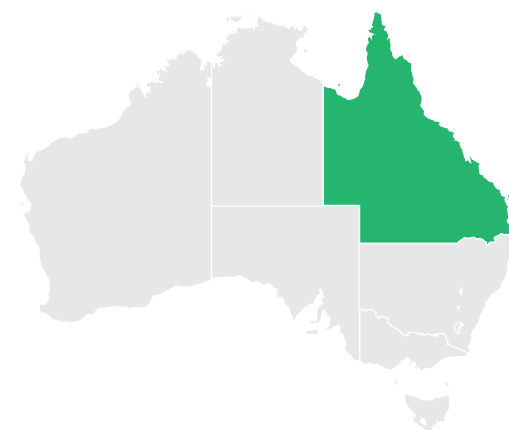


ENVIRONMENTAL IMPACT STATEMENT PROCESS MAP QLD



ACT:

State Development and Public Works Organisation Act 1971 (SDPWO Act)

TYPE:

Coordinated Mining Projects

PURPOSE

Queensland is a state with vast mineral resources, unique environment, communities and cultural heritage. Mining and infrastructure environmental approval processes are complex and not always transparent. Applicant's obligations and the role of communities in the decision making process can be hard to understand.

The purpose of this map is to provide a shared understanding of the process, where community consultation can occur and recommendations on how to improve and strengthen legislation.

The Resources Sector Regulation [Productivity Commission Report](#) was released on 10 December 2020. We have chosen relevant extracts to support the recommendations gathered during our engagement and development of this process pathway.

LEGISLATION

The State Development and Public Works Organisation Act 1971 (Qld) is in place to ensure the proper planning, preparation, execution, coordination, control and enforcement of programs of work, planned developments, projects and environmental coordination for the State (where the State has jurisdiction).

The '[coordinated project](#)' process is designed for large, complex, contentious or unique projects. Whilst many different types of projects can be declared a coordinated project, this process map focuses on mining projects.

To be declared a coordinated project under the State Development and Public Works Organisation Act 1971 (SDPWO Act) projects must have one or more of the following characteristics:

- complex approval requirements, involving local, state and federal governments
- significant environmental effects
- strategic significance to the locality, region or state, including for the infrastructure, economic and social benefits, capital investment or employment opportunities it may provide
- significant infrastructure requirements

The SDPWO Act is one of a number of pieces of legislation in Queensland under which the environmental impacts of development projects can be assessed.

DEFINITION OF ENVIRONMENT

The meaning of 'environment' differs across federal, local, state and territory government legislation.

Under the State Development and Public Works Organisation Act 1971, the environment is defined as:

- ecosystems and their constituent parts, including people and communities
- all natural and physical resources
- the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community
- the social, economic, aesthetic and cultural conditions that affect, or are affected by, the things mentioned above.

COORDINATOR GENERAL

Under the SDPWO Act, the Coordinator-General has a wide ranging role. This includes responsibility for assessing and declaring if a project should be 'coordinated' or not, and if declared a coordinated project, deciding what process companies or government agencies must follow. The Coordinator-General has discretionary powers which cannot be overturned.

TYPES OF DECLARATION

There are two types of coordinated project declarations which involve different processes and information requirements:

- Environmental Impact Statment (EIS)
- Impact Assessment Report (IAR)

The Coordinator-General may also independently declare a coordinated project if justified.

A coordinated project declaration does not imply government approval of, support for or commitment to the project in question. Applicants are also required to obtain necessary development approvals and comply with relevant planning and environment laws and planning policies.

MINING APPROVAL PROCESSES

Mining projects declared to be coordinated projects to date have only required an environmental impact statement (EIS).

Projects may need to meet the requirements of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) if they may have a significant impact to the environment and/or a 'Matter of National Environmental Significance'. A Bilateral Assessment agreement between the Queensland and Commonwealth Government, states the EIS for a coordinated project can satisfy the requirements of the federal Environment Protection and Biodiversity Conservation Act 1999 (Cth) provided it follows both Federal and Queensland environmental law.

ACTORS:

Actors are individuals or organisations that play an active part in the process



Coordinator-General



Applicant
(Mining Company)



Federal
Government



State Agencies and
Local Government



Community

KEY:

Steps that appear in grey are optional and not legal requirements. These steps represent discretionary powers where the Coordinator-General can decide whether the step happens or not.



