

21 October 2024

President Fleur Kingham

Chair of the Queensland Law Reform Commission

By email: [REDACTED]

CC: [REDACTED]

Dear President Kingham,

Submissions to the Queensland Law Reform Commission

QSNTS refers to previous submissions provided in response to the Commission's Background Paper 2. QSNTS acknowledges that the general themes raised have been considered in the development of options presented by the QLRC in its two discussion papers. QSNTS is generally supportive of all six proposals put forward by the QLRC and believes these proposals take significant steps towards embedding Free, Prior and Informed Consent (FPIC) and valuing traditional knowledge in decision-making processes. The proposed enhanced role of the Land Court also provides recourse to the Traditional Owner Groups who, in QSNTS's experience rarely have their concerns for country genuinely addressed. QSNTS uses the term Traditional Owner groups deliberately, to describe those First Nations people with cultural responsibility for the country subject to mining lease or mining activity. This is relevant to QSNTS's response to some of QLRC's proposals.

QSNTS provides the following general submissions, as well as direct responses to the questions posed in the annexed table.

1. Integration of Traditional Owner Consultation and Consent

QSNTS is supportive of the concepts of increased Indigenous participation in both the mining application process and the environmental authority (EA) application process as outlined in proposals 1(c) and P3. However, QSNTS emphasises that such participation should be:

- a) **From the Traditional Owner group whose country is impacted by the mining lease.** This participation should be facilitated through existing or currently proposed structures.
- b) **In the form of decision-making power.** The participation should enable Traditional Owners to make decisions about whether the lease should be granted and, if granted, what conditions should be imposed to mitigate damage to Country.
- c) **If decision-making power is not granted,** the decision-maker should provide a detailed explanation outlining how the advice from the relevant Traditional Owner group has been taken into account and addressed.

In relation to point (a), QSNTS suggests the QLRC consider the proposed Traditional Owner Representative Institution Model, currently being discussed at a Federal level in the context of consultation and consent in offshore energy projects and cultural heritage reforms (see Annexure 1 to the NNTT's Discussion Paper on Traditional Owners and Australian Offshore Energy Projects). Capitalising on existing or proposed structures would reduce the significant administrative load on individuals, who often serve in voluntary capacities. Should existing Traditional Owner representative institutions, such as Registered Native Title Bodies Corporate (RNTBCs) and registered native title claimants, take on this additional role, it is imperative that proper resourcing be provided, provision of that resourcing should be met by the proponent.

Involving RNTBCs, claimants and Traditional Owners who may not have a claim on foot in decision-making (or consultation) is consistent with their existing status under the *Native Title Act 1993* (Cth.) (NTA). QSNTS discloses that, in the context of the recent Lake Eyre Basin Regulatory Impact Statement process and negotiations regarding quarrying, RNTBC clients expressed frustration at the lack of integration between resource activity approvals, environmental authority approvals, and their exclusion from either process.

As raised in our March submissions, it is crucial that Indigenous Peoples have a legislated and protected ability to participate before the decision-making stage, with available recourse if they are aggrieved by a decision. This participation should extend to the EA process, a position reflected in the QLRC proposals, which QSNTS supports.

Our constituents' current experience is that decision-makers responsible for resource-related permits, acting on the environmental approval process (e.g., in quarrying or the expedited procedure), are not and cannot be fully aware of the cumulative impact such activities have on Country. The relevant Traditional Owner groups, with cultural responsibilities to care for Country (for example, RNTBCs), are the only parties capable of comprehensively assessing those cumulative impacts. Traditional Owners witness the damage, and understand the impact, caused by multiple quarries or drill sites on their land, while government staff, assessing applications in isolation and in the abstract, cannot. In the case of RNTBCs, they are already involved "on the ground", via the future acts regime under the NTA.

It follows that the relevant Traditional Owners are best placed to make decisions—or at the very least, provide mandated input—on these application processes. QSNTS cautions against an Advisory Committee having decision-making powers or in the provision of input unless the committee is required to *bona fide* consult with relevant Traditional Owners who hold cultural authority over the impacted Country.

QSNTS is however supportive of proposals for increased First Nations involvement, repeating that consideration should be given to the role of existing or proposed structures to avoid creating unnecessary new entities with duplicate roles across different pieces of legislations.

