



EDO Qld.

Environmental Defenders Office

*Using the law to protect
our environment.*

Community Rights to Object to Mines

This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

1. Factsheet Overview

Mining is a massive and important industry in Queensland. Whilst mines are important to Queensland's growth and development, they do come at an environmental cost. Mines can impact directly on the environment through land clearing, infrastructure construction, and run-off. Mines can impact on amenity such as noise, dust, traffic and visual impacts. Mines, such as coal mines, can also have a significant impact on the environment due to large scale emissions of greenhouse gases that cause climate change.

The laws relating to mining are quite complex, but the public does have the right to object and be heard in certain types of mining applications.

This factsheet will provide an outline of the types of mining and the types of approvals and licenses required before mining activities can commence. In the factsheet we look at both the *Mineral Resources Act 1989* ("MRA"); and the *Environmental Protection Act 1994* ("EP Act"), as both Acts play a dual role in regulating mines and their environmental impacts.

Some mining activities must be publicly notified and the public are given an opportunity to object and have their objection heard in the Land Court.

2. Steps you can take

a. Inform yourself about mining in your area

- Contact DERM or your local mining registrar for information about mining activities or mining applications in your area.
- The Mining Registrar for your region keeps copies of all applications made for mining claims, mining leases or environmental authorities in the area.

b. Have your say on mining applications

- Applications for mining claims and mining leases under the MR Act and their respective environmental authorities under the EP Act are publicly notified for 20 business days, at least.
- During this period anyone can make a submission about a proposed mine or the proposed conditions in the draft environmental authority.
- The properly made objection must:
 - Be in writing in the approved form;
 - Be signed by each person or entity who made the objection;
 - State the names and addresses of each signatory;
 - State the grounds of the objection and the facts relied on in support of those grounds;
 - Be given to the Mining Registrar or other relevant authority on or before the last objection day.
 - Be given to the applicant on or before the last date that the objector may lodge an objection to that application.
 - You can lodge your objection by email, fax, post or in person. If you use post, your objection must *arrive* on or by the last date

c. Appear in the Land Court

- When a properly made objection is lodged, both the application for the mining lease and the application for the environmental authority is automatically referred to the Land Court
- Making an objection gives you the right to be heard in the Land Court. Depending on your time and resources, you can choose how actively you involve yourself in the Land Court hearing.

d. Keep an eye on mining activities

- Ensure that the mine is complying with the conditions of its approval. It is an offence to contravene these conditions.
- Ensure that the mine is not creating a private nuisance – which is an unreasonable interference with the use and enjoyment of property rights, or by material damage to land or property affected by the interference.
- If you think a mine is breaking the law you should contact a DERM and/or a private solicitor.

For more detail please keep reading.

3. What is a mine?

To *mine* means to carry on an operation with a view to, or for the purpose of—

- (a) winning mineral from a place where it occurs; or
- (b) extracting mineral from its natural state; or
- (c) disposing of mineral in connection with, or waste substances resulting from, the winning or extraction.¹

A *mineral* is a substance normally occurring naturally as part of the earth's crust; or dissolved or suspended in water on or within the earth's Crust. The Act provides a detailed list of what does and does not constitute a mineral. For example,

minerals include—

- Clay (subject to some exceptions);
- foundry sand;
- coal seam gas;
- limestone;
- marble;
- a product that may be extracted or produced by an underground gasification process for coal or oil shale and another product that may result from the carrying out of the process;
- peat;
- salt, including brine;
- oil shale;
- silica, including silica sand; and
- rock mined in block or slab form for building or monumental purposes.

Minerals do not include-

- soil, sand, gravel or rock if it is to be used, or to be supplied for use, as sand, gravel or rock;
- living matter; or
- steam or water.²

4. The laws

The Queensland laws that regulate mining are:

- The *Mineral Resources Act* 1989 (“MRA”); and
- The *Environmental Protection Act* 1994 (“EP Act”).