PROJECT PLANNING

TIME
FRAME

ACTORS



Design

Large, complex, significant or unique mining projects which require multiple levels of government approvals may need 'coordinated project' status to progress.

By this stage, the location, activities, proposed project design and communities in which companies will operate should be known and well defined.

TIA recommends that community consultation and engagement is a requirement at the project planning stage prior, to an applicant submitting an application. There should be clear criteria about what should be communicated to the public, and what meaningful consultation looks like, taking into consideration the fact that there are often many unknowns about the project at this early stage. The Resource Sector Regulation Productivity Commission Study Report (2020) found that "earlier scoping of key risks, including through community consultation, would give regulators and proponents a clearer and shared understanding of what information is needed to support decision making" (page 13).



Clarify

The Coordinator-General provides applicants with guidance on the process, requirements to be declared a 'coordinated project', and the conditions that may apply.

MINIMUM
4 WEEKS



Meet

Pre-lodgement meetings with the Coordinator-General's office to discuss project details are strongly recommended and free of charge. There is no obligation to lodge an application.

If the Coordinator-General declares a project to be a coordinated project without application, a notice would be given and a pre-declaration meeting held.

Additional information about the pre-lodgement meeting can be found [here](#).

Learn

Projects may need to go through the Federal Government's referral, assessment and approval process if they may have a significant impact on the environment and/or a 'Matter of National Environmental Significance' (which includes water resources for large coal mining development) under the Environment Protection and Biodiversity Conservation Act 1999 (Cth). Additional information about how coordinated projects go through the federal government process can be found [here](#).



Apply

The application includes the Initial Advice Statement (IAS) outlining the scale, extent, any potential environmental and social impacts of the project, and proposed measures to reduce and prevent adverse impacts. Additional information about the application requirements and initial advice statement can be accessed [here](#). If and when the project is declared coordinated, the initial advice statement becomes a public document and is published [here](#).



Assess

The Coordinator-General decides if the project requires a coordinated project status and whether the company is required to follow an Impact Assessment Report (IAR) process or full Environmental Impact Statement (EIS) process. An impact assessment report is a more limited environmental assessment. Mining projects usually follow the environmental impact statement process.





Impact Assessment Report (IAR)

To date, no mining projects that have been declared a coordinated project have gone through the assessment report process.



Environmental Impact Statement (EIS)

The environmental impact statement process requires a comprehensive description of the current state of the environment in the project area, any potential environmental, social and economic impacts, and proposals to avoid, minimise, mitigate or offset any direct and indirect impacts throughout the whole lifecycle of the project. Additional information about environmental impact statements can be found [here](#).



Declare / Announce

A public announcement about the coordinated project is made. The declaration is published in the Government Gazette and in some instances in a local and/or national newspaper. The initial advice statement is publicly released. Public documents can be found [here](#).



Reject

If the project is not given coordinated project status, the applicant is informed in writing and reasons given.



TERMS OF REFERENCE



Draft

The Coordinator-General gathers requirements for the draft Terms of Reference (TOR), outlining what information is required and sets out the matters applicants must address for the environmental impact statement. They are often large complex documents. More information about the terms of reference can be found [here](#) and [here](#).

Seek

Input to the draft terms of reference may be sought from other organisations and agencies.

TIA recommends that for high risk projects it is mandatory for the Coordinator-General to seek input from other government departments and independent agencies on the draft terms of reference.



Public Consultation

The public may be notified an environmental impact statement is required and provided with: the project location, an invitation and timeline to comment on the draft terms of reference.

A list of public consultations can be found [here](#).

Information about public consultations and guidance on how to make a submission are [here](#).

TIA recommends that public notification of draft terms of reference is made mandatory. The terms of reference have become complex and lengthy documents. Public consultation periods should allow enough time to meaningfully review and respond.



Complete

Comments are reviewed and the terms of reference is finalised and given to the applicant.

Published

The final terms of reference may be published on the Coordinator-General's website.

TIA recommends that publishing the finalised terms of reference on the Coordinator-General's website becomes a mandatory requirement.



