PRIVATE & CONFIDENTIAL

3 October 2024

President Fleur Kingham
Chair
Queensland Law Reform Commission
Level 30
400 George Street
BRISBANE QLD 4000

By email: LawReform.Commission@justice.qld.gov.au; [redacted]

Dear Chair

Review of mining lease objections processes – Consultation Paper (July 2024)

1. The Bar Association of Queensland (the **Association**) welcomes the opportunity to make submissions to the Queensland Law Reform Commission's Consultation Paper "*Review of mining lease objections processes*" dated July 2024 (the **Consultation Paper**).

2. The Consultation Paper has been considered, and this response prepared, with the assistance of the Association's Environmental, Planning and Property Law Committee.

3. For convenient reference, this submission repeats the consultation proposals and questions in the order they are presented within Appendix B to the Consultation Paper.

Guiding principles

Q1: *Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for reform of the current processes?*

4. The Association agrees with the guiding principles as set out in Figure 2 of the Consultation Paper.

The current processes

Q2: *Do you agree* [that the Consultation Paper has described] *the strengths and problems of the current processes? Are there others not mentioned which are appropriate to be considered for reform of the current processes?*

5. The Association agrees with the summary of the strengths and problems identified at paragraphs 28 to 48 of the Consultation Paper. In particular, the Association endorses the views expressed at paragraphs 30 and 31 of

BAR ASSOCIATION OF QUEENSLAND
ABN 78 009 717 739
Ground Floor
Inns of Court
107 North Quay
Brisbane Qld 4000
Tel: 07 3238 5100
Fax: 07 3236 1180
DX: 905
chiefexec@qldbar.asn.au
Constituent Member of the Australian Bar Association

the Paper as to the strengths of the Land Court process and the specialist expertise held by the Court to address the complexities that arise in mining objections proceedings.

6. As to the problems with the current processes, the Association highlights five important issues.

7. ***First***, as identified in the Consultation Paper, the objections proceeding before the Land Court is an administrative proceeding. The final outcome of that proceeding leads to a recommendation to the relevant decision-maker under the *Mineral Resources Act 1989* (**MRA**) and/or the *Environmental Protection Act 1994* (Qld) (**EPA**).

8. While the Land Court's decision is a recommendation, the recommendation is of particular importance. In most cases, the relevant decision-maker adopts the recommendation that is made by the Land Court. As a consequence of this, rather than waiting for a decision to be made by the Minister or the administrative authority (as the case may be), dissatisfied parties to an objection proceeding frequently resort to judicial review of the recommendation. This, in turn, leads to further complexities, costs and delays, to the decision-making process. An extreme illustration of this is the various proceedings concerning the *New Acland* coal mine – the initial objections proceeding commenced in 2015 and the final objections proceeding concluded in 2021.

9. The Association submits that the uncertainties, complexities and costs associated with this feedback loop should be avoided. The Association endorses a proposal(s) which streamlines the objections process and results in a decision for all parties as soon as is possible.

10. ***Secondly***, one of the complexities of the existing process is the different decision-making pathways under the MRA as opposed to the EPA. Under the MRA, an objector lodges an objection to a mining lease application.[1] That application (together with any objections) is referred to the Land Court for a recommendation.[2] No decision (whether in draft or otherwise) is made on the application until after the Land Court's recommendation is made.[3] This contrasts to the position under the EPA when an objection is lodged to an application for an environmental authority (or amended environmental authority). In that instance, an initial decision on the application is made,[4] prior to the referral of the application and objections to the Land Court.[5]

11. Where applications are referred to the Land Court, the MRA and the EPA treats the parties to the proceedings differently. The EPA expressly provides that the parties to the proceedings are the administering authority, the applicant, any objector for the application and anyone else decided by the Land Court[6]. The MRA contains no such provision, although in practice, the only parties to the proceedings are the applicant and any objectors.

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[1] See section 260 of the MRA.
[2] See section 265 of the MRA.
[3] See section 271 of the MRA.
[4] See Division 2, Subdivision 2 of the EPA.
[5] See section 185 of the EPA and section 265 of the MRA.
[6] See section 186 of the EPA.

12. These legislative differences mean that in proceedings relating to mining lease applications (and objections thereto), neither the Court nor the parties to the proceeding have the benefit of a draft decision (or initial decision) under the MRA or the views of the Department under the MRA on the evidence presented before the Court. This contrasts to proceedings relating to environmental authority applications where the Court (and the parties) not only have the benefit of an initial decision but also have the benefit of the Department's views on the evidence presented before the Court. The result is that the parties and the Court are better informed as to whether the environmental authority will be granted and, if so, the likely conditions that will be imposed on the environmental authority.