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* may also be relevant if the mine is likely to impact on a matter of national environmental significance. For more information about requirements under the Commonwealth Act, see the EDO Queensland factsheet at <http://www.edo.org.au/edoqld/edoqld/new/10.10-Cwlth-Laws-the-EPBC-Act.pdf> , or

¹ Section 6A *Mineral Resources Act 1989*

² Section 6 *Mineral Resources Act 1989*

the website of the Department of Sustainability, Environment, Water, Population and Communities at www.environment.gov.au/epbc/.

5. The State Departments

The regulation of mines in Queensland is the combined responsibility of the Department of Mines and Energy and the Department of Environment and Resource Management (“DERM”). Essentially, the DME regulates the tenure and the DERM regulates the environmental aspects of mining activities.

The **Department of Mines and Energy** is responsible for:

- accepting and processing all mining tenure applications (mining lease) and referring the relevant sections to the DERM for environmental assessment;
- issuing tenures under the *Mineral Resources Act 1989*;
- issuing environmental authorities for prospecting permits and mining claims; and
- monitoring and managing the rehabilitation of abandoned mine sites.

The **Department of Environment and Resource Management** is responsible for the environmental regulation and management of the mining industry. The DERM:

- sets environmental conditions;
- sets levels of environmental assessment for amendment applications;
- monitors performance;
- conducts inspections and audits;
- ensures adequate rehabilitation; and
- enforces compliance with environmental controls.

6. Types of Mining Tenure under the MR Act

The MR Act grants different types of tenure (e.g. licenses and permits) for different mining activities.

- **Prospecting permits:**
 - A prospecting permit entitles the holder to prospect for and/or hand-mine for minerals (excluding coal) and/or peg a mining lease or mining claim on the available land specified.
- **Exploration permits:**
 - are issued for the purpose of exploration
 - allow the holder to take action to determine the existence, quality and quantity of minerals on, in or under land by methods which include prospecting, geophysical surveys, drilling, and sampling and testing of materials to determine mineral bearing capacity or properties of mineralisation
 - may eventually lead to an application for a mineral development licence or mining lease

- can be granted for an initial period of up to five years (unless otherwise determined by the Minister), which may later be extended after further application
 - Different exploration permits are required for minerals and for coal.
- **Mineral development licenses:**
 - allow the holder to undertake geoscientific programs (e.g. drilling, seismic surveys), mining feasibility studies, metallurgical testing and marketing, environmental, engineering and design studies to evaluate the development potential of the defined resource
 - can be granted to the holder of an exploration permit for a period of up to five years where there is a significant mineral occurrence of possible economic potential
 - can be renewed
- **Mining claims:**
 - are granted to holders of prospecting permits to carry out small-scale operations with limited use of machinery
 - can be up to one hectare in area
 - entitles the holder to prospect and hand-mine for specified minerals.
 - must have an initial term not exceeding ten years
 - is granted for minerals other than coal.
- **Mining leases:**
 - are granted for mining operations
 - entitle the holder to machine-mine specified minerals and carry out activities associated with mining or promoting the activity of mining
 - are not restricted to a maximum term—this is determined in accordance with the amount of reserves identified and the projected mine life.
 - can be granted for those minerals specified in either the prospecting permit, exploration permit or mineral development licence held prior to the grant of the lease.

Essentially, permits; licenses; and claims allow for lower level mining activities, such as exploratory work, whereas a mining lease allows for the full winning of the material using heavy machinery.

7. Environmental Authorities under the EP Act

When an application is made under the MR Act for mining tenure, an application must also be made with the DERM for the relevant *Environmental Authority*. An *Environmental Authority* is similar to a development approval in that it gives approval to undertake a certain activity and imposes conditions on that approval.

The different types of mining activities, such as exploration permits and mining leases, require corresponding environmental authorities. For example, a miner could apply for:

- a *Mining Lease* under the MR Act together with an *Environmental Authority (Mining Lease)* under the EP Act; or
- an *Exploration Permit* under the MR Act together with an *Environmental Authority (Exploration)* under the EP Act.³

The level of assessment and information required in the application also varies depending upon the type and scale of the mining activity.

