



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

Community Rights to Object to Mines

1. Factsheet Overview

Mining is a massive and important industry in Queensland. Whilst mines are important to Queensland 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 by a miner. 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. 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.

[section 6 MR Act]

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;
- 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;
- steam or water.

[section 6A MRA]

3. 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 NSW factsheet at www.edo.org.au/edonsw/site/factsh/fs02_2.php, or the website of the Department of Environment, Water, Heritage and the Arts at www.environment.gov.au/epbc/.

4. The State Departments

The regulation of mines in Queensland is the combined responsibility of the Department of Mines and Energy (“DME”) and the Environmental Protection Agency (“EPA”). Essentially, the DME regulates the tenure and the EPA 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 EPA for environmental impact assessment;
- issuing tenures under the *Mineral Resources Act 1989*;
- issuing environmental authorities for prospecting permits and mining claims;
- promoting and facilitating industry commitment to environmental best practice; and
- monitoring and managing the rehabilitation of abandoned mine sites.

The **Environmental Protection Agency** is responsible for the environmental regulation and management of the mining industry. The EPA:

- 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.

5. Types of Mining Tenure under the MR Act

The MR Act grants different types of tenure (eg 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 a period of up to five years
- 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.

6. 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 EPA 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.

[section 148 EP Act]

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 EPA or your local mining registrar for more information

7. 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 Schedule 1A of the *Environmental Protection Regulation 1998*.

The criteria for a level 2 mining project in Schedule 1A of the *Environmental Protection 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.

Code and Non-code Compliant

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

- Code compliant; or
- Non-code compliant.

The EPA 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 EPA's website (see references below).

A **code compliant** 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 EPA 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:

- does not fall within the criteria in schedule 1A of the Environmental Protection Regulation 1998; 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.

8. Environmental Information

To assess an application for an environmental authority, the EPA may require Environmental Impact Statements and/or Environmental Management Plans. Whether these are required will depend upon the level and type of mining activity.

9. 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 objections (s252A MR Act).

The public notice must state:

- The number of the proposed mining lease;
- 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 land

[Section 252A of the MR Act]

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

10. Objecting

During the public objection period any person 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.

The objection must:

- 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 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 EPA website (www.epa.qld.gov.au/publications?id=753).

11. 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 (mining lease) 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.

[Section 265 of the MRA and section 219 of the EP Act]

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.

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.

[Section 223 of the EP Act]

Upon the finalisation 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. The Ministers for Mines and the Environment consider the Land Courts recommendation before making their final decisions as to whether to issue the mining lease and environmental authority.

12. Problems with noise and dust

For local residents, mines don't always make the best neighbors. 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 can check to make sure 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 Environmental Protection 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.

[sections 430 and 436-440 of the EP Act]

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:

- 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.

[section 505 EP Act]

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 (eg 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.

13. Useful Contacts

Environmental Defenders Office (Qld) Inc

Phone: (07) 3211 4466

Website: www.edo.org.au/edoqld

Environmental Defenders Office (Nth Qld) Inc

Phone: (07) 4031 4766

Website: www.edo.org.au/edonq

Environmental Protection Agency:

Phone: Hotline 1300 130 372

Website: www.epa.qld.gov.au – website has good fact sheets by Ecoaccess.

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.