect creates communication and accessibility problems that do not arise from simpler systems.

Until these matters are resolved, a simpler and more effective approach would be for applications to be lodged and processed by email and (for larger documents) platforms such as Box. In addition, this option is cheaper. The user fee for Connect is an unreasonable cost for some proponents. This system is the only electronic system introduced whether in government or private enterprise (e.g. banks, Telstra) where companies are charged if they use the electronic system rather than the resource intensive paper one that government is seeking to move away from.

QRC has consistently heard that the reason for the fee is that it is the basic maintenance cost and because it has been placed in the state budget it is unable to be changed. This seems a lack lustre excuse as it should have been based on time-savings of officer hours, not on a basic government cost of maintaining its own IT systems.

Examples of several Connect problems are provided below. It is emphasised that this is not intended as a definitive list.

Such issues include:

- MyMinesOnline does not link in with Connect. When lodging an EPM application online a print out of a physical copy of the EA application form is required to be signed and uploaded, and the company is still required to populate all the EA information (such as FA amount, Area of disturbance etc.) into the MyMinesOnline online application form.
- Joint Ventures (JV)
  - correspondence is being sent to whichever JV holder is at the top of the list on an approval document, notwithstanding that the principal holder has been stated on an application as the relevant contact. This means that minority foreign investors have been receiving responses intended for the operator company.and establishing one signatory for various components of the system eg amendments.
  - When a parent company has subsidiaries that are holders at various sites, there have been issues with not being able to hold a corporate Connect login. For many companies, site personnel are busy with practical day-to-day issues and it would be more efficient for head office to be able to assist, whenever required, with applications. Similarly, the Connect process makes it more difficult for sites to engage consultants, lawyers and operator companies to do most of the work of preparing an application, on the basis that the holder simply has to check and sign a document.
- Lodging an application by Connect normally takes considerably more time than traditional lodgment
  - For example, when lodging an application for amendment of EA conditions, Connect requires the amendment to each individual condition to be entered separately, and each with its own justification. These have to be typed out in full by the site personnel with access to Connect.

    This is particularly burdensome in relation to a minor amendment application that is simply for the purpose of making a series of updates to adopt more recent model conditions, with consequential changes to formatting, re-numbering of conditions, re-numbering of the cross-references contained in other conditions, consequential updates to definitions and related clerical and formatting connections. The traditional way of doing this is to email a Word mark-up, simply with comments in balloons noting the cross-referencing updates etc, rather than having to enter each individual change online by the designated login holder.

    Sites try to get around this problem by just saying 'See Attached' for each of these items (and still submit a Word mark-up with supporting reports in the traditional way), but it would be more efficient not to have to do this in Connect, and just use the old system.
- Connect creates formatting errors and clerical errors that did not exist pre-Connect. Examples of the types of errors created through the Connect system:

- The order of schedules has been swapped around, with the conditions still having the same numbering, but not appearing in the document in any logical order, for example: Schedule A, Schedule D, Schedule B, Schedule F. This creates extra work for the consequential changes to a plan of operations, as well as making it more difficult to find conditions quickly. The schedules are also spat out in a different order from the Model Mining Conditions, making it difficult for a parent company that has multiple sites to be able to compare conditions between sites.
- Existing conditions and tables are often accidentally deleted, or parts of the text of existing conditions are accidentally deleted. Punctuation regularly goes missing. Rows or columns of tables go missing.
- Tables are relocated from their existing position just below the condition referring to the table, either to the end of a schedule or the end of the document, making the document more difficult to read.
- Conditions and tables are frequently wrongly numbered, with the consequence that cross-referencing in other conditions no longer makes sense.
- The Connect system has problems with symbols, for example, the symbol µ is often converted to an empty square.
- If a condition has a list of bullet points or numbered paragraphs, there is often a problem with the formatting of the last line of the condition, for example, it may appear without its paragraph numbering and in the wrong font.
- Fonts and type size are often changed by Connect so as to make the footnotes beneath conditions appear in inconsistent font and type size, making it more confusing to work out which text is intended just as an explanatory note.
- Bold and italics disappear, making it more difficult to find headings. Some words are converted by Connect into upper case, for no apparent reason.
- Documents are made much longer, completely unnecessarily. For example, in an environmental authority, where each ERA is authorised for each mining lease, Connect re-formats the front pages of the EA so as to show half a dozen pages of the ERAs list which would previously fit on one page. Traditionally, the ERAs would all be listed in column 1 and the MLs would all be listed in column 2. Now each ERA is listed 10 times, against each individual ML. This is just a waste of paper.
- After the launch of Connect, it seems to have become impossible to correct or update incorrect information contained in the 'Additional Information' section of an EA, for example, there is a reference in this section to the *Sustainable Planning Act 2009*. That Act was repealed in 2016. The information in the paragraph about the Sustainable Planning Act is also simply incorrect, particularly for resource activities.

