

LEGISLATIVE ENHANCEMENTS TO MINING CLAIMS

Consultation paper | September 2023

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Acknowledgement of Country

The Department of Resources acknowledges the First Nations peoples in Queensland: Aboriginal and Torres Strait Islander peoples and their connections to the lands, winds and waters we now all share. We pay our respect to Elders, past and present.

We also acknowledge the continuous living culture of First Nations Queenslanders – their diverse languages, customs and traditions, knowledges and systems. We acknowledge the deep relationship, connection and responsibility to land, sea, sky and Country as an integral element of First Nations identity and culture.

The Country is sacred. Everything on the land has meaning and all people are one with it. We acknowledge First Nations peoples' sacred connection as central to culture and being.

We acknowledge the stories, traditions and living cultures of First Nations peoples and commit to shaping our state's future together. The department recognises the contribution of First Nations peoples and communities to the State of Queensland and how this continues to enrich our society more broadly.



Background

In June 2022, the Queensland Government released [the Queensland Resources Industry Development Plan](#) (QRIDP) which establishes the state's long-term vision for the resources industry.

As part of the plan, several actions were allocated under key focus areas for industry and government to ensure Queensland is well placed to tackle the challenges and harness the opportunities of the future. These include reform the small-scale mining sector, fostering coexistence and sustainable communities and commitments to promote regulatory efficiency.

The Queensland Government is working alongside industry and community to develop proposed amendments to deliver on these commitments and is continuing to consult with relevant stakeholders to ensure these reforms reflect the needs and views of all Queenslanders.

Feedback is now being sought on a number of legislative changes as part of an overarching consultation process that will allow stakeholders to have their say on the reforms that are important to them, in one process.

In addition to proposed legislative enhancements for mining claims which we are consulting on through this paper, we are also seeking feedback on:

- Coexistence institutions and coal seam gas-induced subsidence management framework
- Regulatory efficiency enhancements

For more information about these papers, visit the [Have your say](#) page.

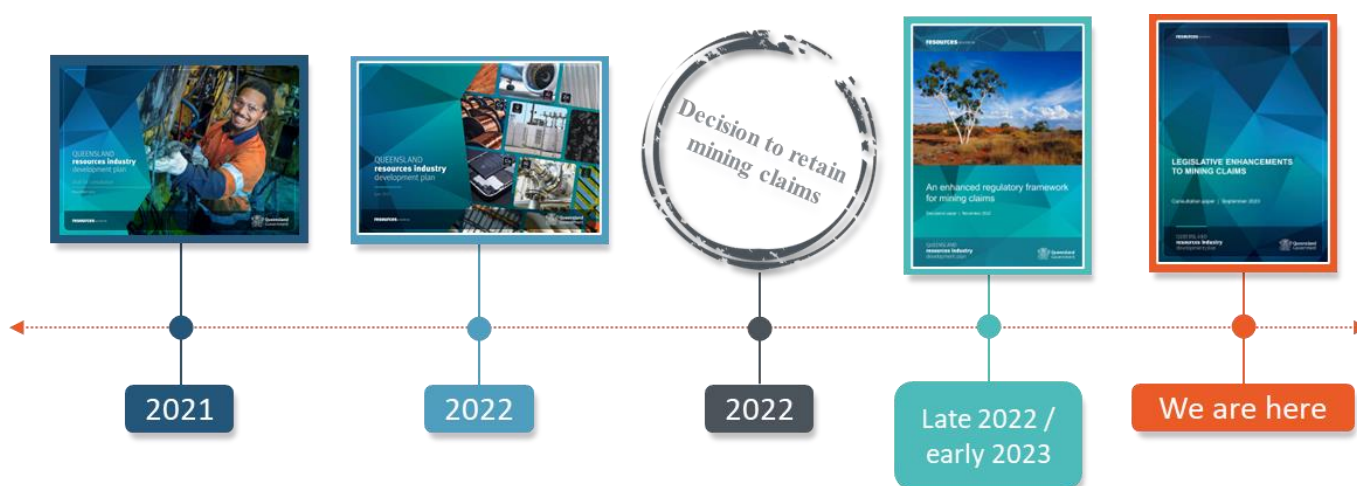


Figure 1 – Key milestones to date

About this paper

The Queensland Government supports small-scale mining and is committed to developing a more effective system for regulating and administering the sector.

