TRANSCRIPT: 12 July – Ignite the conversation

FLEUR KINGHAM: Good afternoon. I'm Fleur Kingham. I'm the Chair of the Queensland Law Reform Commission. It's my great pleasure to welcome you to the launch of our Review of the Mining Lease Objections Process. I'm absolutely delighted to see you all here. Thank you for taking time out of busy lives to join us.

I want to start by acknowledging the Turrbal people and the Jagera people, the original custodians and the Traditional Owners of Meanjin, Brisbane. We're meeting in this gorgeous building, Customs House on the bank of the Maiwar, the Brisbane River. This lovely building is 130 years old give or take a year or two, which is a blink of an eye when you think of the tens of thousands of years that the Traditional Owners have been caring for this country.

I do think it's appropriate to start today's conversation by acknowledging them and paying my respects to their Elders past, present and future. I would like to extend the same acknowledgement and respect to the Traditional Owners of the lands from which we have a number of people joining us for this launch online. I extend a warm welcome to all First Nations people who are with us today, in person and online.

Our partner in this launch is the Sustainable Minerals Institute of the University of Queensland. We would not be in this room without their generous support and I'm grateful for that.

Many of you in this room, I think, know of the SMI already. You may be involved in it personally. It is an internationally renowned multidisciplinary institute and it's committed to delivering sustainable resource development and to training the next generation of community and industry leaders. I can't think of a better organisation to partner with to ignite the conversation.

Having used the title of today's event, I would like to acknowledge Matt Corrigan who's standing at the back there. Put your hand up Matt? He's our Executive Director. Matt has joined the Commission fairly recently and he brings a wealth of experience and legal and policy development both internationally but also, more recently, with the Australian Law Reform Commission. He came up with that title. It's not a catchphrase. It is catchy but it's not a catchphrase, it has meaning.

It encapsulates what our intention is for this review and for all of our future reviews and that is to engage with you, to engage with people who have an interest in our topic and to do that through a series of conversations or really an ongoing conversation that is open, that is transparent and that is respectful.

To get us going with that conversation we have assembled for today's launch a panel of individuals who have personal or professional experience - or both - of the process that we're looking at.

You may be challenged by what they say today. You may disagree with what they have to say or you might find their views resonate with you. What is important to know about our speakers today is that they are speaking as individuals. We made a deliberate choice not to ask representatives of stakeholder organisations to speak at today's panel. We wanted individuals with some personal experiences to express their view.

They're not presenting solutions, we haven't asked them to do that. It's far too early to get to that. Their brief is really quite simple, they are to ignite the conversation by sharing some thoughts, posing some questions, perhaps raising some ideas and we hope that in doing

that they will encourage you to engage with us both today, but in the future as we reach out to you in our more formal consultations.

I'll introduce the speakers to you shortly, but before you hear from them a few more words from me about this review, firstly some context. This review is spawned by ongoing and widespread dissatisfaction with the current mining objections process. It is a commitment from QRIDP, Queensland Resources Industry Development Plan, to refer this to the Law Reform Commission - and the terms of reference are hot off the press. They are dense and they are detailed.

It's no surprise to me that they do not chart a clear and straight path for reform and that's our task, but what they do convey is a consensus that this process can and should be improved.

The second thing is to bring some focus. Mining projects operate in a really complex regulatory environment, a web of State and Federal laws on a range of topics and, whilst it's important that we develop appropriately contextualised recommendations, we have to be laser focused on our task, which is to look at one part of that picture and that's the mining objections process or to describe what it is intended to do, it is the way which people and organisations can participate in decisions made about production tenures, mining leases and environmental authorities.

The third point I would like to make as background to this review is to give you some assurance that we embark with questions and not answers. We have some ideas but we have no draft proposals in a bottom drawer that we'll dust off at some point. We have no formed views on solutions, but we have built some scaffolding for our review and that's what I will introduce to you now firstly by referring to our principles.

Now, what I'm going to take you through now hasn't been plucked out of thin air, this is derived from the terms of reference which set the scope and the boundaries for the work that the Commission does and these principles we've distilled from recurring themes we have discerned in the terms of reference. The first is fair and we understand 'fair' to mean a process that is impartial, just, robust, transparent, independent and accountable, that is clear and certain and that supports access to justice and is compatible with human rights.

Efficient, easy to say hard to achieve, making a process as simple and as streamlined as possible and avoiding unnecessary delay.

Effective, an effective process has a great deal of work to do, it's got to work well to resolve contested applications, be conducive to investment and sustainable growth in the mining industry, provide environment protection, instil community confidence, include rigorous merits assessment and opportunities for review.

Finally, contemporary, this is not a short-term fix. The review is about a process for a sustainable future so it has to be insights driven, risk based, provide adequate opportunities for community participation, including by First Nations peoples, and it has to be responsible, be able to be responsive to future developments in policy and industry.

As well as the principles that will guide us in our review, we've identified key issues that we think we will have to tackle to come up with a process that meets those principles. Again, they come from the terms of reference and the first one is to define the critical elements of a process.