Solutions

1. Upgrades to Connect and MyMinesOnline to better link them (one log-in, etc);
2. Seriously consider the range of functionality issues that have been raised by the resources sector with Connect and work with industry to resolve them once and for all; and/or
3. Remove the Connect user fee.

MYMINESONLINE

QRC has received mostly positive feedback from members regarding MyMinesOnline (MMOL). Members express that the system, including the maps, is an extremely useful resource. However, there are a few issues which if resolved, would improve the user experience. Suggestions for improvement include:

- Update to capture all application types. Currently a number of petroleum tenure applications cannot be lodged through MMOL (for example replacement tenure applications).
- Improve visibility on documents lodged. Currently holders cannot see or access the actual documents lodged in MMOL. Having access to these documents as a source of truth would reduce the requirement to maintain duplications of the documents, and create efficiencies in having all the historic documents for the tenure in one place.
- Improve the overall visibility of the application and assessment tracking process, with meaningful expected completion timeframes in the assessment status tracker. Currently the status tracker has open ended timeframes in stages that aren't linked to each other.
- The technical assessment of applications are completed reasonably quickly (within a few months), however there is a long lag in the tenure-admin/ briefing and sign-off stage, even for simple routine applications. Perhaps for some applications, if certain conditions are met they should be taken to be approved (i.e. not require a full assessment and Ministerial approval)?
- Conceivably realistic expected completion timeframes could be put in place in the status tracker, these may differ dependent on the type of application (e.g. new tenure / renewal etc). Having a reasonable understanding on when approvals are likely to be in place can have a large impact on realising efficiencies, especially in large scale projects where there may be long lead times in coordinating commencement of activities.
- Only provide a copy of the financial and technical capability criterion where an amendment occurs. Currenlty, the criterion is required for the majority of tenure applications submitted with DNRME. It is a lengthy and burdensome process to have to upload every time given the majority of this data is consistently the same. To implement this change, DNRME may decide to have a central place on MyMinesOnline where these are stored and updated as required.

State/Federal Overlap

There are a number of areas in the approvals process where assessment of particular aspects of a project are subject to both State and Federal Government approvals. While Government has indicted an Approval Bilateral is out of scope of this review, it is clearly a duplication and inefficiency in the process that our members continue to identify.

There are areas of significant overlap between the requirements of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) and the *Environmental Protection Act 1994* (Qld) regarding the extraction of water for CSG activities and the management of environmental offsets. While both instruments aim to create the best environmental outcomes, proponents need to undertake significant rework to fulfil the prescribed administrative scopes under each Act, even though the environmental matter being assessed is the same or very similar.

WATER

Under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth),[17] the Commonwealth Minister for the Environment needs to approve actions that may have a significant impact on a water resource, in relation to coal seam gas development and large coal mining development (the "water trigger"). Through this process, DES must request advice from the Independent Expert Scientific Committee (IESC).[18] As a result, the Commonwealth Department of

[17] s 24D
[18] *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) s 131AB.

the Environment (through the Office of Water Science) can provide comment, request information and set conditions as part of the project approval.

As part of the EIS process, State Government can impose conditions on a project in relation to all aspects, including water. This results in a duplication of assessment by State and Federal Government. Further, it is a particularly inefficient duplication. QRC members report providing management plans which manage essentially the same things but having slightly different actions/requirements due to different expectations between State and Federal Government.

