QUEENSLAND resources COUNCIL

Resourcing Queensland's future

31 January 2025

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Queensland Law Reform Commission
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Email: [redacted]
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Dear President Kingham

QRCs submission on the QLRC's Consultation Paper on Conscious Consistency

The Queensland Resources Council (QRC) appreciates the opportunity to provide feedback on the Queensland Law Reform Commission's (QLRC) consultation paper '*Conscious Consistency: Mining and Other Resource Production Tenures*'. This paper forms part of the QLRC's broader *Mining Lease Objections Review* (the QLRC Review) which commenced in August 2023, to evaluate processes for approving mining leases (MLs) and associated environmental authorities (EAs) in Queensland.

QLRC PROPOSALS

The QLRC has proposed changes to the mining lease (ML) process and that these changes should also apply to other resource production tenures under the *Greenhouse Gas Storage Act 2009, Geothermal Energy Act 2010,* and *Petroleum and Gas (Production and Safety) Act 2004*.

The QLRC proposes several reforms:

1. Reframe participation
2. Establish a central online government portal
3. Establish an Independent Expert Advisory Panel
4. Amend decision-making criteria
5. Require decision-makers to consider the rights and interests of Aboriginal and Torres Strait Islander peoples
6. Introduce combined merits and judicial review by the Land Court after government decisions are made.

The QLRC's six proposals are consistent with those presented in the previous two consultation papers issued in July 2024 ("*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*") as part of the QLRC Review and seeks to apply consistencies across the different resources Acts.

QRC's CRITICAL CONCERNS

The QRC supports the guiding principles of the QLRC Review; fairness, efficiency, effectiveness and a contemporary approach, as well as the Queensland Resources Industry Development Plan (QRIDP) objective to **improve regulatory efficiency**, which should underpin the QLRC Review. However, the QRC reiterates its concerns that the proposals outlined in the three QLRC consultation papers are not consistent with these principles and are unlikely to deliver the expected outcomes.

We have attached our response to the consultation questions (**Attachment 1**), for your consideration. For completeness, also note QRC's submission in response to the first two consultation papers dated 4 October 2024, as well as our previous correspondences dated 25 January 2024 and 19 June 2024.

Applying the consultation proposals for mining to other resource proposals

Different resource sectors often face distinct characteristics and challenges, and QRC believes that a standardised, one-size-fits-all approach may fail to adequately account for these differences.

The QLRC's review should have a focus on regulatory efficiency, and it is noted that the Australian Competition and Consumer Commission has identified "lengthy approval processes and legal hurdles" as being a significant barrier to bringing online much-needed new supply in a timely fashion.[1] The review should address such barriers for the gas sector.

QRC firmly holds the view that the six proposals outlined in the current consultation paper are likely to unnecessarily exacerbate existing challenges faced by the petroleum and gas industry rather than provide practical solutions. Additionally, the release of the consultation paper in November 2024 has not provided sufficient time for petroleum and gas proponents to respond and provide feedback.

The review of the petroleum and gas sector appears to lack sufficient consideration of the unique dynamics and operational challenges of the sector. This limited perspective, coupled with the constrained timeframes provided for stakeholders to engage on such a significant issue, risks undermining the review's effectiveness and inclusivity.

Importantly, this is not simply a question of achieving "conscious consistency" with the broader resources sector. The review must carefully consider the specific contributions, operations, and challenges of the petroleum and gas sector. Applying a one-size-fits-all approach may overlook critical nuances, leading to policies misaligned with the practical realities of the industry.

[1] Gas Inquiry 2017-2030, Interim update on east coast gas market, December 2024, pages 8, 108.

Until these issues are adequately addressed, it would be inappropriate to extend the application of these proposals to other resources Acts. Doing so risks compounding existing challenges across additional areas. Resolving these fundamental concerns is essential before considering any extension of QLRC's proposals to other production tenures governed by the remaining resources Acts.

The QRC's previous submissions have outlined some key concerns regarding the proposals, and it is unclear as to whether these concerns have been addressed. QRC's concerns remain applicable where such proposals are intended to apply to other resources Acts. These include:

- Regulatory efficiency, duplication of regulation and multiplicity of legislative frameworks - procedural redundancies.
- Legitimacy of standing - legitimate participation in the process.
- Lawfare and deliberate delays - misuse of the process to deliberately delay projects.
- The role of Land Court within the approval process.