That's really identifying the structure, the key steps, the timeframes, procedures, decision making responsibilities, maximising efficiency, making the process coherent and timely but ensuring relevant matters are considered at the right stage of the process, ensuring effective

community involvement and participation by providing landholders, First Nations peoples and community members with sufficient information and appropriate opportunities to participate in these decisions and have their voices heard, maintaining integrity and rigorous merits assessment with independent specialist expertise and conforming to the wider legislative context - that's that maze of regulations State and Federal that we really need to be observant of, making sure it meshes well that – and, finally, facilitating consistency because we have been asked to consider whether the process we recommend should also apply to other types of resource production tenures.

I appreciate that that's a lot to take in. The principles and key issues are going to be in a background paper that we will publish in a couple of weeks' time, but I describe them at the beginning of my presentation on them as scaffolding, and I use that deliberately but that's the platform from which we will build our review, so we want to make sure we've got them right.

If you have a different view about the principles that should guide us let us know. If you identify issues that aren't encapsulated by the key ones we have identified I want you to tell us. You'll have lots of opportunities to engage and there's information about how to contact us, but now as my time is up I will get in to the topic for today and I would like to introduce to you Professor Deanna Kemp.

Deanna is SMI's Director of the Centre for Social Responsibility in Mining and will be known to some of you here in the room already in that capacity. She has a mining industry background and now leads a team of 30 researchers focused on the social and political challenges of the global mining industry, including processes of community consultation, consent and opposition.

Deanna is going to share some thoughts with you followed by our panellists and then there will be some time for you to either pose questions for the Commission to consider or to make some comments, but please hold onto them until the end. I will certainly give you an opportunity to do that. Please welcome Deanna.

APPLAUSE

PROFESSOR DEANNA KEMP: Good morning, everyone. Thank you, Fleur Kingham, for the opportunity to speak at today's launch of the Queensland Law Reform Commission's Review of Mining Lease Objections.

In the next 10 minutes or so my role is to provide some background context to help set the scene.

Before I start, I'd also like to acknowledge the Traditional Owners of the lands and waters where we meet today and pay my respects to their ancestors and descendants.

The Sustainable Minerals Institute at UQ works with companies, communities, governments and civil society in understanding the global mining industry. We study what happens on the ground and on that basis highlight where processes and outcomes could be fairer and more equitable for communities and rights holder.

While our outlook is global, this Queensland orientated review is of great interest to us. The review comes at a very important time amid concerns about climate change, complex geopolitics, aspirations to decarbonise our economy and local economic pressures that we're likely to face for the foreseeable future.

In this context it's vital to have workable processes for people to understand decisions about mining and for the contestation to be resolved in a fair, democratic and peaceful manner. This is a tall order in a world with increasingly polarised views on the question of whether and, if so, how mining should proceed.

So, what's some of the background context for the review? Certainly, there's no disputing that the mining sector is a major contributor to the Queensland economy. According to the Queensland Government records we host more than 50 major active coal mines and about 100 metalliferous mines.

In 2020, mining comprised around 12% of our State economy equating to around 40 billion dollars and created, according to the Queensland Resources Council, around 85,000 mining jobs.

Mining contributes to the wealth of our State and our quality of life and at the same time mining projects are taking longer to get off the ground and move into production, which means a slower return on investment. Project development costs are also rising and the industry faces greater scrutiny not only around coal mining but also mining the minerals used in renewable energy technologies.

Some of these transition minerals are familiar to us, copper, lead, zinc and bauxite, others are less familiar such as vanadium and rare earth elements.

Across the State, local communities with no prior exposure to mining may be engaging the industry for the first time and with the long lead times and big capital involved developers and investors are seeking greater clarity and stability and predictability in the project development process, but this is challenging in a world that is increasingly uncertain and where mining is set to become more contested, not less.

Let me lay out a little more context for the review, I think we know Queensland is Australia's largest producer of coal and the State continues to approve coal mines while pursuing a decarbonisation agenda because we're still dependent on coal fired power, at least for now.

We're also reliant on steel making coal until a low or zero emissions steel becomes a scalable economic reality.

In the context of climate change any new coal project, whether a new mine or a major expansion, must be very carefully weighed and while the demand for transition minerals is surging so, too, must we weigh and consider these projects against their impacts on local communities, the climate, the environment and rights holding groups.

The high demand for energy transition minerals certainly provides an economic opportunity for developers and investors and with that comes pressure to streamline approvals and remove administrative hurdles to accelerate mining activity. And, so developers and investors are calling for that fast track to help speed up the project development process, but this doesn't guarantee less contention and, in fact, it may drive opposition if people see projects pushed through without proper checks and balances.

Another aspect of the background context is that mining projects are becoming more complex, both above and below ground. Below ground deeper deposits and lower grade ores are likely to produce exponentially more waste and contain deleterious elements, meaning more complex and complicated footprints in operation and in closure, and yet mining companies don't have a great record of closing mines in Queensland or anywhere else in the world.

Queensland's Commission of Audit estimates that we have about 15,000 abandoned mines and a one billion dollar liability, so the more mines that open the more that need to close and that liability will grow.