Member report considerable overlaps, specifically regarding EPBC conditions for surface water, hydraulic fracturing and groundwater against the state framework within the Surat Cumulative Management Area. Groundwater impacts are assessed under the EP Act and Water Act and surface water impacts are assessed under the EP Act. The current duplication results in significantly lengthening of assessment processes and duplication of or inconsistent conditions.

The Chapter 3 make good requirement under the Water Act and the EP Act and AWL assessment for groundwater should be accredited under the Bilateral Agreement to remove the necessity for dual assessments at State and Federal level, duplication of conditions and delays in the approval process. However, QRC understands that consideration of an Approval Bilateral is out of scope for this review.

In the absence of an approval bilateral, QRC would suggest that the State Government cultivate a more collaborative and communicative relationship with the Federal Department of Environment. Another idea to address this issue would be an automatic approval by either State of Federal Government where concerns have been addressed. However, QRC appreciates that this idea raises many complexities, such as agreed auditing of conditions.

OFFSETS

Members regularly experience the situation where having successfully moved through the Queensland offsetting system, additional, often larger offsets are requested from the Commonwealth Government.

The Queensland framework allows optionality with payment into a fund, securing land-based offsets or a mixture to manage offset requirements. On the other hand, the Commonwealth mandates 90% of offsets must be land based and approval of the offsets management plan is staged. Finding and securing appropriate land can take over 2 years, which could delay companies submitting their stage 2 environmental offset management plan.

Since the Queensland Environmental Offsets Act came into place in 2014, QRC has been advocating that the state work to get its processes accredited by the Commonwealth Government as New South Wales has done. Additionally, the Queensland and/or Commonwealth governments could investigate the establishment of appropriate land banks.

QRC again urges government to seek this accreditation which is particularly important given the unlikelihood of an Approvals Bilateral ever being agreed.

Post-Approval

QRC members have raised a number of issues which, while not specifically being aspects of the approval process, are symptomatic of the complexity in the legislation.

NOTIFIED ROAD USE

The *Mineral and Energy Resources (Common Provisions) Regulation 2016* sets out that use of a public road within a resource authority for transport relating to a seismic survey or drilling activity

is a notifiable road use. As such, the holder of the resource authority (tenement) must provide the public road authority for the road (e.g. the Shire) with written advance notice of the transport at least 10 business days before the notifiable use is proposed to start.

The requirement is irrespective of the size of the drill rig/ equipment to be mobilised (e.g. Toyota mounted RAB rig vs. large diameter petroleum well rig). Surveying and drilling does not necessarily relate to the use of large equipment. For example, transport relating to exploration drilling could include a small vehicle. Regardless, failure to complete such notifications will constitute a breach of the Act and, pursuant to Section 63 of the Act, a breach of the conditions attached to the resource authority. As such, this section of the legislation creates an inefficient process whereby proponents have to notify local councils and seek approval where the vehicle using the road does not create any great burden.

The Regulation should be amended so that, in relation to transport relating to a drilling activity, the requirement will only apply to vehicles above a size/ weight threshold.

REPORTING

There are many examples of reporting duplication, within departments and across departments and agencies and into multiple systems. For example, proponents can report petroleum production through:

- 6 monthly reports in the MyMinesOnline system,
- 6 monthly cumulative reports through QDEX,
- Production testing reports through QDEX,
- Safety returns via pdf forms.

Further, information is reported in various formats with slightly different requirements. It would be more efficient for this information for be lodged into a single system at the same time and be reviewable across all agencies.

Water

There is a requirement under the *Minerals and Energy Resources (Common Provisions) Act 2016* to provide information on underground water takes on MLs and MDLs. The requirement applies to all MLs, including infrastructure leases where a miner is not authorised to mine and therefore not likely to have an impact on groundwater. The legislation does not make any distinction between leases. QRC members have reported providing reports of "0" which while not onerous do not stands up in terms of efficiency and effectiveness.

Furthermore, the requirement to report all water takes on all MDLs regardless of whether there is any impact on underground water, is equally as inefficient as very few coal and mineral exploration activities would cause such impacts. In effect drilling activities do not reach the reportable threshold, and so it would only be in the rare event of a bulk sample pit that proponents might take water.

Public Reports

Given petroleum 'title' documents are being removed from the legislation, we would suggest that the detail, content and consistency of public authority reports should be improved. Currently the information in the reports is minimal, inconsistent, and some of the key activities or details are not always captured.

