

[REDACTED]
4 October 2024

Ms Fleur Kingham
Chair
Queensland Law Reform Commission
Email: [REDACTED]
CC: qlrc-miningobjections@justice.qld.gov.au

Dear President Kingham

QRCs submission on the QLRC Consultation Papers on the review of the current processes for deciding applications for mining leases and associated environmental authorities

The Queensland Resources Council (QRC) would firstly like to thank the Queensland Law Reform Commission (QLRC) for continuing to engage with industry and for the opportunity to provide feedback on the QLRC's consultation papers "Reimagining decision-making processes for Queensland mining – Review of mining lease objections processes" and "Valuing the perspectives of Aboriginal peoples and Torres Strait Islander peoples." Both consultation papers were issued in July 2024 as part of the QLRC's review (the Review) of the processes to decide contested applications for mining leases (MLs) and associated environmental authorities (EAs) in Queensland, with the latter paper focusing specifically on issues affecting Aboriginal and Torres Strait Islander peoples and their communities. For the purpose of this submission (see QRC's Submission attached), feedback is provided for both papers collectively.

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

Lengthy and complex objection cases create ongoing uncertainty and high costs, with projects taking on average, between [12 and 15 years](#) from discovery of a mineral to the development of a mine site. This delays progress and runs contrary to the interests of industry, landholders, community, government and the public. As mentioned in our previous correspondences dated 25 January 2024 and 19 June 2024 (Appendix A attached), QRC supports the guiding principles of the Review: fair, efficient, effective

and contemporary. The Review, guided by these principles, should aim to develop processes that allow due consideration of the views of interested and entitled parties in the context of the primary objectives of the *Mineral Resources Act 1989*, including to encourage and facilitate prospecting and exploring for, and mining of minerals and provide an administrative framework to expedite and regulate prospecting and exploring for, and mining of minerals (Section 2: *Mineral Resources Act 1989*). The notions of fairness, efficiency and effectiveness must be considered with respect to all impacted stakeholders, not least of which is the project proponent itself.

The processes under review should also avoid duplication by ensuring that issues are properly litigated in a single forum, reducing the current parallel processes for ML and EA pathways. Reconciling these principles in the Review's recommendations will be paramount. The outcome should be processes where projects can be assessed and approved fairly, efficiently and effectively, without compromising the integrity of those processes.

QRC's overarching comments: The significance of "lawfare"

Given the QLRC proposals are still being developed and lack sufficient detail, the QRC submission offers our preliminary views. We look forward to providing further feedback as the Review progresses and additional details emerge.

As a matter of priority, the QRC recommends that the QLRC focus on addressing the key issues of lawfare and related matters associated with standing. We consider the current "open standing" model for objecting to MLs and EAs to be fundamentally flawed, leading to widespread lawfare, inefficiency, and misuse of the system. This model allows organisations, often driven by ideological or unrelated interests, to object to projects without demonstrating a direct, personal stake in the outcome. Such broad-based participation, while well-intentioned, has opened the door to misuse by groups whose interests are not directly affected by the specific project or decision. This not only undermines the fairness and integrity of the review process but also significantly delays critical development projects and imposes unnecessary burdens on decision-making bodies.

With respect to standing, the terms of reference for the Review explicitly require the QLRC to consider the basis for standing in objection processes, including for community members and relevant government entities (*Paragraph 2(d) Terms of Reference, 5 April 2023*). This requires a consideration of who has a right to object to a project, as well as who has a right to apply for judicial review or merits review of a decision concerning a project.

Further details are provided in the full QRC submission attached.

QRC's position and recommendations

In relation to the 6 proposals in the Consultation Paper, a summary of QRC's position and recommendations are as follows:

PROPOSAL 1: Reframing the participation processes

The QRC does not support this proposal and recommends that:

1. "Lawfare" and the related matter of standing must be addressed as a top priority.

2. Broad-based participation should be discouraged by:
 - a. limiting objection and review to those who can demonstrate their personal interests are directly affected by the specific project or decision; and
 - b. restricting the scope of the subject matter, requiring objectors and review applicants to show a relevant connection to the statutory criteria that the decision-maker must already consider, which would help both the project proponent and decision-maker to assess the objection's relevance.
3. "Directly affected" should be clearly defined to include a specific subset of persons (in addition to the project proponent), such as neighbouring landholders, those adjacent to downstream watercourses, local government entities and relevant Aboriginal and Torres Strait Islander peoples.
4. Reconsider the need for establishing a supplementary Aboriginal and Torres Strait Islander Advisory Committee which may duplicate current processes and instead potentially refine and optimise existing regulations to address any gaps or deficiencies under the *Native Title Act 1993* or the cultural heritage Acts.

PROPOSAL 2: Establish a Central Online Portal

The QRC supports in principle this proposal and recommends that:

1. If an online portal is to be developed, it should be done in consultation with industry to ensure it is fit for purpose with no duplication of requirements and meets the needs of both industry and government.
2. The portal should be user-friendly, secure and reliable.
3. The portal should provide comprehensive and up-to-date information on the status and outcomes of mining applications.

PROPOSAL 3: Establish an Independent Expert Advisory Panel

The QRC does not support this proposal and recommends that decision-makers continue to exercise their existing powers to seek technical advice as needed, while maintaining a streamlined and efficient approval process.

PROPOSALS 4 & 5: Amendments to the Statutory Criteria

The QRC does not support these proposals and recommends that the proposed amendments focus on streamlining the decision-making process by eliminating duplication, introducing statutory timeframes, and ensuring consistency with previous assessments.