13. In the Association's view, any proposal for reform should include a proposal for a decision (or at least an initial decision) on both applications for mining lease and applications for environmental authority (or amended environmental authority) before the applications are referred to the Land Court. The Association also recommends that the parties to the proceedings include a representative(s) with interests under both the MRA and the EPA – preferably, a representative of the decision-maker under each Act.

14. ***Thirdly***, as identified in the Consultation Paper, the primary way to participate in the current processes is by objecting to an application. The objection automatically triggers referral of the relevant application(s) together with the objections to the Land Court. This results in an adversarial and often lengthy and expensive hearing, made more difficult by the restrictions placed upon both the objector and the Land Court as to the scope of the objection and the evidence that may be received by the Court on that objection.[7]

15. The restrictions imposed, in more cases than not, often lead to broad and/or unparticularised objections being lodged to applications. In many cases, those objections include grounds of objection raising most (if not all) of the statutory criteria to be considered under the MRA and/or EPA.

16. While the casting of objections in this way protects the interests of objectors that do not wish to be confined in leading the evidence they consider appropriate, it ultimately means that the real issues are, not infrequently, only defined after lay and expert evidence is delivered. This not only increases costs but limits the opportunity for the applicants (and where appropriate, the statutory party) to engage with objectors on conditions or other practical measures that may resolve the relevant objector(s) concerns.

17. A further issue arising from these restrictions is the ability for an objector to respond to any additional information provided by the applicant or any change by the applicant to its mining proposal during the proceedings.

18. As to the latter, it is quite common for the applicant to revise its mining proposal during the proceedings either in response to the objections that have been raised, as a result of further expert evidence in the proceedings or because of the effluxion of time that has occurred since the mining application was lodged.[8] If the objections lodged are cast in

[7] See section 268(3) of the MRA as well as the observations in *ACI Operations Pty Ltd v Quandamooka Lands Council Aboriginal Corporation* [2002] 1 Qd R 347 at pp.360-361, *Lee v Kokstad Mining Pty Ltd* [2008] 1 Qd R 65 at [9] and *Symbolic Resources Pty Ltd v Kingham & Ors* [2020] QSC 193 at [125] – [132].
[8] See *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 4)* [2022] QLC 3 at [65].

sufficiently broad terms, then there may be no issues of procedural fairness arising from the change to the mining proposal.[9] If, however, the objections lodged are not cast in sufficiently broad terms, then there will be a lack of procedural fairness – the objector cannot not amend its objection to respond to the new (or changed) proposal or lead evidence outside the scope of its existing objection.

19. In the Association's view, while these restrictions are procedural in nature, they can result in significant issues for all parties to an objections proceeding. They result in additional costs and delays and, as set out above, can lead to procedural unfairness.

20. ***Fourthly***, the current process does not accommodate the vast differences in the types of mining lease applications or objections that may be lodged. For the reasons set out in more detail below, the Association considers that there is scope to modify the processes depending upon the scale, size or complexity of the project and environmental or community concerns. The Association considers that a one size fits all process may lead to unnecessary complexity and costs in projects with minimal environmental or community impacts (for example, a small fossicking mining lease).

21. ***Lastly***, as identified in the Consultation Paper, several other Queensland and Australian laws apply to mining projects. This necessarily creates complexities (and in some cases, duplication) in the mining objections process, particularly where decisions made under other Acts may impact upon the decisions whether to approve a mining lease application and/or environmental authority application.

22. One key issue which often arises concerns the impact of the *State Development and Public Works Organisation Act 1971* (Qld) (**SDPWO Act**). In this regard, the SDPWO Act makes provision for 'co-ordinated projects' – projects that require a rigorous and comprehensive environmental impact assessment, involving whole-of-government coordination.[10]

23. The declaration of a project as a coordinated project initiates a statutory environmental impact evaluation procedure under part 4 of the SDPWO Act. For mining projects, this routinely requires the preparation of an environmental impact statement (**EIS**) for the project, public notification of the EIS, the opportunity to make submissions on the EIS and, ultimately, the preparation of the Co-ordinator General's report (**CG Report**).