Once the 'title documents' are removed from the legislation, the public authority reports will in effect become the official register for the tenure, and will become increasingly important

as a source of truth for information related to the tenure. The reports, as they are, do not have the level of information available in the current title documents, many of the activities, application and dealings against the tenures are not captured. These documents are important in terms of the historic activities that have occurred on the tenure, use of the information for tenure management, and in the absence of a 'title document' as a legal document evidencing tenure details that may be used for multiple purposes (including for example in a due diligence process).

Consideration should also be given to having three distinct reports, a Departmental Report, a Client (or holder) Report, and a Public report with varying amounts of information. Ideally the Client (holder) report would have more detailed information than the existing public report, including the history of activity application and approval dates, work program details, tenure conditions etc. (similar to the current title documents). These could be made available to the holders via MMOL. To ensure consistency the key requirements for the reports should be published in the regulations.

CONTIGUOUS LAND

QRC members have experienced inefficient processes and duplication where lease boundaries are not "contiguous" as required under the legislation. Under current legislation, where lease boundaries are not contiguous multiple lease applications need to be lodged. This creates unnecessary administrative work for proponents, is potentially quite confusing for affected landholders, and provides no disenable outcome for Government.

A member reported a scenario where *one* sub-block could not be negotiated into the mining lease, which ultimately meant three leases were needed. This resulted in all sorts of non-outcome/nonsensical requirements, such as:

- Huge information packs being sent to landholders, which needed to include information about the entire project, but also information about the specific lease on their property (even though the lease was part of the project). The requirements were so complicated, the member engaged lawyers to ensure exactly the right information about particular mining leases went to the required stakeholders;
- The member also engaged lawyers to navigate the public notifcation process, as the boundaries of each lease needed to be exactly reported, despite the broader boundary fo the project;
- Physical pegging of each lease boundary, (including internal boundaries to the project).

The obligation on proponents for this issue is obviously large and particularly onerous, as it is a procedural matter that could be judicially reviewed.

LAND ACCESS

When addressing duplication in resources legislation, it would be remiss of QRC's submission to omit mention of land access. This space is becoming quite crowded with different independent bodies and stakeholders, which will potentially create duplication. Most recently, the office of the Land Access Ombudsman (LAO) has become operational. The LAO will be an independent, impartial body to help landholders and resource companies resolve alleged breaches of Conduct and Compensation Agreements (CCAs) and Make Good Agreements (MGAs). The LAOs jurisdiction covers all resource types, but the service is only available to parties who have an agreement in place.

The LAOs role is in addition to the existing statutory roles of the GasFields Commission, CSG Compliance Unit, the Land Court and DNRME and DES's role in compliance (as well as the suspended Agforce Landholder Support Project). In addition, there are upcoming changes to the statutory negotiation framework in the *Minerals, Water and Other Legislation Amendment Bill*. QRC has continually raised concerns about the complex compliance and regulatory

framework of land access. QRC would suggest that if a review of the LAO is undertaken, the review's scope should extend to the entire land access space, and take into account the roles of various independent bodies and stakeholders.

Alternative Dispute Resolution for a Petroleum Pipeline Tenure

Under the *Mineral and Energy Resources (Common Provisions) Act 2014* (and pending Minerals, Water and Other Legislation Amendment Bill), an alternative dispute resolution (ADR) process can be utilised to resolve landholder conduct and compensation (CCA) negotiation disputes on ATP and PL tenure. However, no such provision exists for the negotiation of petroleum pipeline lease (PPL) tenure. If companies were unable to secure a voluntary pipeline easement with landholder, the only legal avenue available to resolve the issues is for the state to intervene under Part 5 of the P&G Act and compulsory acquire land for an easement. It is suggested that a legislative amendment is made to the relevant Act to add ADR provisions to resolve PPL negotiations.

What's going well

LAND RELEASE PROCESS

Recent changes to the land release process through the Queensland Exploration Program (QEP) have been well-received by industry. The new 18-month framework seems very well thought out by Government and was well communicated to industry, providing longer term visibility of acreage that will be released over the next 18 months.

