



EDO Qld.

Environmental Defenders Office

*Using the law to protect
our environment.*

MINING AND COAL SEAM GAS

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.

The legal system in Queensland

Laws made by the Courts are called Judge made law, common law or precedent. Some of this Judge made law is based on principles and Court cases that are hundreds of years old, for example the common law of trespass. Other Judge made law is interpreting Acts of Parliament, also called legislation. Judges try to decide cases with similar facts in a similar way.

The supreme power to make laws in Queensland is vested in the elected representatives in State Parliament. An act of Parliament, or legislation will overrule the Judge made law if there is a common law principle and an Act that conflict in the same area of law. So for example there is legislation that sets out a process by which a mining company may access private land for mining, even if the landholder does not agree, thus overruling certain common law rights.

The Queensland Constitution gives the State parliament the power to make laws for Queensland in areas that are not areas of exclusive Commonwealth power.

In looking for laws about mining and coal seam gas in Queensland, the main place to look is to the legislation or Acts of Parliament, as they deal with matters like how decisions to approve mining are made

Mining

Mining does not need to comply with the planning regime in Queensland as mining is exempt development under the *Sustainable Planning Act 2009*.

To conduct mining operations a resource company must apply for and successful obtain both a mining lease under the *Mineral Resources Act 1989* and an environmental authority (containing the environmental conditions) under the *Environmental Protection Act 1989*. The applicant must publicly notify the application in the application process (including a draft environmental authority, which contains the environmental conditions) and the community has rights of objection. The grounds of objection are permitted to be very wide; any type of public interest matter, social, economic or ecological matter may form the grounds of an objection.

On approval of the authorities, *only* an objector has rights to appeal the decision to approve the authorities to the Land Court. It is very important that interested parties lodge objections in order to protect their right to have their objection heard in the Land Court.

Appeal to the Land Court

The objections will automatically go to the Land Court after the authorities have been approved, you do not need to apply to the Land Court for hearing of your objection. On notification of referral of your objection to the Land Court, you must elect the level of participation you desire to have in the appeal, as follows:

- **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.

Risk of costs being awarded against you

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. 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.

After the hearing, the Land Court makes a recommendation to the Environment Minister as to whether the environmental authority ought to be approved and a recommendation to the Minister for Mines as to whether the mining lease ought to be granted.

Affected land holders may seek compensation in the Land Court.

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 example, a world heritage area, RAMSAR wetlands etc).

Enforcement action against existing mines

Where the mining activity has already been approved and you are experiencing problems with the mine, you can check to make sure that the mine is complying with the conditions of its environmental authority. If the company is breaching its

environmental authority then you can go to the Planning and Environment Court to seek an order to remedy or restrain the breach.

Examples of objector appeals against mines in Queensland

- John Sinclair objected to mining leases on Fraser Island as part of the FIDO campaign to protect the Island.
- In 2007 the Queensland Conservation Council objected to an expansion of the Xstrata Newlands Coal Mine, in the Land and Resources Tribunal (now Land Court) under grounds related to the likely climate change impacts. The State government changed the law before a rehearing occurred to authorise the mining lease and environmental authority.
- Currently, Friends of the Earth – Brisbane Co-Op have an objection in the Land Court against the Wandoan Coal Mine Project, on the basis of potential increases to climate change and associated impacts which the mine could cause.

Coal Seam Gas

In order for coal to form underground a process occurs whereby decomposing plant matter is heated and compressed. As a result of this process gas becomes trapped by water in seams within the coal. Resource companies have worked out a technique to extract this gas. This process involves digging a vertical well into the coal seams and extracting the water. This allows for the pressure that has kept the gas in place to be removed and as such the gas is released and can flow. The gas flow is then captured for use as an energy source.

To lawfully extract coal seam gas, a resource company must apply for and successfully obtain both a resource authority under the *Petroleum and Gas (Production and Safety) Act 2004* from the Department of Mines and Energy (within the Department of Employment, Economic, Development and Innovation) and an environmental authority, containing the environmental conditions, granted by the Department of Environment and Natural Resource Management ('DERM'), under the *Environmental Protection Act 1994* ("EP Act"). Other permits may also be needed.