It's unsurprising then that people have questions not only about impacts from operations, but also about mine closure. Holding companies to account, usually not the original proponent many years after an initial approval, is a major regulatory challenge.

The mining landscape is also complex above ground. There are longstanding questions about the industry's willingness to manage its social, cultural, ecological and environmental impacts and the State's ability to provide effective oversight. In mining, social and environmental impacts are inevitable and, yet, for people who bear the brunt of these impacts, it's often really hard to find out what impacts are anticipated, how they will be managed, how regulators will hold companies to account over the life of a mine.

The primary pattern in Australia and elsewhere is that proponents tend to make big promises when they want to get their project over the line and then struggle to uphold their promises to communities over time. And when things go wrong it can take enormous effort at the grassroots to try and have issues acknowledged and addressed, so again people can be sceptical about the promises made and from what we see in our research this is often rightly so.

Finally, but no less importantly in terms of the background context, is the growing recognition of Indigenous peoples' rights and interests including their right to self-determination, which includes their free, prior and informed consent over decisions that affect them.

History shows that governments and companies have too often privileged mining interests over Indigenous peoples' rights and interests and failed to equitably share benefits. Mining does employ a significant number of Indigenous people, but the proposition must be about more than jobs, it must extend to economic participation, cultural heritage protection and processes of shared decision making. Around the world positive examples are emerging, but not enough of them.

So, what I've described is a State that's reliant on mining where the urgency to decarbonise is palpable, where getting major projects off the ground is more challenging than ever and where the rights of Indigenous peoples are coming to the fore.

Queensland is not alone in this respect. It's no wonder then that some of these issues are also being considered in other mining jurisdictions. Here are 3 things that we should expect of this review based on what we're learning from elsewhere.

First, States and companies must engage meaningfully during exploration and throughout the mining life cycle. No longer can community consultation be a tick box exercise. Claims of inadequate consultation consent are being tested and there's evidence that projects will be delayed or denied if they fail to meaningful engage with project affected people and rights holding groups.

We should also expect that the process of objecting to mining is meaningful. Different people should be able to voice their concerns and be heard. The current process requires stakeholders to object if they want to be heard, which frames all competing interests as oppositional by default and this doesn't reflect best practice.

Researchers at the SMI and many others from around the world have documented cases where the social and environmental impacts of mining are unreasonable and the risks too

great, the compensation for loss unfair or the benefits too distant to make any difference to the lives of people living locally.

It's important that the objections process is able to engage with these types of concerns without pitting one party against the other. Second, mining companies and State processes must address barriers to meaningful engagement. This means that processes for bringing forward concerns and objections should be accessible, flexible and work to level the playing field. That may involve consultations on country, funding for third party technical or legal advice, or flexible options for submissions such as oral testimony, but overall the process should enable participation, not constrain it and yes, all of this takes time.

The big conundrum here, while resource developers may want to go faster, all the research and international best practice tells us that consultation and consent processes may need to go slower to understand the issues, enable participation and allow for the adjustment of plans. So, time, or lack of it, is perhaps the great barrier we face at the current juncture.

Third and finally, there's a great need for a regulatory system that can consider whether an objection represents a one-off isolated issue or whether it forms part of a broader system that takes unfair advantage of some groups of people.

Good resource governance is attuned to structural and systemic issues, those deep- seated issues that see some people and places disadvantaged in a system that is insensitive to those same disadvantages.

The kinds of issues that are embedded in our regulatory systems can include racism, sexism and other forms of discrimination and inequality of access to essential services and infrastructure.

A system of good resource governance would provide ample opportunity to stand back, identify how the system advantages some groups over others and find solutions.

These are a few of the challenges that lie ahead both for the Queensland mining sector and for the Law Reform Commission's review. The upside is that because other mining jurisdictions are facing similar challenges there's much to learn and much to share over the course of the review.

To conclude, I would simply say that Queensland deserves a system that supports development and yet offers a safe and workable avenue to raise issues, challenge decisions about whether and how we mine.

The next 2 years provide an opportunity to help shape that process and so we very much look forward to participating in this important review.

APPLAUSE

FLEUR KINGHAM: Thank you, Deanna. I'm trying not to feel daunted by the challenge that has been laid out there, but I think you have so neatly captured the complexity of the landscape, the range of legitimate interests that the Law Reform Commission is going to be grappling with, and I think that's an excellent start to our conversation, so thank you for that.

Now to our panel. I think you will agree that we have assembled a great panel, who we hope will ignite discussion and questions today and if we could reveal our online members of the panel and welcome them.

I'll start with Melanie Findlay. Welcome, Melanie. Melanie is the Acting Chair of the Queensland Law Society's Energy and Resources Policy Committee and she's a member of their Water and Agribusiness Policy Committee.

Professor John Rolfe also joins us. They're both in Rockhampton, welcome, and I think the fact that we have 2 panellists from regional Queensland demonstrates something important about the nature of the sector that we're working in.

Professor Rolfe is a Resource Economist in the School of Business and Law at Central Queensland University at Rockhampton and, in person, I would like to extend a warm welcome to Avelina Tarrago who's a Wangkamadla traditional owner in far west Queensland and one of the State's leading young barristers.