Government communicated this change to industry well. Dieter Kluger, the Director of Exploration and Policy Support in DNRME presented to Queensland Exploration Council and QRC members on the Exploration Program in July 2018. Dieter spoke to members in detail about the state's land releases for the next 18 months, and the new process going forward. This was a valuable initiative that industry appreciates.

Further efficiencies could be achieved if the release and closing dates of the tenders were published in the QEP document. Additionally, the tender assessment timeframes after often greater than 6 months. This is a seemingly unnecessarily long timeframe.

Conclusion

This submission has been prepared with input from all of the QRC policy areas which deal with regulatory development and engagement. This demonstrates the wide-ranging improvements needed to deliver a more efficient regulatory framework and agile resources industry for the benefit of all Queenslanders.

QRC would welcome the opportunity to discuss our submission with the government during the further development. QRC's Senior Policy Advisor, Resources, Emma Hansen can be contacted on 3316 2511 or ehansen@qrc.org.au.

Annexure 1 – case study

Example: Quarrying

Issue 1: The illogical demarcation of administrative systems for quarrying on a mining lease, depending on whether the material is used on the same mining lease or an adjoining mining lease

The Mineral Resources Act 1989 Section 236(1) provides a specific authorisation for quarrying on a mining lease, provided that the material is used on the same mining lease. This means that sand, gravel or rock can be used for rehabilitation activities on the same mining lease, but the MRA does not authorise this if the material is carted over the ML boundary to the adjoining ML within the same mine.

The first effect of this specific authorisation is that, if the material is only used on the same ML, the activity is covered by Section 4A of the MRA and does not require a local government development approval. If the material (or any part of the material) is carted over the ML boundary to the adjoining ML, it would have required a local government development approval if the planning scheme required this.

The second effect is that there may be different royalty regimes. If the material is used on the same mining lease, it is deemed to be a mineral for the purposes of royalties, but not if it is used on the adjoining ML.

The third effect is that, under Section 236(2) MRA and also under the EP Regulation, the quarrying activity is not a prescribed ERA and is just counted as part of the mining activity, if all the material is used within the same ML, but not if any part of the material is used on an adjoining ML. Generally, this means that, if the material is used on the same ML, there are no specific environmental conditions relating to the quarrying activity, but there may be conditions if part of the material is used on an adjoining ML. There is no apparent environmental logic for this demarcation.

In practice, this demarcation often leads to administrative confusion for both local governments and DES, particularly if part of the material is being used on the same ML and part on another ML, or if the quarry was originally developed just to deal with rehab on the same ML but then later some of the material has been used for adjoining rehab.

Issue 2: What happens to the quarry upon surrender of the ML?

If the purpose of the quarry was to provide material for rehabilitation of the mine, logically, there will be a quarry void upon surrender. It would not make sense to transport material from another quarry to backfill the quarry void, because, carried to its logical conclusion, this would mean that each quarry used to backfill another quarry creates another quarry void, ad infinitum.

This does not mean that quarry voids should be, or need to be, classified as NUMAs. It is normal for quarry voids to support a post-mining land use. Quarry voids owned by extractive industry operators are often assigned to waste operators, including local governments, for landfills. Alternatively, the quarry resource at a mine may not have been exhausted at the time of surrender of the mining lease, and a quarry operator may be interested in buying the land to continue the quarry operation. Either way, there is no interface with non-mining legislation for the post-mining land use.

As an example, if the next landowner wants to continue to operate the mine's quarry, which has previously been automatically authorised as part of the mine under Section 236 of the MRA, post-relinquishment, the quarry would be a continuation of a previously lawful use with no development permit conditions for the local government to administer. Post relinquishment, there is no mechanism or interface between the *Planning Act* and the *Mineral Resources Act* to bring development (such as a quarry) back into the regulatory structure of the *Planning Act*. That which had been lawful, prior to relinquishment, is left in unclear territory – it is not captured by the existing lawful use provisions of the *Planning Act* (s.260) as the change that has occurred is not a change to a planning instrument (as defined in s.8 of that Act), but to the legislative regime applicable.

In many ways, the MER (FP) Bill will make this situation worse for quarries on mining leases, as explained on page 26 of our May 2018 paper, *Stepping outside the box – Regional economic opportunities for a brighter future for post-mining land use*.