24. A CG Report can contain stated, imposed or recommended conditions for a mining project.[11] Where the CG Report includes stated conditions for a mining lease or an environmental authority, those conditions must be included in any mining lease,[12] or environmental authority that may be issued.[13] Further, for any environmental authority, any other condition that is imposed on the authority cannot be inconsistent with a stated condition contained in the CG Report.[14]

25. In the experience of the Association's members, the interplay between the conditions in a CG Report and the conditions that may be imposed on a mining lease or environmental

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[9] As was the case in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 4)* [2022] QLC 3.
[10] See Section 26 of the SDPWO Act; See also: https://www.statedevelopment.qld.gov.au/coordinator-general/assessments-and-approvals/coordinated-projects.
[11] See Division 5, Division 6 and Division 8 of the SDPWO Act.
[12] See Sections 45 and 46 of the SDPWO Act.
[13] See Section 47C of the SDPWO Act and Sections 190(3) and 205(2) of the EP Act.
[14] See Sections 190(3) and 205(4) of the EPA.

authority is complex. In objections proceedings, disputes can arise as to whether an additional condition is inconsistent with a stated condition in an environmental authority and where, a stated condition having been imposed, whether that stated condition is appropriate. Further disputes can arise where a condition in the CG Report is not a stated condition (for example, an imposed or recommended condition as to offsets) as to the consequences of that condition for the resolution of the proceeding. Those disputes, in turn, create difficulties for the Land Court in making its recommendation, particularly with respect to the appropriate conditions that may be imposed on an environmental authority. Outside of the objections proceeding process, the decision maker under the MRA or the ERA is likely to face the same difficulties when deciding whether a mining lease or environmental authority should be approved and if so, on what conditions.

26. The Association considers that the uncertainties arising from the interplay between the SDPWO Act and the objections process is a weakness of the current system. To the extent possible to do so, the Association considers that any proposal should take into consideration whether amendments should be made to the relevant Acts to further clarify the paramountcy of the Coordinator General's conditions and give guidance on the meaning of an inconsistent condition.

Participating in the Government's decision-making processes

Proposal 1: 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

Q3: What are your views on proposal 1?

27. The Association agrees with the proposal to remove the Land Court objections hearing pre-decision. It agrees with the problems identified in paragraph 68 of the Consultation Paper, particularly that the current processes frame participation as a contest and impose an adversarial Court process before the decision is made on each application. Removing the Land Court from the pre-decision process and introducing an integrated, non-adversarial participation process before the Land Court is more in line with the principles of meaningful participation.

28. Further, as set out above, the Association considers that one weakness of the current processes is that no decision is made by the decision-maker under the MRA before the application and objections are referred to the Land Court. The Association is of the view that the proceedings will be more efficient if a decision (whether initial or not) is made on the mining lease application and the environmental authority application prior to the Land Court proceedings. This will particularly be the case if reasons for decision are given by the relevant decision-maker and representatives for the decision maker participate in the Land Court proceedings. In this regard, the Association submits that the current statutory party's role has, and continues to be, of assistance to the Court and

the parties on the appropriate recommendation to be made under the EPA. The Association considers that the inclusion of representatives for the MRA, in a like role, will similarly assist in the hearing process. The removal of the Land Court objections hearing pre-decision will align sensibly with a proposal that decisions be made prior to the Land Court hearing.

29. As to the inclusion of an integrated, non-adversarial participation process, the Association understands that the present proposal is for an expanded participation process prior to the hearing in the Land Court. The Association endorses this approach, particularly insofar as it proposes an integrated participation process for mining lease and environmental authority applications, provided that any proposed changes to the MRA and the EPA are consistent with each other.

30. As part of the participation process, the Association supports the proposal of an Aboriginal and Torres Strait Islander Advisory Committee for relevant proposals and the design considerations for that committee set out at paragraph 78 of the Consultation Paper. Further, given that fossil fuels have climate change impacts statewide,[15] the Association suggests that the composition of the Committee for fossil fuel projects should be reflective of those impacts, including those relevant under the *Human Rights Act 2019* (Qld) (**HRA**).

31. The Association is also interested to understand how the 'South Australia State Aboriginal Cultural Heritage Committee' has been received in South Australia. For instance, how does the Committee promote certainty, efficiency and strong and genuine engagement with Aboriginal Peoples and Torres Strait Islander Peoples and their communities? Are practitioners in South Australia largely supportive of the Committee? Depending on the answers to these questions, the Association's preliminary view is that the South Australian model may be a suitable model to adopt for the Queensland jurisdiction.