I have asked each of our panellists to make some very short remarks before we move to questions. I'm going to turn to you, Melanie first and, just as I tried to keep myself to time, I'm going to try and keep all of you to time as well. I'll let you know when you're approaching 3 minutes.

Melanie, it's important I think to get your perspective as a lawyer working both outside of Brisbane and for landholders, so over to you.

MELANIE FINDLAY: Thank you, Chair Kingham. I think what I would like to do is paint a picture of what it's like to be a landholder in Central Queensland. Prior to aligning lease application there would have been drilling on the property, studies or surveys occurring on the property because that's naturally how a coal mine is developed or a project is developed.

During that process, that may have gone on for 5 or 10 years, the landholder has been presented at least every 6 months with notices of entries. Under those notices of entries, they are provided with a wad of documents about that thick in terms of copies of tenements, copies of environmental authorities, copies of guides and they've also been asked to sign documents to allow studies to occur on the property.

By the time the mining lease is applied for I would describe a landholder as being document fatigued. The weight of the documents that they receive is quite onerous and under different legislation they are entitled to get professional advice to look at those documents, but once the mining lease application is received the landholder is on their own in terms of assistance.

I actually find it difficult to assist a client to identify the difference between the wad of documents that they've been receiving every 6 months from a company to identify what the important mining lease application looks like because under the law there's an advertising process for when a mining lease application is sought. It goes in a newspaper.

Up in Central Queensland here we don't really have a morning bulletin anymore, we have a paper called CQ Today, which I don't read personally. It's very difficult to actually locate or identify when a mining lease application is occurring. Our firm does check the online system just to see if there's any that we can quickly identify.

If you're a farmer out in the field and you've been receiving wads of documents and suddenly you are given, the law says given not served, a mining lease application, honestly it's normally thrown in the back of the ute. Then eventually the client goes home and has time to look through his next lot of paperwork and realises, or she realises, that this was important they bring it to me. They've got 20 business days to have a look at it and if they want to object, the process is quite onerous and they need to sit down with me and I've normally got to read chapters and verses of different studies and things to assist them with the objection.

I just wanted to also explain that I used to live in Brisbane and the mail in Brisbane is entirely different to the mail up here. I have a solicitor that lives in Taringa and she gets mail twice a week. I have some clients that live 80 kilometres from their front gate and they don't have a mail delivery service, they go into town and pick up the mail, so receiving a mining lease objection, and even knowing a mining lease application is on foot, is difficult for these clients to even know is occurring.

FLEUR KINGHAM: Melanie, I'm going to jump in there. You will have an opportunity to take that further but I'm just going to move on now and ask Avelina if she would make her opening remarks. Then I'll turn to John and then we'll come back to a bit more because I want to take what you were saying about the barriers for landholders or the difficulties a bit further later. Avelina?

AVELINA TARRAGO: Thank you. I also want to acknowledge I'm on Jagera and Turrbal country and pay my respects to the Elders past and present.

I guess for me, as a traditional owner, and that's the hat that I want to wear speaking today, is looking at the FPIC, so Free, Prior and Informed Consent, particularly where Traditional Owners are involved in the process is really a disconnect between that FPIC process because it is really after the fact and objecting to processes that have been in place.

So, it really doesn't have a proper consideration or sit down and yarning with Traditional Owners and their aspirations because for some people there are mining aspirations as part of those traditional owner and economic sustainability that's attached to that but that's not across the board.

There needs to be a proper process to acknowledge those opportunities for Traditional Owners who might want to object to that process and allowing Elders, in particular, who are our knowledge holders, respectful conversations and that does involve not rushing and it does involve going out on country and talking about what's important.

I know for my family it's those constant conversations. If you're getting notices as well as Traditional Owners you've got a certain amount of time to respond to that. You've got to be able to produce evidence if you're going to object. There might be Sorry Business that's happening that might prevent those processes, but because there's a timeline it really constrains the way communities operate.

I think there's a lack of cultural consideration and a lack of training amongst the legal profession, in particular. I know from my experience that things that I think are common sense are not known and, as a responsibility, as a society of Australian people, taking it upon yourself to learn the 65,000 years of culture; it's not a one-hour training session that you get as part of your induction. It's a lifelong journey as it is for me as an Aboriginal person. My mother is not going to bestow everything that I need to know on me in one conversation, there are many conversations involved.

FLEUR KINGHAM: Thank you, Avelina. It's interesting to me that both you and Melanie have started your contributions to this seminar talking about culture, the culture for rural landholders and a culture for First Nations people. That's one of the things that this process obviously will have to grapple with - this is how you mediate and facilitate good conversations across cultures. Thank you that, Avelina.

You've been waiting very patiently there, Professor John. Over to you now for your opening remarks. Thanks.

PROFESSOR JOHN ROLFE: Thank you. As well as doing a lot of research over the last 25 years on this field of resource economics, I've also got a lot of first-hand experience because my wife and I have owned cattle properties in Central Queensland for the last 35 years and we've had quite a few interactions with exploration and mining companies that range from very good through to very interesting.