The QRC recommends:

Extending Engagement Timeframes: Provide sufficient time for stakeholders in the petroleum and gas sector to engage meaningfully and offer informed input on proposed changes, thereby enhancing the review's effectiveness and inclusivity.

Avoiding a One-Size-Fits-All Approach: Develop policies that reflect the distinctive characteristics of the petroleum and gas industry, rather than prioritising alignment with other resource sectors. This approach will ensure that regulatory frameworks are practical, effective, and aligned with the realities of the industry.

Deferring Extension of Proposals to Other Resources Acts: Until the specific issues affecting the petroleum and gas sector are adequately addressed, the application of these proposals to other resource legislation should be deferred. Extending these proposals prematurely risks introducing further inefficiencies and misaligned policies across additional areas.

Regulatory efficiency, duplication of regulation and multiplicity of legislative frameworks

The duplication of regulatory and legislative frameworks in mining-related processes contributes to inefficiencies, unnecessary complexity, and increased costs without delivering proportional benefits. Key areas of concern include overlapping pathways for ML and EA applications, each requiring separate but often redundant steps and timelines. Similarly, the objections hearing process frequently revisits issues already addressed during the Environmental Impact Statement (EIS) process, requiring substantial additional time and resources for technical assessments and expert input in expensive and, at times, protracted Court processes.

Environmental considerations often overlap between the *Mineral Resources Act* (MRA) and the *Environmental Protection Act* (EPA), leading to redundant assessments and potential inconsistencies. These overlaps are further exacerbated by requirements from multiple regulatory bodies, necessitating repeated compliance efforts. Additional approvals, such as Progressive Rehabilitation and Closure Plan (PRCP) processes, duplicate existing assessments and create further opportunities for objections, extending timelines unnecessarily.

The current system permits multiple forums for objections and litigation, allowing similar issues to be raised repeatedly across the Land Court, Appeals Court, and Administrative Appeals Tribunals. This re-litigation of substantive issues does little to advance outcomes and can unnecessarily delay a resources project approval process.

Further, the *Regional Planning Interests Act* (RPIA) and the *Human Rights Act* (HRA) are frequently cited in objection processes for resource projects. Where objections to an application for an environmental authority (EA) progresses to Land Court, proponents initially prepare submissions to address the objections, but have, at times, been required to repurpose those submissions to address the criteria of the HRA. This process appears to be an afterthought rather than an integrated step, creating additional administrative burden and complexity.

Different pieces of legislation applicable to resources projects are handled by different courts, leading to inefficiencies. The RPIA operates under the Planning and Environment (P&E) Court, while matters related to MLs, EAs, and associated water licenses (AWLs) fall under the Land Court.

The "open standing" model for objections, which allows participation from parties without direct connection to a project, often results in repetitive objections, compounding delays and costs (this is discussed in the next section). The involvement of multiple courts for different pieces of legislation creates fragmentation, reducing procedural efficiency and increasing the risk of inconsistent rulings.

The QLRC's proposal to establish Independent Expert Advisory Panels for EA applications also introduces duplication, as regulatory bodies already possess the necessary expertise for decision-making. This undermines confidence in the State Government's existing assessment processes.

Similarly, the suggestion to create a supplementary Aboriginal and Torres Strait Islander Advisory Committee duplicates the provisions of the *Native Title Act 1993* and *Cultural Heritage Acts* and may be redundant where project proponents often commence engagement with native title groups earlier in the project's approval process. These processes could instead be refined and optimised to address any gaps.

Overall, the duplication of processes not only burdens proponents but also diminishes the efficiency of regulatory systems without enhancing environmental or cultural protections. Additionally, merits review by a court replicate much of the earlier assessment and decision-making efforts, adding unnecessary layers of scrutiny.

QRC believes these duplications could be addressed by streamlining existing processes, aligning regulatory frameworks, and consolidating decision-making to reduce redundant objections and relitigation. Such reforms would improve efficiency while maintaining the integrity of environmental or cultural heritage protections.