ENVIRONMENTAL IMPACT STATEMENT



Prepare

UP TO
24 MONTHS



The Environmental Impact Statement (EIS) preparation begins. Applicants must include: a detailed description of the proposed project; all relevant environmental, social and economic (surveys and studies) and potential (positive and negative) impacts of the project; an assessment of the management, monitoring, and other measures proposed to avoid, minimise and/or mitigate any adverse impacts of the project.

TIA recommends that there is a publicly available standard and clear criteria for applicants and assessors to follow, to ensure the quality of studies and assessments in an environmental impact statement, and to reduce the likelihood for additional information requests. For example, a certification requirement for impact assessors and publicly available departmental guidelines. Individual authors contributing to the environmental impact statement and studies should be acknowledged to ensure transparency, independence, accountability and avoid any potential conflicts of interest. Further details on our recommendations for a certification requirement can be found [here](#).



Environmental Impact Assessment

The environmental impact assessment is one component of the environmental impact statement. Other components include Cultural Heritage, Native Title, Regional Planning Interests Act 2014 (Qld) and the other mandatory assessments.



Social Impact Assessment

Under the Strong and Sustainable Communities Act 2017 (QLD), a social impact assessment is required for all projects requiring an environmental impact statement.



Economic Impact Assessment

An economic impact assessment is required for all projects requiring an environmental impact statement.



Decide

When the environmental impact statement is submitted by the applicant, the Coordinator-General decides whether they are satisfied it meets the terms of reference.

TIA recommends that there is a certification requirement for internal impact assessors. The Resource Sector Regulation Productivity Commission Study Report (2020) found that “clear regulatory objectives, adequately resourced institutions and effective governance and accountability arrangements are pre-conditions for leading practice regulatory systems” (page 57).



Share

Government advisory agencies may be asked to comment on whether the draft environmental impact statement adequately addresses the terms of reference, and if the measures proposed will effectively avoid, mitigate or manage the project's adverse impacts.

Revise

The Coordinator-General may request more information and request the applicant revise the environmental impact statement. Additional information about the revision process can be found [here](#).



Public Consultation

The applicant may notify the public that: the draft environmental impact statement is complete, how and where the public can provide feedback and make submissions to the Coordinator-General. This consultation period is not required. If it does occur, the timeline is usually 30 business days.

If project is being assessed under a Federal Government EPBC Act Bilateral Agreement, there is a mandated minimum 28 day consultation period.

TIA recommends that public consultation becomes mandatory at the environmental impact statement stage. Consultation supports decision making, ensures an opportunity for independent validation of information and ability to raise issues prior to the mining licence process stage. Statements are often complex and lengthy (e.g. 1,200 pages) making them inaccessible for the general public. TIA also recommends that a design guide is developed for environmental impact statements to present information to the public in a clear concise way.

TYPICALLY
30
BUSINESS
DAYS



Review

TYPICALLY
40 DAYS



The Coordinator-General accepts all submissions (even if they are ‘not properly made submissions’ under the Act). They review the submissions, then make a decision whether to accept the draft environmental impact statement, or request additional information. This usually takes 40 days.

Share

Revise



Public Consultation

If additional information is required and the applicant revises the environmental impact statement, the Coordinator-General may seek public comment. This consultation period is not required. If it does occur, the timeline is usually 30 business days.

TIA recommends that public consultation become mandatory if the Coordinator-General has requested additional information and the applicant revises the environmental impact statement.



Reject

If the Coordinator-General's recommendation is to refuse the project, they must give reasons for the recommendation. Reasons for refusal can include that the project's environmental impacts cannot be adequately addressed.



Environmental Impact Statement - Extension

The Coordinator-General must accept a draft environmental impact statement as a final within 18 months of the terms of reference being issued. Unless the Coordinator-General grants an extension, the coordinated project declaration lapses after 18 months. Extensions are regularly granted.



EVALUATION REPORT

The Coordinator-General considers all of the economic, social and environmental impacts of a project, before making a decision about whether a project should proceed. They prepare the evaluation report recommending the project proceed, outlining conditions to mitigate and manage any adverse impacts. A copy of the report is given to the proponent and publicly released. Additional information about the evaluation report can be found [here](#) and examples of evaluation reports can be found [here](#).



Evaluation Report - Extension

The Coordinator-General's evaluation report lapses after 3 years. The life of the report can be extended indefinitely by applying for other relevant approvals, or by written notice of the Coordinator-General.