The Department of Resources (the department) has undertaken extensive stakeholder engagement since the release of the draft QRIDP, including consultation in late 2022 until early 2023 on the discussion paper titled [An enhanced regulatory framework for mining claims](#). During this period, feedback was received from stakeholders about key issues and ideas to improve the regulatory framework for mining claims. The feedback was then used to inform the proposed legislative amendments outlined below to ensure mining claims can be effectively and efficiently regulated in the future.

This consultation paper is split into two sections, Part A and Part B.

Part A outlines the changes to legislation required to implement the enhancements that were [proposed in the discussion paper](#) and have been refined based on stakeholder feedback. These proposed legislative amendments largely relate to Chapter 3 of the *Mineral Resources Act 1989* (MR Act), but also include minor amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCPC Act). Draft legislation will be released in the coming weeks and can be reviewed as part of this consultation process. Feedback provided on Part A of this consultation paper and the draft legislation will be considered in finalising the proposed amendments.

Part B of this document provides additional information on proposals that were in the discussion paper. Feedback provided on Part B of this paper will help inform legislative amendments. There will be further opportunity to provide feedback on these changes as part of future Parliamentary processes.

Have your say

We are now seeking feedback on Part A and Part B of this consultation paper. Stakeholder views and comments are encouraged and will be considered when drafting the proposed legislative amendments. Please note, it is not necessary to provide feedback on every amendment set out in the paper. We welcome any other feedback you may wish to provide in relation to the small-scale mining sector.

Online

Feedback can be provided via [this online form](#) which allows comments under each of the amendments.

Email

Submissions can be emailed to resourcespolicy@resources.qld.gov.au.

Post

Georesources Policy, Department of Resources
PO Box 15216
City East QLD 4002

Consultation closes 8 December 2023.

For further information, visit [the small-scale mining and fossicking](#).

Next steps

Your feedback will be considered in finalising the legislative changes. Submissions will not be published.

The draft legislation will continue to be refined. The intent and main themes provided in this paper will remain the core objectives of the legislation, however continued modification of the chapter and placement of sections may be adapted to ensure it is fit for purpose.

We understand that the implementation of a new framework for mining claims may raise concerns for existing mining claim holders. We will work with stakeholders, including relevant local governments and other State government agencies, to collaboratively address these concerns and ensure sufficient information and time to transition is provided.