Just outlining some of the relevant issues as I see them, here's a bit of snapshot. Over the last 50 years there's been a lot of improvement in Queensland in dealing with environmental assets and risks and the interaction with mining, but I think when it comes to communities, to Traditional Owners and to the individual landholders, it's a lot more piecemeal where the improvements have been.

It's understandable that the Queensland Government doesn't want to open the door to a lot of veto powers but at the moment the current situation doesn't work as well as it could.

Second, the legislation in Queensland about what's restricted lands is quite prescriptive, so the lands that are potentially exempt from mining, there's not a lot of opportunity I think for the Land Court to consider or to appeal to the Land Court for other restrictions that may have merit, so having a significant pastoral enterprise or long-term nature reserve doesn't really create adequate grounds at present.

Third, when you compare what we've got in Queensland to what happens in other States just in Australia let alone overseas, there's a lot more recognition of what are restrictive grounds in other States than there are here. For example, in New South Wales there's much higher recognition of agricultural improvements as being restrictive, so restrictive to mining. In Western Australia there's a lot more recognition of pastoral enterprises being restrictive. Here it's only high value cropping enterprises that are potentially restrictive.

Finally, we have a system in Queensland to recognise strategic interests, so things that are exempt. That's priority agricultural areas, priority living areas, strategic cropping lands and strategic environmental areas, but when you dig into it it's really hard to see how these work in principle.

Priority living areas, for instance, they are supposed to protect communities from mining happening in strategic growth areas or in buffer areas around communities, yet in the Bowen Basin you can still find mining, new mining developments within a kilometre of a town. That to me doesn't really seem as though priority living areas are being properly applied.

That's just a snapshot.of some issues.

FLEUR KINGHAM: Thank you very much for that, John. The complexity grows and grows as I listen to you, and I've certainly learnt a lot from all you already. I'm going to pose a question myself to each of the panel before I throw it open to the floor. We may as well start with you, John. You've just finished, but let's keep going with you.

There appear to me to be potential tensions between, and Deanna identified this in her talk, tensions between the desire to fast track approvals and process that supports a meaningful and non-compromised consultation with communities. What do you see as critical issues or considerations in that context?

PROFESSOR JOHN ROLFE: I think there are 2 big ones at the moment. The first is that once it comes to negotiation with a landholder, bluntly speaking, really it's only a negotiation around compensation, what are the conditions and what is the compensation. It's not a negotiation around about whether the mining, exploration for mining will go ahead or not.

Under the Queensland legislation it's pretty straightforward that landholders don't have veto rights.

The second big issue, I think, is that we put a lot of emphasis on the environmental impact statement approach, sort of that process to deal with impacts through the EIS process, but basically that's too late to make meaningful changes.

The EIS sort of comes up with conditions for projects but it doesn't change the direction of the railway engine. If we want to make meaningful changes, I think we've got to go back earlier, we've got to have better regional planning processes, we need to have an earlier type of consultation stages so that we've got greater influence over whether something will occur, not how it will occur.

FLEUR KINGHAM: Thanks for that, John. Melanie, I want to come back to you now. I cut you off when you were explaining some of the barriers to landholders in the process and I want to give you the opportunity to take that a bit further. My question to you is this, how do we ensure that landholders are meaningfully consulted and appropriately consulted about potential mining projects without overburdening them in that process. Have you got any suggestions that the Commission could explore?

MELANIE FINDLAY: I think it's better to be overburdened than misinformed or under-informed. When that question was posed to me I stuttered because I don't know how to deal with it any better, but it is very cumbersome, the amount of paperwork, but it is a complex matter. Not every mine that we deal with in the mining lease objection process is a great big Galilee Basin project, sometimes the mines are a lot smaller and so perhaps there could be a split approach because the complexity is different. It is complex so the paperwork needs to be there.

FLEUR KINGHAM: Okay. Thank you for that. One of the things I think for the Law Reform Commission is whilst we're making recommendations about regulations, about the legislation itself, there are often recommendations that are made around guidelines and things that can support an approach that is embedded in the legislation. We're very open to suggestions about the practical things that will hang off any legislative process, as well as the process itself.

Avelina, I want to pose a question to you now. First Nations peoples have a number of processes in the current framework, if you like - broadly speaking - for engagement. What are the barriers for First Nations peoples to participate and for their voices to be heard in the process? Can you perhaps also address both those who hold common law Native Title and those who don't because there may be different considerations there.

AVELINA TARRAGO: It can be very difficult, I think, from my lived experience in the Native Title framework because we've got the Native Title framework as common law Native Title landholders, as well as the State where you're looking at cultural heritage legislation, as well as the mining application process. You're really having to be across 3 processes that have all different purposes.

One of the biggest barriers in terms of the future Acts processes in the Native Title setting is that we're not funded for that process, so a lot of the time our representative bodies are doing that on a pro bono basis and that creates a lot of service delivery issues if they're overwhelmed with the number of applications that are coming in.