Where an extension has been granted for the evaluation report, TIA recommends that it becomes mandatory for community consultation to be part of this process. Extensions without further consultation to assess if changes to environmental and social circumstances and potential impacts are addressed may mean the evaluation report becomes outdated and ineffective.

Publish Extension Approval

Information about report period extensions are published on the government's website. Although the Coordinator-General is not obliged by law to inform the public, this is common best practice.



MINING LICENCE PROCESSES

Environmental Authority

Mining Lease

Native Title

Approvals are required for the mining lease, the environmental authority and native title processes. The Department of Natural Resources, Mines and Energy approve a mining lease, the Department of Environment and Science provide the environmental authority, the Federal Environment Minister if Matters of National Environmental Significance (MNES) under the Environment Protection Biodiversity Conservation (EPBC) Act are potentially going to be significantly impacted.



APPEAL

There are usually two avenues for individuals and organisations to appeal decisions, known as reviews. Both provide an affirmation or variation of the original decision.

A judicial review takes place in a law court. Anyone affected by the decision has the right to judicial appeal. The judge has limited scope and focuses on whether the original decision was made lawfully by following a proper procedure.

Merits reviews are held either by government departments or tribunals. Independent reviewers reconsider the information, law and policy aspects of the original decision to determine what is the 'correct and preferable' decision. The next steps outline what forms of review are available for coordinated projects.



Question

If the applicant or the public disagrees with a decision that the Coordinator-General has made, they have the option of going through a Land Court process (a common law judicial review) within 20 days of the notice being given. The court will examine whether the Coordinator-General correctly applied the law and acted within their legislated powers.

Statutory judicial review is unavailable for most of the Coordinator-General's decisions under the State Development and Public Works Organisation Act (1971) Qld. No merits review is available for third parties of decisions of the Coordinator-General, meaning there is limited legal scrutiny in a court of law.

TIA recommends that merits review of Coordinator-General decisions for approval or refusal of projects be made available as a mechanism to increase the potential scrutiny on decisions made, thereby improving the quality and accountability of decision making. The Resource Sector Regulation Productivity Commission Study Report (2020) found that "Where approval decisions are made by unelected officials it is a leading-practice accountability measure that they can be subjected to merits review that allows for conditions and approval decisions to change to reflect substantive new information" (page 44).



Refer

The Department of Environment and Science refers the Coordinator-General's decision to the Land Court within 10 days of objection period.

10 DAYS TO
OBJECT



Hearing

The Land Court hears objections and gives recommendation. Usually within 24 months. The Department of Environment and Science decides on how to proceed with Environmental Authority Application. It is very difficult to adapt or change the Coordinator-General's decision and evaluation report.

TYPICALLY
24 MONTHS

TIA recommends that the Land Court and the Queensland Department of Environment and Science be able to impose conditions which reflect the evidence and expert analyses presented to them, and are not limited to imposing the Coordinator-General's conditions. The Resource Sector Regulation Productivity Commission Study Report (2020) found that "There is no clear justification for a limitation on the types of conditions that can be imposed by the Queensland Land Court. New information about the impacts of a project could reasonably provide a basis for new conditions on a project that are quite different to those suggested by the Coordinator-General" (page 187).



SUMMARY: COMMUNITY CONSULTATION

"Earlier scoping of key risks, including through community consultation, would give regulators and proponents a clearer and shared understanding of what information is needed to support decision making." [Productivity Commission](#).

Due to how the legislation is designed and laws are applied, community consultation is not always guaranteed. Communities are also not always provided the opportunity to comment on a project when new information is available.

There are also significant risks due to time delays. If an environmental impact statement is granted multiple extensions, the environmental impact statement process at a state level (and federal level if required) could happen 5 to 10 years before mining lease and environmental authority applications are submitted, assessed and approved. By this time, information in the statement will be out of date, issues may arise, new discoveries made, and the public and traditional owners may not be able to comment on new information provided during mining lease and environmental approval processes.

Companies cannot adapt the environmental impact statement to changing circumstances, adapt the project design and operations as needed, or address new community concerns. This exposes companies to reputation damage for failure to address real-time concerns of adverse environmental and social impacts.