The QRC recommends:

- Addressing overlaps by minimising duplication in assessment and approvals processes for ML and EA pathways, as well as RPIA approvals and HRA assessments, to achieve better outcomes while reducing costs and delays.
- Reducing duplication and improving efficiency by providing proper litigation of issues in a single forum.
- Removing duplication of grounds available for objection between the *Mineral Resources Act 1989 and Environmental Protection Act 1994* processes.
- Developing a framework that provides for decisions to be made in a timely and predictable fashion, minimising the potential for re-litigation of issues in different fora.
- Decision-makers to continue exercising their existing powers to seek technical advice as needed while maintaining a streamlined and efficient approval process.
- Reconsidering the need for establishing a supplementary Expert Panels and Advisory Committee which may duplicate current processes.

Legitimacy of standing, the participation process and lawfare

The QRC holds concerns about the 'open standing' model for objecting to MLs and EAs. This model can lead to inefficiency, delays, and unfairness by enabling frivolous or unsubstantial objections. Extending this approach to other resource projects—such as petroleum and gas, greenhouse gas storage, and geothermal— risks increasing administrative burdens, undermining decision-making, and compromising regulatory certainty and resource development integrity.

The current processes allow any person to object to a mining lease, regardless of their location or direct impact. The broad statutory criteria enable objections on wide-ranging grounds, including '**public interest**' and whether there is 'any good reason' to refuse a grant. While public participation is crucial for community input, these provisions can be exploited or misused by groups with disingenuous or vexatious intentions, leading to lengthy and complex objection cases (also referred to as 'lawfare') that cause uncertainty, increased costs, and delays. This not only detracts from genuine community concerns but undermines Queensland's rigorous EIS processes, imposes unnecessary burdens on proponents, authorities, and taxpayers and delays certainty for local residents, businesses and landholders.

The QRC supports the right of individuals and groups with genuine and direct interests to raise objections and appeal decisions. However, the legislative framework must address the misuse of objection mechanisms by parties whose interests are not directly or materially affected.

The QRC resubmits the following recommendations:

- "Lawfare" and the related matter of standing must be addressed as a top priority.
- Broad-based participation should be discouraged by:
    - limiting rights to object and review to those who can demonstrate their personal interests are directly affected by the specific project or decision; and
    - restricting the scope of the subject matter, requiring objectors and review applicants to demonstrate a relevant connection to the statutory criteria that the relevant decision-maker must already consider, which would help both the project proponent and decision-maker to assess the objection's relevance.
- "Directly affected" should be clearly defined to comprise a specific subset of persons (in addition to the project proponent, and owners of land within the areas of a mining lease), such as neighbouring landholders, those adjacent to downstream watercourses, local government entities and any relevant Aboriginal and Torres Strait Islander party under the *Native Title Act* or the *Cultural Heritage Acts* whose interests are affected by the proposed project, such a definition may need to be expanded to ensure other bona-fide parties with interests directly affected by a project are appropriately included in the process.

(QRC Submission, October 2024)

The QRC also recommends:

- A statutory mechanism for proponents to compel objectors (particularly incorporated associations) to disclose to the court and the parties the interests they represent, including their relevant members and financial backers.
- That the State Government provide more clarity to the 'public interest' criteria that is often used as a basis for broad objections.
- Prioritising processes that address concerns of directly affected parties, while maintaining the public interest and aligning with Queensland's resources, environmental, and judicial review objectives.
- Developing a clear definition between "participation/submissions" (to inform the assessment and decision-making process) versus "objections" (which trigger a formal and costly process for resolving disputes). There is a real need to ensure public participation supports decision-making without allowing objections and reviews to unnecessarily derail projects that otherwise have the support of the assessing agency. The EPA as currently drafted is ineffectual and does not operate to prevent objections that are frivolous, vexatious or otherwise an abuse of process.

The role of Land Court

The QLRC has proposed significant changes to the role of the Land Court, suggesting that its considerations arise later in the regulatory sequence and subsequent to a decision by the chief executive administering the EPA approving the relevant EA and the Minister for Resources granting the relevant tenure. Under the proposals, the Land Court would review both mining and environmental decisions, combine judicial and merits review functions, whilst appeals would be determined by the Court of Appeal.