It's a lot of pressure on the lawyers who are already doing a very difficult job in trying to push forward applications or dealing with the RNTBCs, but also that disconnect between the

criteria under the Native Title Act in terms of low impact compared to looking at what low impact might mean under the Cultural Heritage Act and the duty of care guidelines that exist. There is a disconnect there so that's another barrier in trying to understand all these different definitions and trying to explain to Elders what might be considered high impact in one area is low impact in another and how do you reconcile that.

Those are some of the barriers, also the Native Title system is a no cost jurisdiction compared to Traditional Owners who might object to a mining lease application under the State legislation and open to costs being made against them. We're already a disenfranchised community and if we're relying on our rep bodies to represent us for free it really puts us at a disadvantage to participate in the process.

As I indicated earlier, if we're on the back foot trying to object to things rather than being consulted at the start before applications are made to workshop these issues, so there's a multitude of barriers and unfortunately the current framework doesn't support any of them.

FLEUR KINGHAM: Thank you, for that, lots of food for thought. I'm going to open the floor to questions or comments. Somebody demonstrate to me that we have ignited a conversation by starting us off. I don't want to have to point at somebody and ask but I am, David, David Brereton. I know you have opinions.

DAVID BRERETON: I'll frame a different question, which probably just adds to the complexity, but I take it you're seeking to map complexity at this point rather than –

FLEUR KINGHAM: Definitely.

DAVID BRERETON: That's the issue of cumulative impacts, which is quite important which we deal with, I think, badly as a whole. A particular example we'll pick a notional mining town in Central Queensland where there have been issues about ambient dust coming from mines and a new mine is proposed and of itself its dust output may not be that bad but its impact on air shared and the cumulative impact could be quite significant.

I'm not sure whether people have standing to object to something on those terms, particularly, for example they may live in a town that's 20 or 30 kilometres away, they're not landowners and so and so. I guess you might be able to answer that or maybe that's an issue to consider, how is this process going to deal with cumulative impacts which in intensive mining areas it's becoming an increasingly important issue.

FLEUR KINGHAM: The first important decision I made before standing up today is that I wouldn't answer any questions at all except about the process for our review because we're very much at the beginning, but you pose an important question: how a cumulative impact is dealt with and it's not just a question of environmental, it would be social and cultural as well.

We're looking closely at developments that we see coming through government policy, statements, for example the critical minerals strategy, which talks about some sort of baseline assessments and more of a zone approach. I think that it's an issue that's very much on the agenda and we'll have to look at how the objections process interacts with that. Thank you for starting us off, David. Kieran?

KIERAN: I appreciate that it's just an indicative list of stakeholders. It does include land councils, but it doesn't mention prescribed bodies corporate. As more and more determinations are made, they are the ones who are centrally, should be centrally involved.

I just want to support the point of how few resources they have available to them. In many cases you are talking about a handful of people, 5 or 6 people, who are dealing with multiple,

multiple demands on their time from many different sources and it's just an appeal to the Commission to think carefully about how to engage with groups that are very important, but are extremely resource poor and they are constantly receiving demands to be consulted, to be involved, and so I think you'll need to think very carefully about how you can make participation genuine for that group of people.

FLEUR KINGHAM: Thank you for that, Kieran. It's something that the Commission will be talking to you about in the strategy that we develop for consultation with First Nations peoples in this review itself. It's something I'm conscious of having engaged with community justice groups as a judge in communities and I know that the people who sat on those groups wore many hats and did a lot of work in the community that was significant demands on their time and on their resources.

In defence of our appendix it's an appendix that was delivered to us by the Attorney-General. The terms of reference I understand were hotly debated and developed as I think all significant terms of reference are before they reach the Commission and the way the Commission is interpreting that.

A list of stakeholders for those who don't know what Kieran is talking about, at the back of the terms of reference, in the full terms of reference there's a list of stakeholders the Commission is expected to consult with. We see that as a springboard not as a landing pad and your point about prescribed body corporate and Native Title representative bodies and land councils, there's a multiplicity of Indigenous organisations that we're looking to engage with and we'll be knocking on your door to get some more advice about that. Thank you. Yes?

AUDIENCE: I've got a question from online. Is one of the challenges regarding effective landholder engagement not only that voices be heard but that key messages are then demonstrably and respectfully actioned.

FLEUR KINGHAM: Big question. I'm going to throw that to the panel having declared that I'm not going to answer any questions. Does anyone want to tackle that? Deanna?

PROFESSOR JOHN ROLFE: I think one of the issues in this area is that a lot of agreements about compensation and about arrangements are generally not visible, so we have very open land markets where you know what the price is, who's bought land and what the prices are, but when it comes to compensation agreements in the resources sector, for the gas sector, most of those are completely confidential so you don't know what different landholders have been paid, you don't know what the different conditions are and it's the same, I think, with all the other agreements with a lot of the other stakeholders.

I think one of the big reforms that would be very useful is to make these publicly visible, that everything has to be registered, publicly visible and that would get a lot more systematic equity within the system and I think move from just registering Issues to actually dealing with them.

FLEUR KINGHAM: Thank you, John. John was only briefed to pose questions but he's already diving into solutions and we'll certainly be talking to you more about that, but it is helpful to have ideas generated as to how we might tackle some of these topics. Do we have any other questions from the floor or online? Yes, just down here? I'm sorry, Melanie.