Unfortunately, it can be very confusing trying to navigate your way around the EP Act and MR Act to work out what type of approval and level of assessment is required. Below is an outline of some of the classifications. If you are aware of mining activity or a mining application and you do not know how it is classified or what type of assessment is required, contact the DERM or your local mining registrar for more information

8. Classification of Mining Activity

Project Level

Under the EP Act, mining activities are classified as either a:

- Level 1 mining project; or
- Level 2 mining project

A **level 2** mining project is one that is considered to have a low risk of serious environmental harm. Level 2 mining projects include:

- all applications for prospecting permits and mining claims (as these activities are automatically considered to be low risk); and
- exploration, mineral development and mining lease projects that meet the criteria in chapter 3, part 3, division 2 of the *Environmental Protection Regulation 2008* (“EP Regulation”).

The criteria for a level 2 mining project in chapter 3, part 3, division 2 of the EP Regulation include:

- the mining activities will not disturb more than 10ha of land or 5 ha of riverine area;
- the mining activities are not, or will not be, carried out in environmentally sensitive areas;
- the mining activities do not include a level 1 environmentally relevant activity (see schedule 1 of the EP Regulations)
- The mining activities can only be for alluvial; clay pit; dimension stone; hard rock; opal or shallow pit mining.

³ Section 148 *Environmental Protection Act 1994*

Code and Non-code Compliant

Environmental authorities for level 2 mining activities are further classified as either:

- Code compliant; or
- Non-code compliant.

The DERM has set out a series of codes that apply to certain types of mining activities. Different codes have been set for:

- prospecting permits and mining claims;
- exploration permits and mineral development licenses and;
- small scale mining leases.

The codes contain the criteria for the type of activity that the code applies to, as well as standard environmental conditions that apply to that activity. The codes can be found on the DERM's website (see references below).

A **code complaint** authority is a mining activity that:

- falls within the criteria for the level 2 mining project; and
- can comply with the standard environmental conditions for that code.

A **non-code compliant** environmental authority for a level 2 mining project is one that meets the low level criteria for a level 2 mining project, but is *unable* to comply with the standard environmental conditions. The DERM may grant approval to such a mining activity despite its non-compliance and may impose additional conditions to its approval.

Level 1 Mining Project

A level 1 mining project is a higher risk mining activity. A level 1 mining project:⁴

- does not fall within the criteria in chapter 3, part 3, division 2 of the EP Regulation; or
- is for a significant project; or
- is within a wild river area.

For level 1 mining projects, site specific environmental management documents are required, as is an assessment of the environmental impacts of the project.

9. Environmental Information

To assess an application for an environmental authority, the DERM may require Environmental Impact Statements and/or Environmental Management Plans.

Whether these are required will depend upon the level and type of mining activity.

⁴ Section 151 *Environmental Protection Act 1994*

10. Public Notification

Public notification is required for applications for mining claims and mining leases under the MR Act and their respective environmental authorities under the EP Act.

At least **20 business days** must be given for objections⁵.

The public notice must state:⁶

- The number of the proposed mining lease or mining claim;
- The day and time the application for the mining lease was lodged;
- The last objection day;
- Where the application or any additional documents given to the mining registrar about the application may be inspected.

How will the public be notified?

The notice must:

- Be posted at the office of the mining registrar;
- Be posted on the datum post of the land the subject of the proposed mining lease;
- Be given to the owner of relevant land or land necessary for access;
- Be given to the local council;
- Be published in an approved newspaper circulating generally in the area of the relevant land⁷

Currently there are no internet services provided by the State Government which detail, in one easy to access webpage, when the public notification period is open for these applications. This makes it very difficult for the public to keep informed as to when a public notification period is open for a mining lease, mining claim or environmental authority. We may only recommend that you regularly ring the Mining Registrar of the region you are concerned about to determine when the public notification period is open for any possible applications made for mining claims, mining leases or environmental authorities in the region.

Contact the Department of Mines and Energy to find out the location and contact details of your nearest mining registrar.