2. Statutory Criteria for Decision-Making

QSNTS supports the imposition of statutory criteria on decision-makers. However, based on our experience with the State's application of the expedited procedure under s237 of the NTA, we have identified the following issues:

- i) **Lack of transparency:** It is unclear how and if statutory criteria are applied before a decision is made, as there is no requirement to publish reasons for the decision.
- ii) **Lack of consultation:** There is no requirement for the decision-maker to consult with the relevant Aboriginal or Torres Strait Islander groups before making a decision.

QSNTS believes that Traditional Owner groups are best placed to make decisions affecting their Country. If the legislation does not require Traditional Owners to make the decision, there must be a statutory requirement to involve them in applying any criteria imposed on decision-makers in the EA or lease process. Where criteria exist, they must be applied in consultation with the relevant Traditional Owner groups. Under their traditional laws and customs, Traditional Owners are uniquely qualified to either make decisions or, at a minimum, provide the advice necessary for decision-makers to apply the criteria appropriately.

In terms of drafting the legislative criteria for an EA (or mining lease application), QSNTS encourages the QLRC to develop that criteria in consultation with Queensland's Traditional Owners. From experience, QSNTS can indicate that the "cumulative" impact of activities on country is a common theme expressed by its clients which is generally not currently considered by decision makers who are assessing a single application in isolation.

Finally, decision-makers must publish their decisions, including how they regarded the views of the relevant Traditional Owner group. These decisions should be open to challenge, consistent with the QLRC's proposal for the Land Court's merits and judicial review functions.

3. Conclusion

QSNTS strongly supports the QLRC's proposals, particularly those aimed at enhancing the participation of Traditional Owner groups in decision-making processes related to mining leases and environmental authority applications. By embedding FPIC and giving Traditional Owners a greater role in decision-making, the QLRC's proposals represent a significant step towards recognising and valuing traditional knowledge and cultural responsibilities to Country.

4. Specific Responses

Question	Response
1	Generally, yes. As outlined in our March submissions, given our constituents' constant battle to be considered and treated as "landholders" under legislation

Question	Response
	and in the policy context, we consider that any reform should put traditional owners on an equal footing with any other tenure holder. It follows that "Equitability" should be another guiding principle in reviewing and reforming the objections process.
2	See March submissions.
3	Strongly support an integrated participation process, given the links between mining activity and environmental approval processes. We agree on increased Indigenous input (although we advocate for decision-making powers as opposed to mere consultation). See above submissions for further comments regarding streamlining and improving consent and consultation from the relevant Traditional Owner groups.
4.	See above submissions.
5.	No specific comment.
6.	See above submissions.
7.	See above submission, particularly regarding ensuring the relevant traditional owners, with cultural responsibility for the country, are the ones involved in decision-making (or consultation).
8.	Supportive, provided that resources to Traditional Owner institutions (e.g. RNTBCs) are provided to support access to the portal.
9.	Early information to the relevant traditional owners (e.g. RNTBCs and registered claimants) during the "concept" stage of a project, consistent with the principles of FPIC, ideally before any approvals are applied for. See March submissions.
10.	See response to (9) above.
11.	See response to (9) above.
12.	Generally supportive; however, see above submissions regarding decision-making/consultation with the relevant traditional owner groups (e.g. RNTBCs or registered native title claimants).
13.	See above submissions. Criteria to be workshopped with traditional owners with working knowledge and experience.
14.	Strongly support. See above submissions regarding involving the relevant traditional owner group (e.g. RNTBC or registered native title claimant).
15.	See response to 14
16	See response, and above submissions re the publishing of reasons.
17	"Suitability" criteria should include: a) Willingness to genuinely engage with relevant traditional owner groups. b) An ability to fund the engagement and any proposals put forward by the traditional owner group.
18.	Strongly support.
19	No specific comment
20	Yes
21	Proponent pays
22	Further consideration should be given to how the Land Court's processes will interact with the role of the NNTT's future act determination function. The integrated approach proposed by the QLRC is an approach that QSNTS would advocate for across the resource and future act regime. That is, our clients seek further involvement in the EA process, which tends to occur before notification under the NTA, leading to two queries:

Question	Response
	a) How will registered native title claimants and RNTBCs navigate and utilise the future act regime and the proposed integrated mining lease process to have a genuine say about the proposal? b) What room is there to have an integrated approach applied to all resource activities, including exploration?
23-26	No specific comments

Yours faithfully,



Acting Principal Lawyer