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**PARTICIPATION OPTIONS FOR OBJECTORS TO MINING PROJECTS IN
THE LAND AND RESOURCES TRIBUNAL (QUEENSLAND)**

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From its inception, the Land and Resources Tribunal (LRT) has had a commitment to continual improvement of its procedures to ensure that matters are dealt with fairly, appropriately and expeditiously. The President of the LRT has issued a number of practice directions to achieve that end. A table of relevant practice directions appears at the end of this article. They can all be viewed at the LRT's website www.lrt.qld.gov.au. This article draws attention to the practice direction dealing with objections to mining projects and highlights the potential benefits for parties.

Any person can object to the grant of a mining lease or to the grant of or the conditions of a draft environmental authority for a mining project. Whether the objection relates to a mining lease or an environmental authority, it is lodged with the Mining Registrar using a combined objection form. The application and any objections are then referred to the LRT by the Mining Registrar, in the case of an objection to the grant of a mining lease, and by the EPA, in the case of an objection to the grant of or the conditions of a draft environmental authority. The LRT is then required to consider the application, to hear any objections made to it and to make recommendations to the Minister for Natural Resources, Mines and Energy. Accordingly, once the application and objections are referred, the LRT commences a proceeding and sets down the matter for a hearing at which directions are set for the preparation for and conduct of the hearing.

Whilst some objectors are familiar with the mining approval process, many are not and are surprised to find themselves engaged in a legal process. Many are familiar with the development approval process where a submission is made to a local authority which then makes a decision. An "objector", having made a submission, is entitled to appeal the decision to the Planning & Environment Court. However, this requires the objector to make a deliberate decision to engage in a court hearing. This is a fundamental difference from the mining approval process where the objection triggers a hearing by the LRT before the Minister's decision is made, whether the objector wishes to participate in a hearing or not. In effect, the LRT's objection hearing is a compression of the submission and appeal stages for development decisions.

Some objectors simply want their written views taken into account by the decision maker. Such objectors are understandably perplexed and concerned when they find themselves in a legal forum, regardless of how informal and accessible the proceedings may be. Some have neither the desire nor the resources to participate in LRT hearings. The LRT goes to considerable lengths to make its hearings accessible and accommodates regionally based parties by undertaking hearings by telephone or video conference. Even so, some objectors would prefer simply to have their written objection considered by the LRT in making its recommendation to the Minister.

Other objectors are keen to participate in hearings and to test the information put forward by the applicant in support of their case. They may not wish, however, to produce their own evidence. In my experience, this is sometimes the case when there are a large number of objections on similar grounds by residents who may be affected by a mining project. The number of objections may reflect a widespread concern amongst residents about particular issues raised in the objections. The objectors may wish to put the applicant's case under scrutiny, but may not be in a position to or wish to call evidence to contradict that case.

Finally, some objectors are sufficiently concerned and resourced to enable them to take on full participation in a hearing and wish to call their own evidence to support their objection.

Before the President adopted the practice direction regarding the level of participation by objectors, the LRT's procedures, like those of its predecessor, the Warden's Court, were designed on the assumption that an objector wished to fully participate in a hearing. This created difficulties for some objectors who did not wish to be drawn in to a hearing and to be exposed to a potential order for costs.

It also created considerable difficulties for all parties and the LRT where there were a large number of objectors. The LRT has dealt with cases in which there were as many as 123 objectors. In the past the LRT has encouraged parties to organise themselves into groups representing those with similar objections and to nominate a single spokesperson for each group. However, the process of reaching agreement amongst a large number of objectors can be problematic, even on issues such as which objections are on similar grounds and who should be the spokesperson. Further, the spokesperson is then in the unenviable position of having to answer to and take instructions from a large number of people who do not necessarily all speak with the one voice. This can complicate both the hearing and any resolution processes that may be attempted, whether they are direct negotiations between the parties or mediation offered by the LRT.

In 2002, I travelled to Canada and visited a number of natural resource management tribunals and courts to consider their jurisdiction and procedures. One, the Environmental Review Tribunal in Ontario, had adopted a procedure to allow objectors to choose their level of participation in formal hearings. They had found this to be an effective way of dealing with multiple objections and was well received by those objectors who did not want to engage in a full hearing. On my return, and after observing the difficulties the LRT was then facing with two matters both involving dozens of objectors, I proposed this procedure to the President for consideration.

The President's practice direction gives objectors the following options:

- ❖ Level 1 – the objector relies on the written objection only and does not attend or participate in the hearing;
- ❖ Level 2 – the objector relies on the written objection, attends the hearing and makes submissions at the conclusion, but does not call evidence or cross-examine the applicant's or any other parties' witnesses;
- ❖ Level 3 – the objector fully participates in the hearing, calls evidence and cross-examines other parties' witnesses.

Objectors are asked to make their election early in the proceedings so appropriate directions may be set.

The benefits of this process are:

- ❖ The objector’s level of participation reflects the degree of involvement they wish to have in the proceedings;
- ❖ It has the potential to shorten an objection hearing and, therefore, to reduce all parties’ costs as well as those of the LRT;
- ❖ Where there are multiple objections, it provides an alternative to groups of objectors being represented by a spokesperson (although that option is still available to objectors who wish to take that approach).

One issue objectors may be concerned about is whether, if they choose a lesser level of participation, their objection will be properly considered. The LRT is required to consider the objection regardless of the level of participation chosen. Of course, if an objector is able to call evidence to establish a proposition made in an objection, they will be in the strongest position to contest the application. Nevertheless, in my experience, objections place the focus on particular aspects of an application. LRT Members have carefully considered any material offered by an applicant in response to objections. An applicant should expect that the Member hearing their application will want to hear on any matter raised by an objector. Well prepared and competently advised applicants will respond to objections regardless of the level of participation chosen .

The LRT has received positive feedback from legal representatives experienced with multiple objections hearings. The Members are always interested in hearing views of those likely to be affected by our procedures. Interested parties are encouraged to provide their views on this and the LRT’s other procedures at any time by writing to the President.

LRT Practice Directions	
No	Subject
10/2003	Simplification of Tribunal procedures – Mining Leases
5/2003	Objectors’ participation in hearings (mining)
4/2003	Hearing procedures – expert evidence – “hot tubbing”
3/2003	Pre-hearing settlement conferences
2/2003	Costs – Compensation determinations (mining)
1/2003	Compensation determinations (mining)
3/2002	Mediations
2/2003	Access Agreements for Low Impact Exploration Permits
1/2001	Simplification of Tribunal procedures (Applications for Mining Leases and for Additional Surface Areas of Land)
16/2000	<i>Mineral Resources Act 1989</i> – Application to remove a caveat – Procedure
13/2000	Taking evidence by telephone
11/2000	Guidelines for expert witnesses
10/2000	Disclosure of documents
9/2000	Facsimile filing