The time delay also limits public comments to the original environmental impact statement - if the public were made aware of the project earlier and had the opportunity to comment within the limited timeframe. An independent review through the Land Court is available and an important part of the process. However, it leaves the community and other agencies with only a costly court process to provide feedback, voice their concerns and objections. The Land Court has no recourse to change the decision of the Coordinator-General.

SUMMARY: CULTURAL HERITAGE

"Consultation with traditional owners is often inadequate, and heritage can be seen as an afterthought" [Productivity Commission](#).

The Queensland Aboriginal Cultural Heritage Act 2003 requires a negotiated agreement on heritage issues before a project can go ahead. We recommend this process be communicated better. To see it in context with the State Development and Public Works Organisation Act 1971 (SDPWO Act) will improve understanding about how this works and provide communities and companies with certainty about obligations.

SUMMARY OF RECOMMENDATIONS

Transparency International Australia's (TIA) recommendations have been developed in collaboration with many of the roundtable and workshop participants from industry, civil society, government and academia.

- 1 TIA recommends that community consultation and engagement is a requirement at the project planning stage prior, to an applicant submitting an application. There should be clear criteria about what should be communicated to the public, and what meaningful consultation looks like, taking into consideration the fact that there are often many unknowns about the project at this early stage. The Resource Sector Regulation Productivity Commission Study Report (2020) found that "earlier scoping of key risks, including through community consultation, would give regulators and proponents a clearer and shared understanding of what information is needed to support decision making" (page 13).
- 2 TIA recommends that for high risk projects it is mandatory for the Coordinator-General to seek input from other government departments and independent agencies on the draft terms of reference.
- 3 TIA recommends that public notification of draft terms of reference is made mandatory. The terms of reference have become complex and lengthy documents. Public consultation periods should allow enough time to meaningfully review and respond.
- 4 TIA recommends that publishing the finalised terms of reference on the Coordinator-General's website becomes a mandatory requirement.
- 5 TIA recommends that there is a publicly available standard and clear criteria for applicants and assessors to follow, to ensure the quality of studies and assessments in an environmental impact statement, and to reduce the likelihood for additional information requests. For example, a certification requirement for impact assessors and publicly available departmental guidelines. Individual authors contributing to the environmental impact statement and studies should be acknowledged to ensure transparency, independence, accountability and avoid any potential conflicts of interest. Further details on our recommendations for a certification requirement can be found [here](#).
- 6 TIA recommends that there is a certification requirement for internal impact assessors. The Resource Sector Regulation Productivity Commission Study Report (2020) found that "clear regulatory objectives, adequately resourced institutions and effective governance and accountability arrangements are pre-conditions for leading practice regulatory systems" (page 57).
- 7 TIA recommends that public consultation becomes mandatory at the environmental impact statement stage. Consultation supports decision making, ensures an opportunity for independent validation of information and ability to raise issues prior to the mining licence process stage. Statements are often complex and lengthy (eg. 1,200 pages) making them inaccessible for the general public. TIA also recommends that a design guide is developed for environmental impact statements to present information to the public in a clear concise way.
- 8 TIA recommends that public consultation become mandatory if the Coordinator-General has requested additional information and the applicant revises the environmental impact statement.
- 9 Where an extension has been granted for the evaluation report, TIA recommends that it becomes mandatory for community consultation to be part of this process. Extensions without further consultation to assess if changes to environmental and social circumstances and potential impacts are addressed may mean the evaluation report becomes outdated and ineffective.
- 10 TIA recommends that merits review of Coordinator-General decisions for approval or refusal of projects be made available as a mechanism to increase the potential scrutiny on decisions made, thereby improving the quality and accountability of decision making. The Resource Sector Regulation Productivity Commission Study Report (2020) found that "Where approval decisions are made by unelected officials it is a leading-practice accountability measure that they can be subjected to merits review that allows for conditions and approval decisions to change to reflect substantive new information" (page 44).
- 11 TIA recommends that the Land Court and the Queensland Department of Environment and Science be able to impose conditions which reflect the evidence and expert analyses presented to them, and are not limited to imposing the Coordinator-General's conditions. The Resource Sector Regulation Productivity Commission Study Report (2020) found that "There is no clear justification for a limitation on the types of conditions that can be imposed by the Queensland Land Court. New information about the impacts of a project could reasonably provide a basis for new conditions on a project that are quite different to those suggested by the Coordinator-General" (page 187).