MELANIE FINDLAY: Just something contemporary that I think perhaps hasn't been considered is the definition of affected persons. When there were changes about who could object and not object to mining leases I know Powerlink, for example, put in some

submissions that they would definitely want to have the chance to object because their infrastructure might be affected so they're noted within definitions.

We now have a State that really wants to explore renewable energy and is really putting a lot of planning in place and really encouraging investment in renewable energy and we have a conundrum where we're going to have a mine that has been being developed for 5 years and there have been studies done and at the same time we're going to have a renewable energy company that has entered into an option agreement with the landholder, which you won't be able to find anywhere, it won't be on any register or anything like that. Renewable energy company has spent millions on studies and they won't have a right to compensation, they won't also perhaps have a right to receive notices for the mining lease application unless they're an affected person. I feel like the complexity is going to increase not decrease. That's another type of overlying tenement issue I guess that's going to erupt.

FLEUR KINGHAM: I think I'm free to say that that is starting to emerge in the Land Court with multiple land uses not just landholders and miners but landholders and other energy providers. I think it has already started, Melanie, it's there. Are there any other comments or questions? Yes?

CRAIG REIACH: Craig Reiach from Queensland South Native Title Services. I'm a lawyer, Native Title lawyer, full disclosure, I'm Avelina's lawyer as well.

FLEUR KINGHAM: Welcome.

CRAIG REIACH: Thank you. I won't pose the question to Avelina but just noting that the objection processes obviously cut across different jurisdictional, you know, legislative areas so we've got Queensland legislation and also Commonwealth with the Native Title Act.

This Commission is obviously looking at Queensland law reform, but just making the point that there is some crossover where, I think, it's worth having a look at how Queensland processes actually impact on the Native Title processes. I guess one example is Queensland has a Human Rights Act, which guarantees distinct cultural rights. Under other objection processes, which fall in the Native Title space, those very important safeguards to protect cultural rights are not reviewable through the process on the Native Title end. I'm just making that point and just wondering whether the Human Rights Act is something that will be considered through the process of law reform.

FLEUR KINGHAM: I said I wasn't going to answer questions but I will answer that one just to the extent of saying yes, the Human Rights Act is specifically mentioned in the terms of reference as something that the Commission must have regard to so how the objections process interacts with the Human Rights Act, but also the Commission has been tasked with looking at how the objections process interacts with a range of Acts and the background paper will identify those that are specifically mentioned in the terms of reference or that we have already identified. It's very early days, we haven't identified more but listening to you and to Avelina speaking today I know that we will be doing more work in mapping not just the Queensland context, but the context of the mining process in the national space.

We'll also be looking at comparative jurisdictions, certainly New South Wales and WA and a couple of international comparatives, but the domestic ones will be important because we will look not only at their process but how they interact with the Federal overlay if you like. It's an important point that and I think everyone has drawn our attention to differing definitions between Acts which can be unhelpful, so there may well be some work that can be done by the Commission identifying some of those disconnects.

Yes, Kevin?

KEVIN SMITH: Thanks, Fleur, Kevin Smith, President of the National Native Title Tribunal.

FLEUR KINGHAM: Welcome.

KEVIN SMITH: Thank you, Fleur. It strikes me that we should know where the resources are, we should know where just by GIS and a whole range of information that's available publicly. All 4 speakers have really turned to the point of the necessity to have free, prior and informed consent. I think it actually extends right across the board. It seems like it's a place-based planning process where there's a whole range of things that are at play and they could be competing, but it's actually having the dialogue early and frequently, not in the sequential way that the Acts lay out.

I think you can overcome the conflicts of law by actually having meaningful place-based discussions where the resources are and where the prospective work might be in a decarbonised economy. I suppose it's just a comment, but I think the emphasis should always be on if you're going to navigate the complexity of legislation it's dealing with the people at place where the prospective activity will be and generating a really meaningful conversation about what are the priorities for place.

FLEUR KINGHAM: Thank you for that, Kevin. A couple of things I suppose I would just add to that. When you're dealing with mining legislation there is an obvious incentive to ground it, so your suggestion of approaching it from the place rather than the Act has some obvious attraction. It does seem to reflect some pilots that we're seeing both in Queensland but also internationally with place-based planning and that's one of the reasons we're delighted to be engaged with SMI because of their experience of what is happening internationally, as well as in Australia. Thank you for that. Yes?

JAMES: My name is James. I represent our family office in the resources sector. Our family office has been mining resources in Queensland for over 30 years. That's both in metallurgical coal, gold, copper, lead, zinc.

FLEUR KINGHAM: Welcome.

JAMES: Thank you. Just to add on Kevin's point, it's for us not enough just to know where the resource is because we're doing mining the commodities market is cyclic, so what we end up having to do is actually forecasting what we think the price would be for that commodity and then proactively engaging the communities because we understand the consultation period now is very, very long.

When we went out to public notification for our new mining lease application, we didn't do it just with newspapers, we sent out text messages, we posted it online, we used social media. All these things do take a very long time, engaging with the traditional land owners, the Gangulu in that area that took 2 years for us to sort out the CHIMA and then for them to do the surveys. I think maybe that's something that we have to take in consideration, that the period is a very long time and maybe there's a solution where we can kind of forecast the price and then do all this pre-emptively.