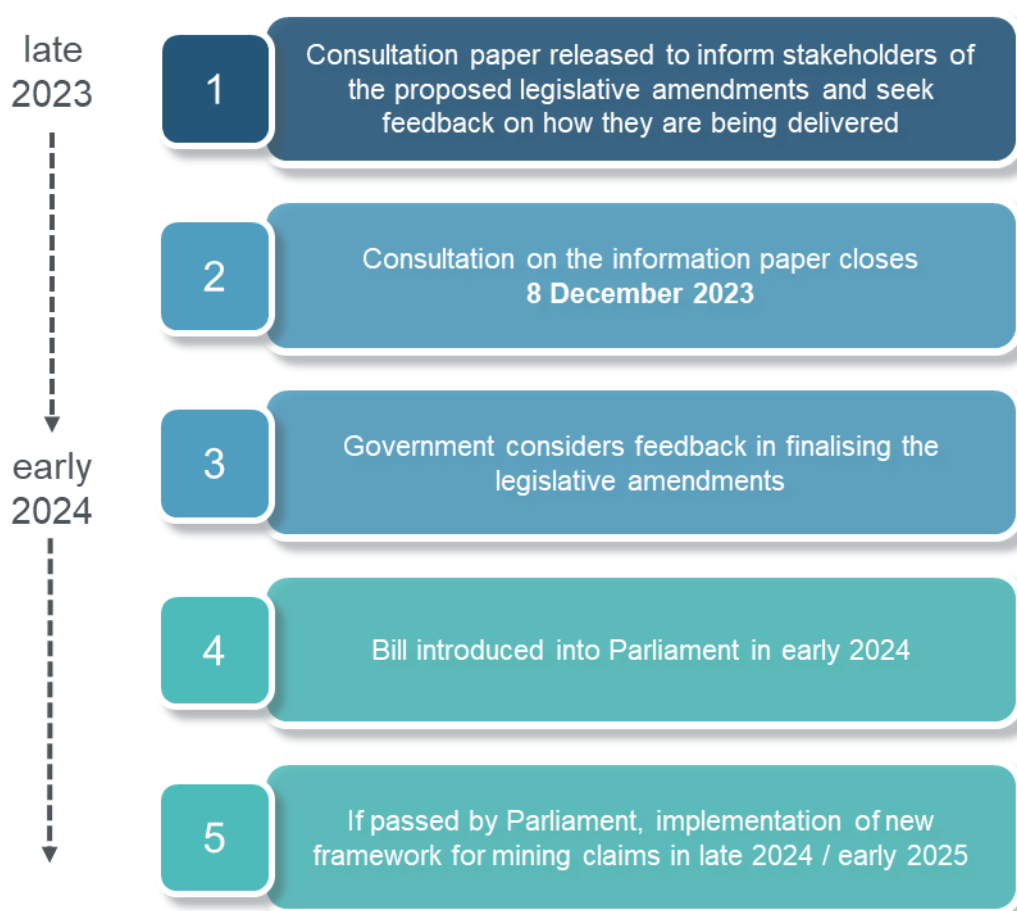


Figure 2 – Next steps

Part A – Proposed legislative changes that relate to the discussion paper

The discussion paper, [An enhanced regulatory framework for mining claims](#) included a range of proposed changes to the mining claim regulatory framework based on three key objectives:



Part A of this paper sets out how the proposed changes to the mining claim framework may be progressed as legislative changes. The proposals have been refined based on feedback received on the discussion paper by stakeholders, including mining claim holders, landholders and community. Of the proposals included in the discussion paper, two were not supported by stakeholders and therefore are not being progressed:

- limiting transfers in the final term of mining claims
- requiring a landholder statement or auditor report about clean-up/improvement restoration prior to surrender.

Fossicking

The discussion paper also indicated that a review of current fossicking areas would be undertaken to ensure people interested in recreational activities can do so. The department has commenced this work and engaged with relevant local governments to identify areas that could be appropriate for fossicking. This work is ongoing.

We are also proposing amendments to the *Fossicking Act 1994* that will require fossickers to seek permission from the relevant mining lease applicant before any fossicking activities may be undertaken on the area of land. For further information, please refer to the [Improved regulatory efficiency](#) consultation paper.

Modernising chapter 3 of the Mineral Resources Act

In line with the proposed legislative changes, a number of general improvements have been identified to modernise chapter 3 of the MR Act. This includes:

- creating 'parts' in the chapter, to group related provisions together and make the chapter easier to read
- reordering existing provisions to align them under the new relevant headings
- updating some language to modernise the chapter (such as replacing 'shall' with the word 'must')
- simplifying large provisions (such as conditions of a mining claim) by separating them into several new 'divisions' with clear topics.

Should the Bill be passed by Parliament, the new framework will apply from the date of commencement and any application made on or after that date will be required to comply with the proposed legislative amendments set out below.



Changes to ensure the effective regulation of mining claims

One of the objectives outlined in the discussion paper was to ensure the regulatory settings for mining claims are contemporary, efficient, effective and fair.

Fees and charges

To help with the cost of administering mining claims and increase resourcing for compliance activities, it is proposed that a new administrative and regulatory fee will be introduced. Most feedback was accepting of the introduction of a new administrative and regulatory fee for mining claims, provided further consultation occurred on the proposed amount.

Feedback about whether the new administrative and regulatory fee should be charged upfront or annually over the life of the tenure was mixed. Benefits for both approaches were identified. Some stakeholders outlined that for an upfront fee, the costs are known and there are no ongoing charges. Alternatively, some stakeholders suggested it is easier to budget for annual payments over the life of the tenure.

Government is yet to consider the particulars of the fee, including a proposed fee amount and whether it should be charged upfront or annually over the life of the tenure. Further consultation on these matters will occur before any changes are made to fees.

Proposed changes to the legislation relating to fees and charges

- A new administrative and regulatory fee must be paid upon application for a mining claim.