QRC does not support the expansion of the Land Court's role in this way, for several reasons:

- **Separation of Powers and Parliamentary Authority**: It is not appropriate for the Land Court to assume a role of final decision-maker that effectively overrides the authority of elected officials or decision-makers empowered by Parliament. Decision-makers, not the Court, are accountable for regulatory outcomes and are equipped to balance competing interests, with the authority to extract and commercialise a State asset (the relevant resource) a decision of the relevant Minister. If a decision-maker fails to appropriately discharge their responsibilities, the judicial review framework already provides recourse for interested parties to challenge procedural defects.
- **Preserving Ministerial Accountability**: Decisions regarding mining leases and environmental approvals are inherently policy-driven and involve balancing complex economic, environmental, and social considerations. These decisions are best made by elected officials and ministers, who are ultimately accountable to Parliament and the public.
- **Assessment Framework and Merits Review Scope**: Any expanded role for the Land Court, in the event the QLRC's proposals were to be implemented, must ensure that the Land Court does not disregard or duplicate the robust assessment provisions leading up to the ministerial decision.

It is critical to maintain a clear and streamlined process where decision-making powers are appropriately delineated. The proposed expansion of the Land Court's role risks creating regulatory uncertainty, additional delays, and does not reduce or address unnecessary litigation. This would ultimately hinder the efficiency of the approval process without providing meaningful benefit.

The QRC recommends:

- That any adjustments to the process must preserve ministerial accountability by maintaining the Minister as final decision-maker, uphold the integrity of the assessment framework, and ensure that decision-making processes remain transparent, efficient, and fair.

The QRC welcomes the opportunity for continued consultation with the QLRC as its proposals are refined, leading up to the final recommendations expected in mid-2025.

If you require any further information, please don't hesitate to contact my office.

Yours sincerely

Chief Executive Officer

Attachment 1 - Response to consultation questions

Attachment 1: QRC Submission

QLRC Conscious Consistency: Mining and Other Resource Production Tenures

QRCs submission on the QLRC's Consultation Paper on Conscious Consistency: Consultation proposals and questions

Threshold for reform

Q1. Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for considering reforms to the processes for deciding other resource proposals?

Yes, the QRC supports these principles.

Proposals for reform of the mining lease processes reform

Q2. Should we recommend that there is a consistent process by applying the consultation proposals for mining to other resource proposals?

No, the QRC acknowledges that different resource sectors often have unique characteristics and impacts and believes that these might not be adequately addressed by a one-size-fits-all approach.

Q3. Is the rationale for the consultation proposals for mining also appropriate and justifiable for other resource proposals? If so, would the consultation proposals need to be tailored, and if so, how?

No, the QRC does not support this, for the reasons expressed in response to Q2, above and cover letter.

Participating in the Government's decision-making process

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.

Q4. What should be the scope and extent of public participation in processes to decide other resource proposals?

The QRC believes the distinction between public notification and participation, which are essential to the decision-making process, and objections and reviews, which can hinder progress, must be clearly defined. Public notification fosters broad community input, while objections and reviews often lead to prolonged delays in project approvals, even when relevant assessing agencies have undertaken full review and determined to fully support the relevant project. These delays can:

- undermine the credibility of Queensland's rigorous Environmental Impact Statement (EIS) processes;

- unfairly burden project proponents, assessment authorities, the judiciary, and Queensland taxpayers with unnecessary costs and setbacks; and
- postpone clarity for local residents, businesses and landholders who rely on timely decisions about whether a project will proceed.

To address this, the right to commence objection and review processes should be limited to those with interests directly affected by the project. This is distinct from public participation, which remains vital for inclusive decision-making. The existing regime permits any person or entity —without direct personal impact—to unnecessarily delay or obstruct projects via the objection and review processes.

Furthermore, greater clarity is needed regarding the proposed Advisory Committee. The timelines associated with standing up a project-specific committee present significant concerns. Processes such as briefing members, engaging stakeholders, preparing reports, making recommendations, responding to those recommendations, and resolving conflicts will inevitably extend decision-making timeframes. How will these increased timeframes be managed or capped? Will provisions to accommodate and respect participants' contributions be written into the relevant Acts? Further, project proponents often engage with regulatory bodies in advance of applying for an approval ("pre-lodgement conferences") to obtain greater certainty on approval processes. The appointment of an Advisory Committee at a later stage in the approval process greatly diminishes the confidence and certainty in the approval process.