Key considerations include:

- ensuring decision-making authority remains with elected officials, with clear guidance and accountability to help maintain an efficient, transparent and accountable process that reduces the risk of protracted legal challenges;
- streamlining the statutory criteria for decision-making to prevent unnecessary overlap; between ML and EA application processes;
- introducing specific timeframes for Government decision-making; and
- avoid overburdening decision-makers with additional criteria as the current statutory framework already requires them to consider the public interest.

PROPOSAL 6: A new Land Court review process

The QRC does not support this proposal and recommends that the QLRC focus on addressing the key issues of lawfare and related matters associated with standing.

Closing remarks

The QRC considers that an effective process for deciding contested applications for MLs and EAs will benefit all Queenslanders and reaffirms the core message of the QRC's Streamlining Project, that focussing on streamlined approvals for mining projects will bring investment, job creation, infrastructure development and contributions to the state's revenue.

The Review recognises that there are competing interests in the regulation of mining projects, and that any reform entails costs and benefits for different parties. The QRC considers that the QLRC's proposals and final recommendations should also include a rigorous cost-benefit analysis and assess the trade-offs between regulatory, environmental and social outcomes.

Approval timeframes have been a long-standing issue for the resources industry. Efficiency and communication improvements are needed so that the industry can better predict and plan for decision timeframes, such as better handover and coordination practices, and legislative reform initiatives. As a result, the QRC has been working with its members and Government for over a decade to further streamline the respective regulatory requirements applying to mining projects in the State. QRC welcomes the QLRC's offer to consider its 2024 update of its Streamlining Project in conjunction with the feedback provided in this submission.

We trust that this feedback will contribute to the ongoing efforts to improve participation and decision-making processes in Queensland's mining sector, as well as improve the clarity and reduce inefficiencies through more streamlined processes for all stakeholders involved.

The QRC looks forward to continuing consultation with the QLRC as its proposals are further detailed and ahead of finalising its recommendations, understood to be in mid-2025. If you require any further information, or for a more detailed discussion, please contact [REDACTED], Policy Director - Resources [REDACTED].

Yours sincerely

[REDACTED]

[REDACTED]

Chief Executive Officer

Attachments:

- QRC Submission on the QLRC ML Objections and Appeals Process Review Consultation Papers October 2024
- Appendix A: QRCs previous correspondences dated 25 January 2024 and 19 June 2024

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QRC Submission

Queensland Law Reform Commission Consultation Papers:

- Paper 1: Reimagining decision-making processes for Queensland mining
- Paper 2: Valuing the perspectives of Aboriginal peoples and Torres Strait Islander peoples

October 2024

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Introduction

The Queensland Resources Council (QRC) would firstly like to thank the Queensland Law Reform Commission (QLRC) for continuing to engage with industry and for the opportunity to provide feedback on the QLRC's consultation papers "Reimagining decision-making processes for Queensland mining – Review of mining lease objections processes" and "Valuing the perspectives of Aboriginal peoples and Torres Strait Islander peoples". Both consultation papers were issued in July 2024 as part of the QLRC's review (the Review) of the processes to decide contested applications for mining leases (MLs) and associated environmental authorities (EAs) in Queensland, with the latter paper focusing specifically on issues affecting Aboriginal and Torres Strait Islander peoples and their communities. For the purpose of this submission, feedback is provided for both papers collectively (Consultation Paper).

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

Lengthy and complex objection cases create ongoing uncertainty and high costs, with projects taking on average, between 12 and 15 years from discovery of a mineral to the development of a mine site¹. This delays progress and runs contrary to the interests of industry, landholders, community, government and the public. As mentioned in our previous correspondences dated 25 January 2024 and 19 June 2024 (Appendix A attached), QRC supports the guiding principles of the Review: fair, efficient, effective and contemporary. The Review, guided by these principles, should aim to develop processes that allow due consideration of the views of interested and entitled parties in the context of the primary objectives of the *Mineral Resources Act 1989*, including to encourage and facilitate prospecting and exploring for, and mining of minerals and provide an administrative framework to expedite and regulate prospecting and exploring for, and mining of minerals². The notions of fairness, efficiency and effectiveness must be considered with respect to all impacted stakeholders, not least of which is the project proponent itself.

The processes under review should also avoid duplication by ensuring that issues are properly litigated in a single forum, reducing the current parallel processes for ML and EA pathways. Reconciling these principles in the Review's recommendations will be paramount. The outcome should be processes where projects can be assessed and approved fairly, efficiently and effectively, without compromising the integrity of those processes.

¹ [De-risking Australia's Critical Minerals Industry | GHD Insights](#)

² Section 2 *Mineral Resources Act 1989*.

QRC's understanding of the Review

The Review aims to examine and make recommendations to improve the current processes under the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994*, which also apply to major amendments for EAs.

The Review is also to consider how the recommended processes would interact with decisions made under other relevant Queensland and Australian legislation, such as the *Aboriginal Cultural Heritage Act 2003*, *Torres Strait Islander Cultural Heritage Act 2003*, the *State Development and Public Works Organisation Act 1971*, the *Water Act 2000*, the *Planning Act 2016*, the *Local Government Act 2009* (Local Government Act), the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), and the *Native Title Act 1993* (Cth). Importantly, the Review examines the implications of other legislation, including the *Human Rights Act 2019* and the *Judicial Review Act 1991*. The Review explores whether the proposed processes should apply to applications for resource production tenures under the *Greenhouse Gas Storage Act 2009*, the *Geothermal Energy Act 2010*, and the *Petroleum and Gas (Production and Safety) Act 2004*.