FLEUR KINGHAM: It's an interesting suggestion and one that I would be interested in talking to you more about. I think I said earlier today that one of the, I think, challenges in designing the process or making recommendations for an improved process is to make sure that the right questions are asked at the right time, that the right things are looked at, at the right time. I also see a trend about life cycle planning for mining and maybe we've got a regulatory structure that comes from a different time. Maybe the regulatory structure needs to adapt a

little bit more to the reality of the life cycle of mining, as well as the way it impacts on communities' change over time and the opportunities change over time. Thank you for that.

UNKNOWN SPEAKER: There is a question online.

FLEUR KINGHAM: Okay, thank you. This will be our last question. I think we'll need to wrap up then.

UNKNOWN SPEAKER: Would the panellists agree that it would level the playing field for landholders if the financial capacity was provided to enable them to engage expertise to protect their interests.

PROFESSOR JOHN ROLFE: I think there is already provision for mining companies to fund initial legal costs of landholders to get advice, so I agree in principle but I think there's something already there.

FLEUR KINGHAM: Melanie?

MELANIE FINDLAY: MERCPA which is the exploration - years ago they tried to consolidate the prior Resources Act and they had a modernising program and they created MERCPA, which was the Common Provisions Act. Under that Act if you are exploring and you're after a CCA, conduct and compensation for exploration or gas wells you were entitled to get the professional fees reimbursed if you're a landholder, but when it comes to aligning these objections there is no right to ask for legal assistance and it's normally a negotiated item when it comes to compensation for a mining lease.

FLEUR KINGHAM: Avelina, do you want to add anything? You've already identified this is a huge issue for First Nations peoples. Deanna?

PROFESSOR DEANNA KEMP: I would just say more simply yes, it's a huge issue and to level the playing field with resources is a really important thing to be thinking about as part of the review.

FLEUR KINGHAM: Thank you for that. All right, I really need to bring this to a close. We said we'd finish at 2 and it's now 2. That was a really lively discussion. Thank you, David Brereton, for starting us off, I knew you would.

I'd like to thank Deanna, Melanie, Avelina and John. Thank you all for your time, for your thoughts, your ideas. I've certainly gained a lot listening to you as have members of the Commission staff who are here. Can you please join with me in thanking our speakers.

APPLAUSE

As I said, time demands I draw it to a close but I do want to say a few more words, of course. I'm a little bit of a last word freak. I'm going to talk about the review timeline. Just so you know what to expect, the shaded boxes where we are we've started. We received the terms of reference at the beginning of June. We've now launched it. We're in the process of preparing background papers which is the next box. I've mentioned one to you which will contain just a little bit of a mapping of the current objections process and what we see as the principles and the key issues.

You will all receive a copy in your email because you've taken the time to come today but please respond if you've got any ideas. If you'd like to meet with us, please reach out. There will be more background papers over the next few months leading into early in the new year on various topics including comparative analysis of other jurisdictions.

Then we'll beaver away with everything we gather from our conversations with you and produce a consultation paper around about May of next year. We'll have a formal consultation process after that leading into our final report and recommendations in June of '25.

I'm out front talking but there is a huge team here of people of excellent and enthusiastic lawyers and they're at the core of the review. I want them to stand and just put their hand up when I mention them and I'll only mention those who are on the Mining Objections Review Team because I want you to recognise them. If you speak to any one of them then you will be speaking to all of us because we're in constant communication.

Firstly, our Principal Legal Officers, Emma Phillips and Anita Galeazzi. One of our Senior Legal Officers can't be with us for happy reasons, Dayne Kingsford, but we have Jade Watson here today and we have legal officers, Erica Wilkinson and Jack Cuming. Of course, I have to mention my Associate Sophia Bird, who is also part of the team. Having applied to be an Associate to the President of Land Court she's ended up as Associate to the Chair of the Law Reform Commission, not at all what she bargained for but she's also a very important part of the team. If you see any of us wandering around in the street feel free to stop us and talk to us about this review.

I've got a few take-home messages before I finish. It's not a quick fix. This report is due in 2 years' time and then it will have to be considered by government and the decision made about how to implement our recommendations, so not quick, not simple. We are doing this quite apart from really all the things that you've heard today, we're doing it in a very dynamic environment.

It's a confronting time as the world transitions away from a fossil fuel economy, which has contributed so much to this State's prosperity. It's an exciting time as government and community and industry seize the opportunities offered by the transition to new energy minerals. It's a challenging time as decision makers grapple with managing the transition in a way that is sound economically, culturally, environmentally and socially. It is an innovative time as we enter a new resources race at the same time as fostering a partnership with First Nations people on Queensland's path to treaty and while building our ESG credentials as the key to the future of our resources industry.

I've personally gained a lot from the conversation today and I look to all of you to help us to maintain it during the review. We want open, thought-provoking conversation about what a new process might look like. Thank you for coming, the better the conversation the better the outcome.

APPLAUSE