Q4: What forms of participation should be included in the new participation process?

32. At present, the standing rules in the objections processes largely align with the standing rules to object to projects which are notifiable under the *Planning Act 2016* (Qld) (**Planning Act**).[16]

33. While the Association is aware of complaints that open standing and unlimited grounds enable abuses of process, the Association notes that a significant factor for any proposed project is public interest considerations. Public interest has been described as a wide-ranging enquiry in administrative decision-making and, in the case of objections proceedings, has been described as a factor that should be given the "*widest import confined only so far as the subject matter and the scope and purpose of the statute may enable"*.[17]

34. To the extent objections raise matters that are frivolous, vexatious or otherwise an abuse of process, the present processes enable the Land Court to strike out those objections.[18]

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[15] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 at [1016].

[16] *Planning Act 2016* (Qld), section 53.

[17] *Adani Mining Pty Ltd v LSCC & Ors* [2015] QLC 48 (MacDonald P) at [43] citing *O'Sullivan v Farrer* (1989) 168 CLR 210 at 216.

[18] See Section 188A of the EPA and Section 267A of the MRA.

In practice however, where the objections are wide-ranging, unparticularised or, raise most (if not all) of the factors under the EPA or the MRA, it becomes more difficult for this power to be used at an early stage. Often, as indicated above, the real issues in dispute are not revealed until lay and expert evidence is filed and by that stage, there is a real and substantive question as to whether it is appropriate to strike out an objection or grounds of objection at such a late stage in the proceeding.

35. In the Association's view, a balance should be struck between the need to ensure that the public is able to comment and participate in decision-making, and the need to ensure that the decision-making is efficient and fair to all parties. In this regard, the Association is conscious that open standing and unlimited grounds of objection can, in some cases, lead to lengthy delays in decision-making. Further, open standing and unlimited grounds of objection can, if not managed appropriately, lead to procedural unfairness for an applicant in having to respond to numerous objections on wide ranging (and in some cases, unparticularised) grounds.

36. The Association considers a proposal which enables open standing and unlimited grounds of objection for pre-decision making will ensure that the public interest is adequately addressed. Once a decision is made, and the matter is referred to the Land Court, the Association considers that there is room for a more restrictive approach to be taken so as to ensure that the real issues are identified early in the proceedings and to ensure that procedural fairness if given to all parties. The Association cautions that allowing open standing and unlimited grounds at both stages may lead to a more prolonged and complex process than the current objections processes.

37. As to the proposed models of public participation prior to decision-making, the Association supports the models for participation outlined in paragraphs 92 to 107 of the Consultation Paper, provided that they are genuinely open and consultative. If the models are not genuinely open and consultative, the Association considers there is a risk that members of the public may not wish to participate because of concerns that their views may not be taken into consideration and/or that the issues they raise may have consequences in any later hearing before the Land Court.

38. As noted above, subject to the identification and adoption of a suitable model, the Association supports the proposal for an Aboriginal and Torres Strait Island Advisory Committee as a constant community advisory committee, to assist at an early stage in identification of the cultural heritage, native title or other indigenous community implications of a proposal, and to make recommendations with respect to such matters from the perspective of the indigenous community.

Q5: How would removing the objections hearing affect private interests?

39. The Association agrees that proposed projects can significantly affect the rights of landholders and other miners (private interests) as well as native title holders (communal interests).

40. In practice, the concerns of private interest holders and native title holders are often raised in objections proceedings. To the extent they are not, other legislative processes are in place to ensure that those interests are adequately addressed.

41. As noted in the Consultation Paper those processes include separate processes for landholder compensation and native title. Insofar as overlapping tenements and the

interests of other miners, the recent introduction of section 271AB to the MRA also provides a pathway for a decision-maker to consider the disadvantage to other miners associated with any proposed project.

42. However, the Association agrees that the Land Court's recommendation in an objections proceeding may have an impact on private and communal interests. This is particularly so where compensation is concerned. Compensation is affected through the way in which a mine is operated. For example, the manner, timing and staging of the construction of a mine often informs compensation. It is not unusual to have compensation determined after an objections hearing.