The QLRC is currently inviting public feedback on the issues identified and proposed solutions in the Consultation Paper.

SUMMARY OF THE CONSULTATION PAPER

The Review aims to improve the way decision-makers consider the statutory criteria for mining projects. Some regulatory requirements are replicated in different Acts and this may cause confusion or delay.

The Consultation Paper proposes six preliminary ideas for reform, which include early participation, an online portal, an independent panel, amendments to the statutory criteria, a new Land Court review process, and a new criterion for Aboriginal and Torres Strait Islander rights and interests. Twenty-six questions related to these six preliminary ideas for reform are asked.

The QLRC's initial view is that the public interest should continue to be considered in the decision-making processes for both ML and EA applications, and that any problems with overlap should be addressed through process reforms rather than changing the statutory criteria.

The Review highlights the Land Court's role as a credible and transparent forum with expertise in land, environment, and cultural heritage issues. It also notes the benefits of combining objections hearings and applying statutory criteria to decision-making.

As a key proposal, the QLRC proposes that Land Court considerations arise later in the regulatory sequence (post-decision) and that the Land Court should review both mining and environmental decisions, combine judicial and merits review, and allow direct appeals to the Court of Appeal.

With respect to standing, the terms of reference for the Review expressly include a requirement for QLRC to have regard to the basis of standing to make an objection and participate in the objections processes, including for community members and relevant

government entities³. This requires a consideration of who has a right to object to a project, as well as who has a right to apply for judicial review or merits review of a decision concerning a project. The Review examines who can challenge mining and environmental decisions in court. The current processes allow any person to object on any grounds and be heard in the Land Court (or decline to participate in such a hearing) and the Review questions whether restricting standing in some way is justified or effective.

The Consultation Paper notes that the current decision-making processes for mining and environmental applications do not directly consider cultural heritage, and that the cultural heritage Acts have limitations and gaps that may not protect the interests of Aboriginal or Torres Strait Islander peoples. The Review suggests that relying on the cultural heritage process is not sufficient, and that a more integrated and responsive approach is needed to ensure that cultural heritage is respected and preserved.

The Consultation Paper also considers the role and powers of the Coordinator-General under the *State Development and Public Works Organisation Act 1971*, which can limit judicial review of certain decisions for major projects. The QLRC is seeking feedback on whether the current processes are appropriate and consistent with the other legislation, and how they could be improved to ensure transparency and accountability.

The Consultation Paper discusses how the use and impact of associated water is regulated under the mining and environmental legislation and the *Water Act 2000*. It notes that there are two separate processes for assessing and conditioning the use of associated water: one as part of the EA, and another as part of the Underground Water Impact Report (UWIR). The Consultation Paper invites feedback on how these processes interact and whether they can be better aligned to avoid duplication and confusion.

The Consultation Paper examines the lack of formal links between the decision-making processes for ML and EA applications and the *Local Government Act 2009*. It identifies the concerns of local governments, who have no dedicated legislated role in the assessment and conditioning of mining proposals in their region, and who are required to object to a project in order to participate in the process. The Consultation Paper acknowledges that some informal consultation may occur, especially if a social impact assessment is required, but questions whether this is adequate and consistent.

The Consultation Paper discusses the duplication between the federal and state assessment and approval processes for mining projects in Australia, and how the Australian Government's proposed Nature Positive Plan and National Environmental Standards will affect state decision-making processes.

The Consultation Paper also suggests a mismatch between the conditions set by native title agreements and the EA for mining projects and is concerned that some of these agreements may not be legally binding or transparent, and that the EA may not respect or include the conditions that protect Native Title rights.

³ Paragraph 2(d) Terms of Reference, 5 April 2023

QRC's overarching comments

As the QLRC's proposals are still being developed and lack sufficient detail, these are our **preliminary** views. We look forward to providing further feedback as the Review progresses and more detail is developed.

THE SIGNIFICANCE OF “LAWFARE”

The QRC supports the right for those individuals and groups with direct and legitimate interests to raise objections and exercise their appeal rights. However, the legislative framework should recognise the reality that it is being unfairly and inappropriately exploited by organisations whose personal interests are not directly affected by the specific project or decision.

In our attached June 2024 correspondence to the QLRC, the QRC identified “lawfare” as a major issue that delays and increases costs for mining projects and argued that objection and review rights should be limited to parties with a genuine and legitimate interest in the specific project. While the proposals to reform participation processes and dispense with pre-decision objections hearings by the Land Court go some way towards addressing this issue, the QRC believes more is needed to reduce the significant burden imposed on the system and on all stakeholders by vexatious objections and legal processes.

The Consultation Paper notes the concern about lawfare and says that there is “limited evidence” to support a more restrictive approach to standing⁴. The QRC respectfully disagrees with this contention. There is a long list of cases initiated and run, in substance, by organisations whose personal interests are not directly affected by the specific project or decision. These organisations are rarely the party on record, and some have been found by Courts to act unethically in the way they present evidence or coach witnesses.