Application requirements

The department is proposing to introduce a new financial and technical capability statement requirement as part of mining claim applications, renewals and transfers. This will ensure applicants have the technical and financial capabilities to undertake the proposed activities in accordance with their work program and support genuine small-scale miners.

Overall, feedback suggested that the key technical capabilities should include past experience in mining and compliance with conditions, and that differences between hand-mining claims and prescribed mining claims (which are larger in size and may use machinery) should be taken into account. Details about the type of information required by applicants (including any differences in information required for hand-mining claims or prescribed claims) will be detailed in future guidance material and will not be included in the draft legislation.

Changes are also proposed to require work programs to be provided with transfer applications, and to require work programs to be updated if a significant change occurs, or amended if the department considers they are insufficient. A significant change could include if a new structure is proposed for the claim, if a change is proposed to the planned work period, or if another activity associated with mining the claim is proposed (for example, a cut and polishing business). More information about

work program requirements is outlined below under the heading 'Clear requirements for mining claim holders'.

It is proposed that the Minister will also be given the ability to disqualify persons from applying for another resource tenure in the future if the holder has:

- previously held a mining claim that was cancelled
- contravened a mining claim condition in relation to failure to remove structures or complete improvement restoration.

Proposed changes to the legislation relating to application requirements

Financial and technical capability requirement

- Requiring mining claim applications to be accompanied by a financial and technical capability statement.
- This requirement will apply to applications for a new mining claim, renewal and transfer of an existing mining claim.

Work program

- Requiring a work program to be provided with a transfer application.
- Providing the department with the ability to require a work program to be resubmitted if it does not contain sufficient information.
- Requiring a work program to be updated if a significant change in activity is proposed and provided to the department.

Disqualification of applicants

- Preventing a person from obtaining another resource tenure if they have previously held a mining claim that was cancelled, or a mining claim was terminated and the obligations to remove structures or complete improvement restoration have not been met.

Term of mining claim

To provide an incentive for holders to actively mine their claim, it is proposed that the maximum term of a hand-mining claim will be reduced from ten years to five years, while prescribed mining claims will remain at a maximum of ten years. A limit of two renewals will be imposed for all new mining claims granted after the commencement of the new legislation should it be passed by Parliament.

Most feedback received on this proposal raised concerns about the introduction of a maximum term on mining claims, however this was largely in relation to the impact it will have on current mining claims and their holders. Feedback also suggested that should a maximum term of a claim be imposed, an ability to extend the term should be available in circumstances where the mineral deposit has not been exhausted. Some feedback was supportive of limiting the number of renewals because it provided certainty regarding how long mining activities will occur.

In circumstances where a mining claim, granted after the commencement of the legislation, is transferred, the transferee will be limited to the same maximum term that applied to the original holder. In other words, a claim cannot be renewed beyond 15 years for hand-mining claims and 30

years for prescribed claims. However, one additional renewal may be granted if the holder is able to demonstrate there is a substantial amount of mineral that has not been exhausted and additional time is required to produce the mineral and remediate the claim. The length of this additional term will be at the Minister's discretion. A moratorium will then be automatically applied to the area which will remain in place until a decision is made about whether the area should be released again as a mining claim.

These changes will apply to all new mining claims from commencement. Transitional arrangements will apply to all existing mining claims and are discussed in **Part B** of the paper.

Proposed changes to the legislation relating to the term of new mining claims

- Reduce the maximum term for new hand-mining claims of to up to five years.
- Retain the maximum term for prescribed mining claims of to up to ten years.
- Limit the total number of renewals for a mining claim to two renewals.
- Allow for the possibility of one additional renewal, at the Minister's discretion and for a term decided by the Minister, if the holder is in compliance and a substantial amount of mineral remains and additional time to produce the mineral and remediate the claim is required.



Changes to support genuine small-scale mining operations

Another objective outlined in the discussion paper was to support genuine small-scale mining operations, which included a number of proposals to provide greater clarity in the regulation of mining claims.

Clear requirements for mining claim holders

Proposed changes to clarify the regulatory framework will make it easier for mining claim holders to understand and comply with the requirements set by government. The proposed changes include clarifying the entitlements of a mining claim and the structures permitted on a mining claim, and ensuring the definitions of particular terms are clear and relevant.