11. Objecting

During the public objection period any person or incorporated or unincorporated body may make a submission regarding any aspect of the proposed mining activity or the proposed conditions in the draft environmental authority.

It is only necessary to lodge one objection under both the MR Act and EP Act.

⁵ Section 252A(3) *Mineral Resources Act 1989*

⁶ Sections 64A(4) and 252A(4) *Mineral Resources Act 1989*

⁷ Sections 64B, 252A and 252B *Mineral Resources Act 1989*

The objection (a properly made objection) must:⁸

- Be in writing in the approved form;
- Be signed by or for each entity who made the objection;
- State the names and addresses of each signatory;
- State the grounds of the objection and the facts and circumstances relied on by the objector in support of those grounds;
- Be lodged with the Mining Registrar or other relevant authority on or before the last objection day;
- Be served upon the applicant on or before the last date that the objector may lodge an objection to that application.

The requirements for a valid objection are vital. An objection that fails to comply with all of the above can be disregarded and the objector will have no right to be heard.

The valid form for an objection under the MR Act and EP Act is available on the DERM website:

http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=203526

The objection must be lodged with the following parties on or by the date specified on the public notice:

- the administering authority (typically DERM, however this authority may have been delegated to the relevant region's mining registrar);
- the mining registrar relevant to the region in which the mining lease, mining claim and/or environmental authority have been applied for; and
- the applicant for the mining lease, mining claim and/or environmental authority at the address the applicant has provided on the public notification certificate (or, if no address has been provided, at their registered office).⁹

The details of whom the objections must be lodged with must be provided on the public notice. The objection may be lodged via email, facsimile, post or by lodging in person with the relevant department and applicants registered place of business (as provided on the public notice). Please note that, if lodging by post, you must ensure that the application *arrives* on or by the last date for objections. It may be prudent to use more than one option above (eg email and lodging in person) to ensure the application is received in time and that you have reserved your right to be heard.

⁸ Section 217 *Environmental Protection Act 1994*; section 71(3) and section 416A *Mineral Resources Act 1989*

⁹ Sections 71 and 260(1) and (4) *Mineral Resources Act 1989* and section 216(3) *Environmental Protection Act 1994*

12. Referral to the Land Court

When a valid objection is lodged, both the application for the mining lease and the application for the environmental authority will automatically be referred to the Land Court. Until late 2007, the Land and Resources Tribunal heard all objections relating to mining leases, however, the jurisdiction of the Tribunal has now been taken over by the Land Court.¹⁰

The Land Court will set a date for the hearing and notify the parties, including the objectors, of that date.

Right to be heard

All objectors who lodged a valid objection will be notified of the hearing date in the Land Court. The first hearing date will not be the actual hearing on the merits of the application and objection, but rather, the Court will set a timetable for the preparation of the hearing.

Objectors will be asked what level of objection they intend to pursue in the Court hearing. Objectors can opt to appear as either:

- **A Level One Objector** – relies on their written notice of objection and does not attend the hearing.
- **A Level Two Objector** – relies on their written notice of objection, attends the hearing and is able to make submissions at the end.
- **A Level Three Objector** – relies on their written notice of objection, attends the hearing, is able to make submissions, and is able to call evidence and cross examine witnesses.

Objectors will be asked to notify the Land Court what level they chose at the first directions hearing. The level of objection you choose will probably depend upon the time and resources that you have available. It is not necessary for you to have legal representation in the Land Court, however, it is a good idea to seek further legal advice if you are considering a level two or three objection.

Although the Land Court is a public interest jurisdiction court, you need to be aware that the judge has a discretion with regard to awarding costs if you do not succeed in your objection.¹¹ Therefore, should you choose to lodge an objection which will lead to a Land Court hearing of the objection, particularly as a level three objector, there is the possibility that you may be open to a large costs award against you. It is unlikely that level one or level two objectors would have substantial costs awarded against them.