While public notification and participation is of course an important part of the decision-making process, this needs to be distinguished from objections and reviews, which can derail, often for years, approval processes for projects that have received the full support of the relevant assessment authorities. Such outcomes unfairly and unnecessarily impose cost and delay, not just on project proponents, but also on assessment authorities, the judiciary and all Queenslanders, who are made to fund the cost of responding to these vexatious objections. It is also unfair to local residents and landholders who seek quicker certainty on whether a project will be approved and proceed.

It is only fair and appropriate that there be checks and balances on who can invoke such costly and time-consuming objection and review processes. This is an issue that should not be conflated with the issue of who can provide input into (i.e. participate in) a decision-making process. Failing to draw this distinction largely defeats the purpose of having

⁴ Paragraphs 231-233

comprehensive assessment processes, which can be entirely derailed and delayed by a single party whose personal interests are not directly affected by the specific project.

This issue arises under state and federal legislation referred to in the terms of reference for the Review, including judicial review legislation, which is currently open to misuse by organisations who use these processes as a platform for promoting their broader objective of seeking to prevent all forms of mining and development regardless of merit. Such behaviour imposes great expense on the broader society and runs contrary to the widely held views of communities and other stakeholders and groups who are directly affected by the specific project or decision.

The QRC considers the “open standing” model for objecting to MLs and EAs to be a shortcoming in the current processes for deciding contested applications for MLs and EAs, as it leads to unfairness, inefficiency and ineffectiveness in these processes.

QRC's preliminary comments on Consultation Paper proposals and questions

PROPOSAL 1: REFRAMING THE PARTICIPATION PROCESSES

P1	Participation in the current processes should be reframed by:
(a)	removing the Land Court objections hearing pre-decision
(b)	including an integrated, non-adversarial participation process
(c)	establishing an Aboriginal and Torres Strait Islander Advisory Committee for relevant mining proposals to facilitate Aboriginal and Torres Strait Islander input as part of the new participation process.

The QLRC proposes removing the Land Court objections hearing pre-decision and increasing early participation with stakeholders and including an integrated, non-adversarial participation process through methods like community advisory committee or reference groups and community leader councils and asks the question which consultation methods should be employed.

This proposal requires greater clarity and detail before we can provide meaningful feedback. For instance, it is important to understand how feedback provided to decision-makers will be considered and how project proponents will be involved in addressing this feedback during the project design and application phase. Guidance materials and statutory timeframes are essential throughout this process. Project proponents need as much certainty as possible at the outset of a project when seeking approvals.

In principle, the QRC supports streamlining the assessment process and reducing costs and delays for the mining industry. As per our June 2024 submission, the QRC supports public consultation earlier in the assessment process, and in cases where there are no active objectors, we advocate for removing or streamlining the Land Court process. This would reduce duplication and inconsistency, leading to more timely and efficient decision-making.

Notwithstanding the above, QRC's position remains that the key issues of "lawfare" and the related matter of standing must be addressed as a top priority, rather than focusing on the timing and role of the Land Court process. Resolving these concerns is essential to ensuring a fair and efficient system, and we believe they should take precedence over procedural adjustments to the Land Court.

While the QRC supports productive engagement with all stakeholders in a mining project, we are concerned that the proposal for broader-based participation may lead to unintended delays, increased costs, and uncertainties without offering clear benefits to the environment, community, or economy. As mentioned above, the current "open standing" model for objecting to MLs and EAs allows organisations, often driven by ideological or unrelated interests, to object to projects without demonstrating a direct, personal stake in the outcome. To address this shortcoming, it is imperative to limit objections to parties who can clearly demonstrate that their personal or organisational interests are directly and materially impacted by the proposed project. Additionally, transparency in the identity of objectors—including the membership of incorporated organisations—must be enforced to ensure that objections come from those with a genuine, relevant interest, not from those leveraging the system to further unrelated agendas.

The QRC considers that early consultation should be voluntary, limited and tailored to the specific issues at hand for a mining project and not duplicate the existing requirements for consultation later in the relevant application assessment processes.

With respect to establishing an Aboriginal and Torres Strait Islander Advisory Committee for relevant mining proposals to facilitate Aboriginal and Torres Strait Islander input as part of the new participation process, QRC members are concerned that there may be duplication of existing processes under the *Native Title Act 1993* and the *Aboriginal Cultural Heritage Act 2003*. The establishment of such a committee could also potentially cause conflict between interested Indigenous parties. If this proposal were to be adopted, careful consideration must be given to the committee's composition, representation, and its interaction with current legal frameworks, while ensuring respect for the existing Native Title framework.

PROPOSAL 1:

In reference to the guiding principles:

Fair	Efficient	Effective	Contemporary
NO	NO	NO	NA

The QRC **does not support** this proposal and recommends that:

1. "Lawfare" and the related matter of standing must be addressed as a top priority.
2. Broad-based participation should be discouraged by:
 - a. limiting objection and review to those who can demonstrate their personal interests are directly affected by the specific project or decision; and
 - b. restricting the scope of the subject matter, requiring objectors and review applicants to show a relevant connection to the statutory criteria that the decision-maker must already consider, which would help both the project proponent and decision-maker to assess the objection's relevance.
3. "Directly affected" should be clearly defined to include a specific subset of persons (in addition to the project proponent), such as neighbouring landholders, those adjacent to downstream watercourses, local government entities and relevant Aboriginal and Torres Strait Islander peoples (this term would require more definition).
4. Reconsider the need for establishing a supplementary Aboriginal and Torres Strait Islander Advisory Committee which may duplicate current processes and instead potentially refine and optimise existing regulations to address any gaps or deficiencies under the *Native Title Act 1993* or the cultural heritage Acts.