Public submission rights are available only for level 1 petroleum activities. The main level 1 petroleum activities are:

1. A petroleum activity on a site containing a high hazard dam or a significant hazard dam; (The hazard of 'high hazard dams' relates to the design and contents of the dam and the risks to health and ecology if the dam broke or failed to contain its contents).
2. Certain other petroleum activities that also include as part of the project activities such as fuel burning, waste treatment, sewerage treatment or certain other activities set out in Chapter 4 of the EP Act;
3. A petroleum activity that is likely to have a significant effect on a Category A or B environmentally sensitive area (the areas are in the *Environmental Protection Regulation 2008* which includes many types of protected areas)

under the *Nature Conservation Act 1992*, but not nature refuges or water catchment areas).

On approval of the authorities, *only* an objector has rights to seek a review of the approval decision or appeal the approval decision to the Land Court. It is very important that interested parties lodge submissions in order to protect their right to have their submission heard in the Land Court.

Seeking DERM to review an approval

A submitter for an environmental authority (petroleum activities) for a level 1 petroleum activity may apply for an **internal review** of a decision granting the application for environmental authority. The application must be made within 10 business days after the day on which the person receives notice of the original decision. Section 521 of the EP Act contains details about that review process. If you seek internal review then a fresh decision will be made on the application by DERM.

Making an Appeal to the Land Court

There are also appeal rights to the Land Court. The submitter wanting to appeal an approval decision must make an application to the Land Court within 22 business days after the appellant received notice of the decision.

Application must be made to stay the work

An application for review, or an appeal to the Land Court does not automatically “stay” the decision so work can start on the activity: an application must be made to the Land Court to be sure that work may not start.

Risk of costs being awarded against you

As stated above for mining related appeals, although the Land Court is a public interest jurisdiction court, you need to be aware that the judge has discretion with regard to awarding costs if you do not succeed in your objection. Therefore, should you choose to lodge an objection which will lead to a Land Court hearing of the objection, there is the possibility that you may be open to a large costs award against you.

On appeal, the Land Court has the same powers as DERM. The Land Court rehears the matter and may make a fresh decision.

Enforcing breaches of an Environmental Authority

If the holder of an environmental authority breached a condition, then DERM has the responsibility to take enforcement action, either issuing an order to compel compliance or bringing criminal prosecution or seeking an enforcement order in the Planning and Environment Court.

Members of the community have legal entitlement to go to the Planning and Environment Court to seek an order to remedy or restrain a breach of the EP Act for example, breach of conditions. The general rule in Court is that each side pays his or her costs, irrespective of the outcome of the case, as it is a public interest jurisdiction.

Example of a coal seam gas appeal

- A group of farmers have an appeal currently before the Land Court (*Clapham & Ors v DERM and Ors EPA030-11*) with regard to an authority to prospect

over land lying in the Surat Basin, west of Dalby. The grounds of their objection include the possible impacts to groundwater, good quality agriculture land and possible unacceptable emission of noise and other contaminants.

Refusing entry to your land

If you obstruct a mining or coal seam gas company from accessing your land then you might be guilty of offences – see the EDO Qld ‘Peaceful Protest and Your Rights’ factsheet. Be aware that the constitution does not guarantee you property rights so as to entitle you to refuse entry – this is a myth. However, there are procedures set out in the *Petroleum and Gas (Production and Safety) Act 2004* that the coal seam gas companies must follow to be able to legitimately access your lands. DEEDI provides a number of useful leaflets to help landowners in their interactions with coal seam gas companies here:

http://www.dme.qld.gov.au/mines/land_owner_occupier_information.cfm

Useful contacts

Environmental Defenders Office Queensland

<http://www.edo.org.au> for detailed guides on making a submission/objection to a coal seam gas proposal or an environmental authority for a mining lease

Department of Environment and Resource Management (DERM)

Ph: 13 25 23 CSG Hotline - to ask about applications in progress and to seek a copy of applications

Ph: Pollution Hotline 1300 130 372 if you wish to report a breach of conditions of approval.

Ph: 131304 to locate your local DERM business centre or go online to: <http://www.derm.qld.gov.au/contactus/businesscentres.html#bclist> so that you can search the public register under the EP Act for environmental authorities, environmental reports, monitoring reports etc. A fee will be charged for copies of documents.