The majority of feedback provided in relation to these proposals focused on the need for clarification on the structures permitted on mining claims, with various suggestions of what should be permitted, such as dongas and caravans. Other feedback related to clarifying existing terms that apply to mining claims, such as what 'bona fide' or 'genuine activities' mean, when the small-scale mining code applies, and work program requirements.

Other government initiatives are also proposed to extend the requirement to keep a mining claim tidy to all mining lease holders. For further information, please refer to the [Improved regulatory efficiency](#) consultation paper.

Proposed changes to the legislation to clarify mining claim requirements

Entitlements of mining claim

- Clarify the purposes for which a mining claim may be granted, including for mining activities and purposes that arise from or promote mining (e.g. tourism, cut and polish activities, etc.).
- Include a condition that only the activities authorised on the mining claim notice and recorded in the register are permitted.
- Remove reference to 'structures' as an entitlement of a mining claim.

Structures

- Update references from temporary residence to temporary accommodation.
- Remove the term permanent building.
- Clarify that temporary accommodation, equipment storage or structures may be permitted on mining claims if authorised on the mining claim notice.
- Clarify that prior to expiration or surrender of a mining claim, all structures, equipment, and plant must be removed.

Work program

- Include as a condition of a mining claim that activities are to be undertaken in accordance with the work program.

- Amend the definition of work program to clarify that it must include information about:
 - all activities proposed to be carried out on the mining claim (e.g. mining, tourism, improvement restoration)
 - the type and number of proposed structures, equipment and vehicles on site and how they relate to the authorised activities.
- Relocate the definition of work program from the dictionary to chapter 3 of the MR Act.

Small scale mining activity:

- Include the definition of small scale mining activity in chapter 3 of the MR Act.
- Require that the mining claim notice specify whether the activity will operate as a 'small scale mining activity' or under a relevant environmental authority and include this information on the register.
- Where the mining claim holder is not operating as a small scale mining activity, require affected persons be given a copy of a relevant environmental authority.

Evidence of activity

A record-keeping requirement to demonstrate evidence of activity is proposed as a condition of a mining claim to allow authorised officers to determine whether holders are operating in accordance with the MR Act, their work program and using the claim for a bona fide purpose. The majority of the feedback received expressed a preference for recording evidence of activity in a logbook or diary and suggested that the requirements should be the same for hand-mining and prescribed mining claims, although the level of information required should differ.

Details of the information to be kept that demonstrate evidence of mining activities will be prescribed in the MR Regulation 2013. Mining claim holders will be required to keep a copy of the record and make it available on request by an authorised officer. There will be no requirement for holders to submit the records on a regular basis.

As part of a renewal application, mining claim holders will also be required to demonstrate works have been carried out in accordance with the previous work program.

Proposed changes to the legislation relating to keeping records of mining activities

- A requirement for mining claim holders to keep records that demonstrate evidence of mining activities and make it available upon request by an authorised officer.

Improving coexistence

Compensation agreements between the owner of the land and mining claim holders are proposed to be expanded from monetary compensation, to also include conduct and in-kind compensation. This will enable the Land Court to consider conduct and in-kind compensation in determining mining claim conduct and compensation agreements. An ability for the parties to renegotiate the agreement if there is a significant change is also proposed to be introduced. If the interested party (owner of the land)

and the mining claim holder decide to include conduct related requirements in compensation agreements, it must relate to activities on the mining claim or associated with accessing the claim.

Feedback received related to ways to improve coexistence between landholders and mining claim holders, such as preventing weed spread and rehabilitating the land after mining. However, the feedback is largely in relation to matters already captured by existing legislative requirements in the MR Act, *Environmental Protection Act 1994*, *Biosecurity Act 2014*, *Resources Safety and Health Queensland Act 2020* and their associated regulations.

Following on from the department's review of the state's coexistence institutions, changes are proposed to the dispute resolution processes available for disputes that arise under the resources acts. This may include an expansion of the Land Access Ombudsman functions to enable them to assist in resolving disputes for mining claims and mining leases prior to referral to the Land Court.