PROPOSAL 2: ESTABLISH A CENTRAL ONLINE PORTAL

- P2** A central online Government portal should be established to facilitate public notice and give up-to-date information about mining proposals. The Mineral Resources Act 1989 and the Environmental Protection Act 1994 should be amended to require material to be published on the online portal, including:
- (a) notice of applications
 - (b) notice of opportunities to participate
 - (c) outcomes of participation processes
 - (d) information requests
 - (e) decisions.

The Consultation Paper proposes to establish an online portal that would allow the public to access information about mining applications, objections, decisions and appeals.

The QRC is generally supportive of this proposal, as it believes that it could enhance transparency and accountability in the mining sector, and foster trust and confidence among the stakeholders. The QRC recognises the importance of providing accurate and timely information to the public and acknowledges the role of digital technology in facilitating this process. The QRC also considers that an online portal could streamline the administrative and procedural aspects of the consultation process and reduce the costs and burdens for both the applicants and the objectors.

The QRC suggests that the online portal should be fit for purpose meeting the needs of both industry and government, user-friendly, secure and reliable, and provide comprehensive and up-to-date information on the status and outcomes of mining applications. The QRC welcomes the opportunity to collaborate with the QLRC and other stakeholders in designing and implementing the online portal.

PROPOSAL 2:

In reference to the guiding principles:

Fair	Efficient	Effective	Contemporary
YES – Pending design details	YES – Pending design details	YES – Pending design details	YES – Pending design details

The QRC supports in principle this proposal and recommends that:

1. If an online portal is to be developed, it should be done in consultation with industry to ensure it is fit for purpose with no duplication of requirements and meets the needs of both industry and government.
2. The portal should be user-friendly, secure and reliable.
3. The portal should provide comprehensive and up-to-date information on the status and outcomes of mining applications.

PROPOSAL 3: ESTABLISH AN INDEPENDENT EXPERT ADVISORY PANEL

- P3** An Independent Expert Advisory Panel should be established that is:
- (a) comprised of people with recognised expertise in matters relevant to the assessment of environmental authority applications
 - (b) formed as project-specific committees to give independent expert advice to inform decisions on environmental authority applications that meet specified criteria.

The Consultation Paper also proposes establishing an Independent Expert Advisory Panel to advise decision-makers on technical matters related to mining applications as part of the proposed new participation process. This panel would consist of qualified experts in various fields, such as geology, hydrology, hydrogeology, ecology, economics and social impact assessment offering impartial, evidence-based opinions on the potential impacts and benefits of mining projects to assist in informed and balanced decision-making.

While we recognise that other jurisdictions have adopted similar approaches, there is still ambiguity about its precise nature and role of the panel. QRC remains sceptical of the value of such a panel, particularly in relation to the guiding principle of efficiency. We believe that decision-makers already possess the authority and discretion to draw on input from experts or seek advice from other agencies when technical guidance is needed. Introducing an additional expert panel may not necessarily streamline the assessment and approval process, and we are concerned that it could overlap with existing state and federal departmental expertise, rather than enhancing efficiency.

Also, while the general concept of an Independent Expert Advisory Panel might be understood, there are practical limitations to its formation. A shortage of skilled subject matter experts raises concerns about the panel's ability to represent the necessary expertise. Additionally, conflicts of interest may arise, making it challenging for applicants to access appropriate, unbiased advice. There is a risk that the independent expert panel could increase the potential for dissent among experts, leading to further delays, higher costs, and potentially more litigation and appeals. Some members have observed that expert panels in other jurisdictions have not effectively improved efficiencies.

Additionally, resource companies already engage highly qualified experts to assess potential impacts and ensure compliance throughout their project development processes. Therefore, it would be unnecessary for the newly formed panel to revisit foundational assessments that have already been conducted by third-party experts. Should the establishment of a panel be necessary, it is crucial to ensure that the panel's review process does not inadvertently introduce delays. Members have noted that expert panels, particularly those involving academic participants, sometimes request additional data that is not relevant, let alone essential, to a project's assessment. The purpose of such panels should not be to fulfil the academic interests of their members.

PROPOSAL 3:

In reference to the guiding principles:

Fair	Efficient	Effective	Contemporary
NO	NO	NO	NO

The QRC does not support this proposal and recommends that decision-makers continue to exercise their existing powers to seek technical advice as needed, while maintaining a streamlined and efficient approval process.

PROPOSAL 4 & PROPOSAL 5: AMENDMENTS TO THE STATUTORY CRITERIA

Proposals

- P4** The statutory criteria in the Mineral Resources Act 1989 and the Environmental Protection Act 1994 should be amended to require the relevant decision-maker to consider:
- (a) for decisions about mining lease and associated environmental authority applications – information generated through the new participation process
 - (b) for decisions about environmental authority applications – any advice of the Independent Expert Advisory Committee.
- P5** The statutory criteria in the Mineral Resources Act 1989 and the Environmental Protection Act 1994 for decisions about mining lease and associated environmental authority applications should be amended to require each decision-maker to consider the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage.

The QLRC suggests changing the criteria for mining decisions to include the input from the new participation process, the expert panel, and Indigenous peoples. The participation process would involve consultation with the affected communities and stakeholders. The expert panel would provide independent advice on the environmental and social impacts of the proposed mining activities. The Indigenous peoples would have the right to advise about land, culture and cultural heritage as it relates to mining activities on their lands.