The selection process for committee members also requires careful consideration. If committee members are to take on an expert consultancy role, their remuneration will need to be addressed. This may necessitate higher application fees to offset the government's growing reliance on external consultants.

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.

Q5. Should the consultation proposal for an online portal apply for other resource proposals? Are there any additional notification requirements?

The QRC supports this proposal in principle. However, consultation with industry is required throughout the development of such a portal.

Deciding applications

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.

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.

Q6 How should the following interests be considered in the decision-making processes for other resource proposals:

(a) the public interest?
(b) the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage?

The response provided to question 4 also applies to question 6.

In response to P3, the QRC requests QLRC give clarity on the following before inviting further commentary from stakeholders on the proposal :

- How long will it take to establish a project-specific committee for each application?
- How would committee members be selected? Will this involve the usual procurement processes, such as open, transparent, and competitive tendering?
- How much additional time will be required in the application process to accommodate the establishment of the committee? This includes developing its scope and parameters, briefing members, engaging stakeholders, conducting assessments, providing recommendations to the regulator and applicant, responding to recommendations, and delivering a final report to the decision-maker.
- Will the decision-maker be bound by the committee's recommendations? For example, in cases where a government decision conflicts with the advice of independent expert consultants, could this affect trust and the government's reputation within the community?
- In periods of high industry activity, when resource companies, consultants, and regulators are stretched and competing for the same limited pool of skilled personnel, will academics become the primary candidates for committee membership?
- How will conflicts of interest among committee members be identified and managed?

In response to P5, the QLRC should consider the following:

- The obligation to consider human rights in decision-making already exists and is established under the *Human Rights Act 2019*, although the QRC welcomes opportunities to remove multiple approval pathways and minimise duplication.
- Proponents already engage with Indigenous groups at an early stage in the approval lifecycle with a view to complying with existing State and Federal legislation (specifically, the *Cultural Heritage Acts* and the *Native Title Act*). This risks adding an unnecessary and burdensome impost and risks to working relationships through engaging with those who may not be considered authorised to speak on behalf of country.
- With respect to the public interest, this is a mandatory consideration under the existing resource and *environmental Acts*.

Review

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.

Q7. Should the review consultation proposal for mining apply for other resource proposals?

The QRC is concerned about proposals to grant the Land Court a merits review role while still permitting judicial review challenges from parties without a direct interest. Such changes risk undermining the core objectives of the review by creating redundant processes that lead to higher costs, inefficiencies, and unnecessary delays.

Other matters

Q8. Are there any issues or opportunities arising from interactions with decisions made under other Acts that we should consider?

Many of these proposals appear to not take into account the *Cultural Heritage Act, Native Title Act, Human Rights Act, Water Act* and *the Regional Planning Interests Act*.

Q9. Is there anything else you would like to tell us about the current processes for deciding other resource proposals or any additional options for reform of these processes you would like us to consider?

When considering processes for other resource proposals or additional reform options, the QRC recommends that the following principles should be emphasised:

- **Prioritising Legitimate Interests**: Focus on addressing the concerns of parties with direct and legitimate interests while upholding the public interest and aligning with the objectives of Queensland's resource, environmental, and judicial review legislation.

Efforts should aim to minimize duplication between the mining lease and environmental authority pathways.

- **Rigorous Cost-Benefit Analysis**: Conduct thorough cost-benefit analyses to evaluate trade-offs among regulatory, environmental, and social outcomes. This ensures balanced decision-making that considers all relevant factors.
- **Clear Distinction Between Public Participation and Objections**: Differentiate public participation, which is integral to decision-making, from objections and reviews. This distinction helps avoid unnecessary disruptions to projects already endorsed by assessment authorities.
- **Effective Checks and Balances**: Establish robust checks and balances to prevent costly and time-consuming objections from parties without a direct stake. This will streamline processes and focus on addressing significant and relevant concerns.