Information on this initiative can be found in the [Coexistence institutions and coal seam gas-induced subsidence management framework](#) consultation paper.

Proposed changes to the legislation to improve coexistence

- Allow mining claim holders and landholders to negotiate conduct and in-kind compensation (e.g. maintenance of fencing, road building, etc.) as part of their compensation agreements.
- Create an ability for compensation agreements to be renegotiated if there has been a significant change.
- Enable the Land Court to make a determination regarding conduct and in-kind compensation and review renegotiated agreements.



Changes to address non-compliance

The discussion paper identified the need to address non-compliance on mining claims as a key objective.

Enhancing compliance functions

A new offence for contravening a condition of a mining claim is proposed to allow the department to better respond to any non-compliance that may occur. The new offence will complement existing offences already provided for in the MR Act. The proposed maximum penalty unit for this new offence can be found in **Part B**.

Feedback was largely supportive of the proposal to introduce Penalty Infringement Notices (PINs). The department is proposing to introduce PINs for contraventions of certain conditions, however, this requires amendments to the *State Penalties Enforcement Regulation 2014* and will be progressed later should these legislative amendments be passed by Parliament.

For reoccurring or serious non-compliance of a condition of a mining claim, the compliance and enforcement strategy will determine the appropriate compliance responses, which may include the cancellation of the claim.

Proposed changes to the legislation to address non-compliance include

New offence provision

- A new offence for contravening a mandatory condition of a mining claim. This offence will relate to matters such as:
 - conducting activities that are not authorised under the mining claim
 - failing to keep records
 - failing to comply with the mandatory conditions in the small scale mining code (for activities not operating under an Environmental Authority)
 - carrying out activities prior to entering into a conduct and compensation agreement (where required)
 - failing to provide a work program, including after a significant change in activity
 - failing to keep the mining claim area in a tidy state
 - failing to restrain animals (imposed under regulation)
 - failing to carry out improvement restoration
 - failing to remove structures, vehicles, plant and equipment before termination or surrender
 - failing to make relevant payments (i.e. security)
 - failing to comply with conditions of a reserve and indigenous land use agreements

- diverting water without holding the appropriate authority.

The maximum penalty unit proposed for this offence is outlined in **Part B**.

Cancellation of mining claims

- Giving the Minister the power to cancel a mining claim if contravention of the following conditions including:
 - undertaking unauthorised activities
 - having unauthorised structures, vehicles, plant or equipment
 - failure to make all the prescribed payments.

Promoting site clean-up

The department is proposing to introduce an ability for the Queensland Government to accrue and keep interest earned on security held on tenures granted under the MR Act. It is also proposed that the department pool these funds and any security held by the department for mining claims that has not been collected within 12 months following the termination of a claim. The department will then be able to use these funds to clean up and remediate any abandoned mining claims (and not necessarily the claim for which the security was held). To remove any doubt, security will be returned to mining claim holders that successfully remediate and surrender their claim.

Proposed changes to the legislation to promote site clean-up include

- Introducing the ability for government to pool security held for terminated mining claims.
- Introducing the ability for government to accrue and keep interest on security held under the MR Act.

Part B – Proposals for further consideration

Maximum penalty unit

As part of introducing the proposed new offence relating to non-compliance of a condition of a mining claim, a maximum number of penalty units needs to be prescribed. A maximum penalty is the maximum fine a court can impose if the department decides to prosecute for serious non-compliance of a condition of a mining claim and the court finds the holder guilty. The department would only consider prosecution for an offence for serious matters and if other escalation pathways were ineffective.

The maximum penalty unit proposed for this offence is 1,000 penalty units. The value of one penalty unit as of 1 July 2023 is \$154.80. This amount is indexed every financial year and will increase on 1 July 2024. Based on the current value of a penalty unit, this would equate to a \$154,800 fine.

The department considers a maximum penalty of 1,000 units is appropriate because it is consistent with other, similar offences in the MR Act for a contravention of conditions and adequately reflects the level of activity and possible risk associated with mining claims. By comparison, the maximum penalty for contravention of an exploration permit under the MR Act is 500 penalty units and for mining leases is 1,500 penalty units.