The QRC recommends that the proposed amendments focus on streamlining the decision-making process by eliminating duplication, introducing statutory timeframes, and ensuring consistency with previous assessments. The QRC considers that additional consultation through the participation process as proposed should be voluntary and any expert panel should not add to project risks and delays. The QRC respects the rights and interests of Indigenous peoples, and notes that such interests are supported by existing legislation and agreements that govern mining activities. Any proposed reform should streamline rather than duplicate mining lease and environmental impact considerations.

Where native title does (or may) exist, the mining lease applicant is already required to engage in negotiations with the native title holders or claimants, under the *Native Title Act*, and if agreement is not reached, the National Native Title Tribunal already has the jurisdiction to consider impacts on native title and decide whether or not the mining lease should be granted. Also, whether native title exists or not, the mining lease applicant will always have to comply with the *Aboriginal Cultural Heritage Act* or *Torres Strait Islander Cultural Heritage Act*. A mine of any significant scale would trigger an EIS and therefore make it mandatory for there to be an approved Cultural Heritage Management Plan ("CHMP") for the mine. The purpose specific legislation already identifies who the "Aboriginal Party" is that must be involved in those negotiations, a mandatory negotiation process, and a specific dispute resolution process (involving the Land Court) if agreement is not reached. Given this purpose-specific legislation, and that negotiation and decision-making processes already exist, QRC submits that the proposal introduces duplication and complexity if the Land Court were to reconsider these issues in the mining lease objection process.

The focus of QRC members remain that there should be reforms to require Government decision-making in specific timeframes rather than a focus on changing the criteria.

PROPOSALS 4 & 5

In reference to the guiding principles:

Fair	Efficient	Effective	Contemporary
NO	NO	NO	NO

The QRC does not support these proposals and recommends that:

the proposed amendments focus on streamlining the decision-making process by eliminating duplication, introducing statutory timeframes, and ensuring consistency with previous assessments.

Key considerations include:

- ensuring decision-making authority remains with elected officials, with clear guidance and accountability to help maintain an efficient, transparent and accountable process that reduces the risk of protracted legal challenges;
- streamlining the statutory criteria for decision-making to prevent unnecessary overlap; between ML and EA application processes;
- introducing specific timeframes for Government decision-making; and
- avoid overburdening decision-makers with additional criteria as the current statutory framework already requires them to consider the public interest.

PROPOSAL 6: A NEW LAND COURT REVIEW PROCESS

Proposal

- P6** Review by the Land Court should be available after the Government has decided the mining lease and environmental authority applications. Decisions of the Land Court should be appealable to the Court of Appeal on the grounds of errors of law or jurisdictional error. The Land Court should:
- (a) conduct proceedings after decisions on both applications are made
 - (b) conduct combined (merits and judicial) review
 - (c) conduct the review on the evidence before the primary decision-makers, unless exceptional circumstances are established
 - (d) apply existing practices and procedures.

The QLRC proposes that the role and function of the Land Court in reviewing mining applications should allow review after the Government has made the decisions, combining merits and judicial review, limiting the evidence to the primary decision-makers, and applying the current practices and procedures.

The QRC firmly maintains that addressing the critical issues of "lawfare" and the related matter of standing must be treated as urgent and the top priority. These fundamental concerns far outweigh the current focus on the timing and procedural role of the Land Court. The QRC strongly believes that the existing "open standing" model for objections to MLs and EAs is a significant flaw in the current framework. This model undermines fairness, creates inefficiency, and hampers the overall effectiveness of resolving contested ML and EA applications. It is imperative that these structural deficiencies are rectified.

Noting that the approval of mining projects involves a consideration of a broad range of complex issues, the QRC asserts that the ultimate decision to approve such projects should be reserved to elected Government officials who are properly informed by comprehensive assessment processes undertaken by the relevant Government departments. These officials weigh up all of the considerations and competing interests in arriving at their decision, and they are publicly accountable for that decision. The QRC believes that the Land Court should not be the final arbiter in the approval of mining projects.

If the Land Court were to be the final arbiter, any review by the Land Court should only occur where a party has filed an objection to the mining lease decision (whether that is an objection to the grant or the rejection of a mining lease application, or the conditions of grant) within a strict statutory timeframe. A strict timeframe for lodgement of objections would be essential, as a mining lease holder needs to have certainty when it can start investing in commencement of mining activities with certainty that a mining lease grant will not be subsequently overturned.

PROPOSAL 6:

In reference to the guiding principles:

Fair	Efficient	Effective	Contemporary
YES	NO	NO	NO

The QRC does not support this proposal and recommends that the QLRC focus on addressing the key issues of lawfare and related matters associated with standing.

OTHER CONSIDERATIONS

New criterion for Aboriginal and Torres Strait Islander rights and interests

The QRC respects the rights and interests of Indigenous peoples, and notes that such interests are supported by existing legislation and agreements that govern mining activities. The QRC considers that this proposal needs to consider the risks of creating an unfair and unbalanced assessment process that favours the interests of one stakeholder group over others.

The role of the Coordinator-General

The Consultation Paper seeks feedback on whether the current Coordinator-General legislation and processes are appropriate and consistent with the other legislation, and how they could be improved to ensure transparency and accountability. The QRC considers that mining projects which are assessed through the Coordinator-General are complex and can offer significant economic return to the State. The Coordinator-General therefore is afforded additional discretion to consider these matters and if approvals are granted, the additional legal protections assist these projects to proceed in a timely way.