All objectors may minimise the chances of costs being awarded against them by:

- Ensuring their objections are relevant to the criteria used to assess the objection and supported by evidence;

¹⁰ Section 72 *Mineral Resources Act 1989* and section 219 *Environmental Protection Act 1994*

¹¹ Section 34 *Land Court Act 2000*

- Only pursuing an objection as a level two or level three objector where you have good evidence to support your points of objection;
- Not pursuing unnecessary technical points, for example about defects in the public notice if you have not suffered prejudice;
- Making every effort to run your case efficiently and respecting the Court's timetable.

In hearing the application for the mining lease, the Land Court is required to take into consideration any valid objection. The Land Court is also required to consider “the standard criteria”. The standard criteria include, amongst other matters, the principles of ecologically sustainable development; the character, resilience and values of the receiving environment; and the public interest.¹²

Upon the conclusion of the objections hearing, the Land Court decides whether or not it will recommend approval of the mining lease and environmental authority and if so, what conditions should be attached. After receiving the recommendation, the Ministers for Mines and the Minister for Environment consider the Land Courts recommendation before making their final decisions as to whether to issue the mining lease and environmental authority. This decision cannot be appealed.

13. Problems with noise and dust

For local residents, mines don't always make the best neighbours. Some residents experience loud noise, dust, emissions, and traffic associated with mining activities.

If the mine is a proposed activity and the public are notified and given the right to object as outlined above, you will have an opportunity at that stage to raise your concerns about how the mine will impact on your amenity and use of your land.

Where the mining activity has already been approved and you are experiencing problems with the mine, you should check to ensure that the mine is complying with the conditions of its environmental authority.

It is an offence to contravene a condition of an environmental authority. The EP Act also makes it an offence to unlawfully cause environmental harm or nuisance. Unlawful harm occurs when the mine does not have an authority under the EP Act to cause the harm or nuisance.¹³

A proceeding can be commenced in the Planning & Environment Court for an order to remedy or restrain an offence against the EP Act. A person can bring proceedings if:

¹² Section 223 *Environmental Protection Act 1994*

¹³ Sections 430 and 437-440 *Environmental Protection Act 1994*

- that person's interests are affected by the subject matter of the proceeding (eg someone with a proprietary, material, financial or special interest in the proceedings); or
- the Court gives leave for that person to bring the proceedings. In deciding whether to grant leave, the court will consider, amongst other things, whether the harm has or is likely to be caused, and the public interest.¹⁴

We strongly recommend that you obtain legal advice if you are considering commencing proceedings under the EP Act.

Nuisance at common law

The common law (not statute based) provides for remedies for nuisance. Private nuisance occurs whether there is an unreasonable interference with the use and enjoyment of property rights, or by material damage to land or property affected by the interference.

In relation to a claim for nuisance it is important to note:

- The interference must be unreasonable – what is unreasonable depends upon the circumstance of each case. In determining whether an interference is unreasonable the Court will consider the locality (e.g. what is unreasonable in a residential area may be reasonable in an industrial area).
- You must have property rights to bring an action in private nuisance – i.e. you must own the land over which the nuisance has occurred.

There are a number of significant defences to a claim for nuisance:

- Statutory authority – it is a defence to a claim for nuisance if an Act expressly authorises the activity that causes the nuisance and the activity is done in a careful manner.
- Reasonable precautions – it is a defence to a nuisance claim if the person causing the nuisance has taken all reasonable precautions to guard against the nuisance.

The remedies for private nuisance include an injunction to restrain the activity that is causing the nuisance, and/or damages.

If you are considering an action in nuisance, you should contact a private solicitor.

14. Useful Contacts

Environmental Defenders Office (Qld) Inc

Phone: (07) 3211 4466

Website: www.edo.org.au/edoqld

¹⁴ Section 505 *Environmental Protection Act 1994*

Environmental Defenders Office (Nth Qld) Inc

Phone: (07) 4031 4766

Website: www.edo.org.au/edonq

Department of Environment and Resource Management:

Phone: Hotline 1300 130 372

Website: www.derm.qld.gov.au – website has good fact sheets

Department of Mines and Energy

Freecall: 1800 657 567

Website: www.dme.qld.gov.au – however, this website gives little assistance, so it is best to contact your nearest mining registrar.