Penalty infringement notices

The department intends to allow PINs to be issued for certain contraventions of conditions of mining claims. As stated in **Part A**, this requires further amendments to the State Penalties Enforcement Regulation 2014 and will occur at a later stage.

The consequences of non-compliance with a condition of a mining claim will determine when a PIN may be issued and the amount of the PIN, for both an individual and corporation. An example of where a PIN may be appropriate is if a mining claim holder fails to keep records. PIN amounts will be determined by the department in consultation with the Department of Justice and Attorney General, should the Bill be passed by Parliament.

Transition to the new framework

Feedback provided on the transition to the new framework indicated existing mining claim holders were concerned about the impact the proposed changes would have on them. A strong desire to transition into the new framework over time was expressed. Key areas of concern regarding the transitional arrangement are outlined below.

Undecided mining claim applications, renewals and transfers

For any applications (including for a renewal or transfer) that are made, but not decided upon commencement of the Bill, the application will be decided under the legislation in force immediately before commencement. However, most aspects of the new framework will apply from the grant of the mining claim, other than the limits on the term and number of times a mining claim can be renewed. To be clear, the new application requirements do not apply, and payment of the new administrative and regulatory fee is not required.

Existing mining claims

Existing mining claim holders will be required to meet all the new obligations upon commencement of the Bill. This includes:

- keeping records of evidence of activity
- complying with the mandatory conditions prescribed for mining claim holders
- providing updated security at renewal or if significant changes to the work program are made.

Application requirements and the fee changes will apply at the next renewal application. The new mining claim term and limit on renewals will not apply unless the tenure expires or is transferred. In other words, these mining claim holders will be able to continue to renew their mining claims under the existing framework until they decide to transfer.

For existing mining claims that do not have a permanent structure, the holder will be able to transfer the mining claim. Upon transfer of the mining claim, all aspects of the new framework will apply to the new holder, including a maximum term limit and number of renewals.

For existing mining claims that do have a permanent structure, the holder will be permitted to retain their permanent structure for as long as they hold the claim. If the mining claim holder seeks to transfer the claim, to someone other than to a spouse, the permanent structure must be removed or modified to become compliant with the new requirements before the transfer application will be approved. Updated security will also need to be provided. If the holder seeks to transfer the claim to a spouse, the permanent structure does not need to be removed or modified. This can only occur if the spouse does not already hold two mining claims. To remove any doubt, once a transfer application is approved after commencement, the transferee must comply with all requirements of the new framework. From that point on, the limit on the number of times a claim can be renewed will apply.

The department recognises that there may be periods of time where holders are unable to work their claim due to age, health or other medical reasons. For holders who are unable to carry out mining activities, at renewal the holder will be required to provide information about why mining activities cannot be undertaken on the claim. This information will be considered by the Minister in deciding whether to renew the claim. Decisions to renew a claim in these circumstances will be considered on a case-by-case basis and the Minister will have discretion in determining the length of the term of the claim.

Proposed changes to the legislation relating to the transitional provisions

Fees and charges

- The new administrative and regulatory fee will be required for all new mining claim applications and renewal applications following commencement of the Bill.

Application requirements

- The requirement to provide a copy of the relevant environmental authority to affected persons will apply to all new mining claim applications submitted following commencement of the Bill.

Term of mining claim

- The new terms will apply upon transfer for existing mining claim holders including for applications made, but not decided, on commencement.

Clear requirements for mining claim holders

- The mandatory conditions apply to all existing holders from commencement.
- Clarifications to entitlements will apply from the first renewal that occurs from commencement.

Evidence of activity

- The requirement to keep records to demonstrate evidence of mining activities will apply to all mining claims after commencement of the Bill.

Improving coexistence

- Existing mining claim holders can renegotiate agreements to their conduct and compensation agreements if a significant change occurs post commencement.

Enhancing compliance functions

- The new offence will apply to all holders from commencement.
- Changes to the disqualification process will take effect from commencement of the Bill.

Thank you for taking the time to read this consultation paper.

We encourage you to provide feedback via the [online form](#) or by emailing ResourcesPolicy@resources.qld.gov.au. Submissions can also be posted to the address listed at the beginning of the paper.

Stakeholder views and comments will be considered when drafting the proposed legislative amendments.

Consultation closes 8 December 2023.