Participation of Local Governments

The Consultation Paper examines the lack of formal links between the decision-making processes for ML and EA applications and the *Local Government Act 2009*. In principle, the QRC supports consultation with stakeholders such as local government and notes that any additional consultation measures should be voluntary and specific to the needs of each mining project.

Cost of review

The Consultation Paper questions whether each party should pay their own costs of the review or whether some other rules apply. Generally, the QRC advocates for a balanced approach where each party bears their own costs, promoting fairness and accessibility. The QRC considers that the conventional costs model where costs follow the event, is a fair, balanced and appropriate model to use for contested mining projects. However, provisions for alternative rules should exist to address public interest considerations and deter frivolous claims.

Concluding comments

The QRC considers that an effective process for deciding contested applications for MLs and EAs will benefit all Queenslanders and reaffirms the core message of the QRC's Streamlining Project, that focussing on streamlined approvals for mining projects will bring investment, job creation, infrastructure development and contributions to the state's revenue.

The Review recognises that there are competing interests in the regulation of mining projects, and that any reform entails costs and benefits for different parties. The QRC considers that the QLRC's proposals and final recommendations should also include a rigorous cost-benefit analysis and assess the trade-offs between regulatory, environmental and social outcomes.

Approval timeframes have been a long-standing issue for the resources industry. Efficiency and communication improvements are needed so that the industry can better predict and plan for decision timeframes, such as better handover and coordination practices, and legislative reform initiatives. As a result, the QRC has been working with its members and Government for over a decade to further streamline the respective regulatory requirements applying to mining projects in the State. QRC welcomes the QLRC's offer to consider its 2024 update of its Streamlining Project in conjunction with the feedback provided in this submission.

We trust that this feedback will contribute to the ongoing efforts to improve participation and decision-making processes in Queensland's mining sector, as well as improve the clarity and reduce inefficiencies through more streamlined processes for all stakeholders involved.

The QRC looks forward to continuing consultation with the QLRC as its proposals are further detailed and ahead of finalising its recommendations, understood to be in mid-2025.

19 June 2024

President Fleur Kingham
Chair
Queensland Law Reform Commission
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Queensland, 4000
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Dear President Kingham

Queensland Resources Council (QRC) would firstly like to thank the Commission for engaging with industry and providing an update on the QLRC's Mining Lease Objections Review (the Review) on 16 May 2024. The QRC also welcomes the release of **Background Paper 3: Other Jurisdictions**, which forms a part of a series of background papers introducing the Review. This paper thoroughly examines Queensland's objections and decision-making processes for mining leases and associated environmental authorities in comparison to other Australian and international jurisdictions.

As the peak representative organisation of the Queensland minerals and energy sector, QRC represents a diverse membership, including exploration, production, processing companies, and associated service providers. Our mission is to ensure the profitable and competitive development of Queensland's resources, maintaining a delicate balance between social, economic, and environmental sustainability.

As mentioned in our previous correspondence dated 25 January 2024, QRC supports the guiding principles of the review, aiming for fairness, efficiency, effectiveness, and contemporary relevance. "Lawfare", manifested in lengthy and complex objections cases and judicial reviews, lead to ongoing uncertainty, higher costs, delays and inefficiencies, all of which are contrary to the interests of legitimate stakeholders. The review should prioritise developing a process that addresses the concerns of parties who have a *genuine and legitimate* interest in the *specific project* concerned, while also keeping the public interest and the objectives of Queensland's resources, environmental and judicial review legislation in focus and minimising duplication for mining lease and environmental authority pathways.

Indeed, Background Paper 3 provides invaluable insights into public participation in government decision-making processes, particularly in jurisdictions where minerals are state-owned, necessitating relevant authorisations from the government for mining activities. It is evident from the paper that mining and environmental laws are complex, and the authorisations required vary significantly between jurisdictions.

The comparison presented in the paper highlights the following priority issues that should inform the Commission's considerations on community participation and decision review:

- **Discouraging illegitimate “lawfare”:** Queensland uniquely enables any person to object to mining lease applications, environmental authorities, or both, triggering a referral to the court for a hearing and recommendations to the relevant decision-makers, and the objectors are not even required to appear at the hearing. This unnecessarily incurs significant cost and delay for project proponents, thereby delaying all of the economic and societal benefits that flow from those projects. This usually occurs in a situation where a project has been comprehensively assessed and supported by all relevant government agencies. Some NGOs deliberately exploit this system, even by canvassing legitimately impacted parties and using them as a proxy or “front” for driving their own activist objectives relating to broader issues like climate change, rather than airing legitimate concerns about the specific project concerned. Indeed, the tactics employed by some NGOs have been viewed by some judges as unethical.¹ Ensuring legitimacy of objections and integrity of standing rules for making objections and applying for judicial review is imperative if the system is to be effectively streamlined. The law needs to recognise the distinction between a *genuine and legitimate* interest in a *specific project* versus an abuse of process by parties seeking to further their own broader activist objectives that typically seek to prevent all forms of development regardless of merit.
- **Fostering consultation over confrontation:** Unlike other jurisdictions, Queensland's approach seemingly encourages adversarial participation by preserving objection rights until late in the assessment process. This adversarial approach can hinder constructive dialogue and collaboration between stakeholders. It is imperative to foster a culture of consultation throughout the decision-making process to promote better outcomes for all stakeholders.

Based on the findings from Background Paper 3, the following recommendations are proposed for the Commissions consideration:

- **Discourage “lawfare” by clarifying standing rules:** While submission rights can remain broad to facilitate involvement in the assessment process, objection and review rights should be more aligned with other jurisdictions. In order to have standing to trigger an objection hearing or judicial review, parties should be required to demonstrate that their interests will be directly affected by the specific mining proposal and that they have initiated the objection or review without being used as a proxy or “front” by a third party whose interests will not be so affected.
- **Commencement of public notification and submissions toward the start of the process:** Initiating public consultation and submissions earlier in the assessment process would allow proponents the opportunity to address any concerns raised in the application material proactively.

¹ For example, in *Munkara v Santos NA Barossa Pty Ltd* (No 3) [2024] FCA 9, the Federal Court criticised the Environmental Defenders Office as putting forward evidence that was “lacking in integrity” and derived from “coaching” witnesses.

- **Removal of the Land Court process or streamlined resolution:** In cases where there are no active party objectors to substantiate or explain their concerns, consider removing the Land Court process or implementing a streamlined resolution mechanism to expedite decision-making. In any case, judicial review should not be available following the Land Court process.

In addition to the above, the QRC would also like to emphasise the following as critical considerations in the ongoing reform effort:

- The need to eliminate procedural redundancies and enhance clarity in decision review avenues.
- The need for efficient and effective processes to avoid long and protracted timeframes for approvals.
- Ensuring that the QLRC's review process includes substantial consultation with stakeholders and sufficient time to evaluate final recommendations.

We trust that these recommendations will contribute to the ongoing efforts to enhance community participation and decision-making processes in Queensland's mining sector, as well as improve clarity and reduce inefficiencies through more streamlined processes for all stakeholders involved.

QRC eagerly anticipates the release of the upcoming consultation paper in July 2024 and looks forward to further engagement with the Commission throughout this crucial review process. If you require any further information, or for a more detailed discussion, please contact [REDACTED], Policy Director - Resources [REDACTED].

Yours sincerely

[REDACTED]

[REDACTED]

Chief Executive Officer

Attachment:

Letter to President Fleur Kingham_Mining Lease Objections Review_25.01.24

25 January 2024

President Fleur Kingham
Chair
Queensland Law Reform Commission
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Dear President Kingham

The Queensland Resources Council (QRC) welcomes the release of a series of background papers introducing the Mining Lease Objections Review. The papers provide a good outline of the review's principles and a sound overview of the key drivers shaping the future of mining.

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The significance of resource projects in Queensland warrants extensive, transparent and fair assessment processes. Unfortunately however, multiple stakeholders are dissatisfied with the complexity and uncertainty of the existing process. QRC has made various submissions to the Government outlining concerns with the objections and appeals process, particularly its inefficient and duplicative nature. Other concerns include the ability and practice of opponents of the resources sector to knowingly misuse the appeal processes to deliberately delay projects and cause lengthy and expensive proceedings which ultimately discourages investment in projects. The most recent QRC submission (dated 17 June 2022) is attached and provides a comprehensive overview of industry concerns alongside ideas for reform to facilitate improved outcomes.

QRC supports the guiding principles of the review; fair, efficient, effective and contemporary. Lengthy and complex objections cases result in ongoing uncertainty and high costs which are contrary to the interests of industry, landholders, the community and government. This review as guided by the principles, should aim to develop a process which enables due consideration for interested and entitled parties while keeping the public interest for Queenslanders and the principal objectives of the *Queensland Mineral Resources Act 1989* at front of mind. The process should invariably avoid duplication through providing for the proper litigation of issues in a single forum and reduce the existing parallel processes for mining lease (ML) and environmental

authority (EA) pathways. Reconciling these principles in the recommendations of the review will be paramount.

QRC is pleased to see the reference to the Queensland Resources Industry Development Plan (QRIDP) in the background papers. The QRIDP outlines a vision to ensure the long-term future of the resources sector through initiatives that facilitate investment and support sustainable growth. Given that this review is an action stemming from the QRIDP, any processes recommended as part of this review should contribute to a framework which supports ongoing investment and sustainable growth in the sector.

QRC supports the key drivers identified by the Commission which are influencing the future of mining in Queensland including decarbonisation and the demand for critical minerals, the growing emphasis on Environmental, Social, and Governance principles, and increased acknowledgment of First Nations rights.

This review is taking place at a time of exponential growth in exploration for critical minerals as global demand increases. However, the development of new critical minerals projects is currently at risk of delayed investment through lengthy and expensive proceedings. Given the state government is ambitious in its aims to facilitate growth in the critical minerals industry, the development of a streamlined, efficient and fair objections process will encourage future development of critical minerals projects, as well as other traditional energy projects which are vital to the decarbonisation agenda and long-term energy security.

Over the years, QRC has advocated for reforms to streamline the mining objection and approval process by eliminating procedural redundancies, reducing costs for stakeholders, and enhancing clarity in decision review avenues. These issues are emphasised as crucial considerations in the ongoing reform efforts.

QRC looks forward to further engagement with the Commission as this important review continues throughout 2024. If you require any further information, or for a more detailed discussion, please contact [REDACTED], Policy Director - Resources.

Yours sincerely

[REDACTED]

A/Chief Executive

Attachment – Letter to [REDACTED] QLRC dated 17 June 2022 including QRC Submission on Mining Lease Objection and Appeal Processes.