43. The removal of the Land Court prior to decision-making may impact on private and communal interests in the sense that the Land Court's recommendation may not be available when, for example, compensation issues are addressed. To remedy this, the Association suggests that amendments be made to the relevant Act(s) to allow issues such as compensation to be revisited post any decision by the Land Court. In this regard, one possible amendment would be to make clear that a decision by the Land Court (or a decision to grant a mining lease), if it is different, constitutes a material change for the purposes of section 283A and 283B of the MRA.

Q6: Should there be tailored participation processes depending on the nature of the project? If so:

(a) *what criteria should be used to determine different requirements for participation (for example, size, nature of risk, interest or other factors)?*

(b) *what should be the forms of participation?*

44. The Association sees merit in separate participation processes for pre-decision-making as against participation processes (or standing) for a Land Court hearing post decisions being made.

45. For the participation processes prior to pre-decision-making, the Association cautions against the approach outlined in paragraphs 118 and 119 of the Consultation Paper. This process has the potential to give rise to situations where, due to an apparent absence of community concern for a project, an important step in the process (i.e., community engagement) is usurped in situations where the scale, risk and impact of the project plainly categorise it as major and likely to impact upon the community. To this end, such a tailored participation process may give rise to situations where projects proceed without meaningful interrogation due to the absence of active community engagement. Further, benchmarking against community concern alone is inconsistent with intergenerational equity and the precautionary principle and is affected by the imposition of participation for many marginalised groups.

46. An important matter to be addressed in any such tailored participation process is the extent to which it may exclude participation by Aboriginal Peoples and Torres Strait Islander Peoples who may be directly affected. Mining proposals, even those involving small areas of land or limited on-site activities, may have potential to significantly interfere with indigenous cultural heritage or other indigenous community interests. The involvement of the proposed Aboriginal and Torres Strait Islander Advisory Committee may be particularly important if a tailored participation process is to be adopted. Any potential tailoring of the participation process may need to consider, and address,

potential indigenous community impacts (for example, by exclusion or modification of tailoring in particular circumstances relevant to indigenous cultural heritage or native title issues).

47. That said, the Association considers there is room for the tailored approach canvassed in paragraph 120 of the Consultation Paper for discrete projects that do not warrant a full review (e.g., small fossicking projects). The tailored approach could attach to particular licences or over specific benchmarks within an environmental authority (e.g., once impacts such as water, dust, and/or noise have progressed past the edge of the grant or for fossil fuel extraction).

48. For participation processes post decision-making, the Association considers a more restrictive approach can be taken. As set out above, allowing open standing and no restrictions before the Land Court has the potential to lead to lengthy delays and increased costs. It also raises additional issues if the matters raised in the post-decision-making process differ from those raised in the pre-decision-making process; the most obvious being that those issues were not before the decision-maker at the time of making their decision. The Association's views on the more restrictive standing for the Land Court hearing are addressed in further detail below.

Q7: How can we ensure that the new participation process is accessible and responsive to the diverse needs of communities?

49. The Association considers that a participation process which is multi-faceted is more likely to ensure that the process is accessible and responsive to the diverse needs of communities.

50. At present, the only model for participation prior to an objections hearing is to lodge a submission (for an EIS) and/or to lodge an objection to a mining lease application or application for an environmental authority.

51. During the proceedings, an objector can choose to be an active or non-active objector. An active objector is an objector that wishes to participate in the process by leading evidence or making submissions during the hearing. A non-active objector is an objector that that does not wish to participate but wishes its objection nonetheless to be taken into account by the Land Court in making its recommendation.

52. In the case of Aboriginal or Torres Strait Islander peoples, the Land Court recently heard from First Nation witnesses on country and in accordance with a First Nations protocol in the recent *Waratah* objections proceeding. This was, in the Association's understanding, the first time the Court had undertaken this approach.

53. The present model of lodging an objection and/or submission may impose restrictions on members of the community including First Nations peoples who do not communicate predominately or usually in writing. The Association considers that, in addition to submissions (or objections), a further method of participation (whether an information session or public meeting) may ensure that those members of the community that may have been excluded (or felt excluded) previously are able to participate. In the case of First Nations peoples, the Association recommends that this approach should be taken in addition to the establishment of the proposed Aboriginal and Torres Strait Islander Advisory Committee.

54. Also, the Association considers that meaningful participation also requires appropriate notification to be given to ensure that members of the community are aware of any proposed project and the opportunity (and ways) in which their views may be heard on that project. In this regard, as set out below, the Association endorses the establishment of a central online Governmental portal to assist with notification.

55. As to the Land Court hearing, the use of active and non-active objectors ensures that objectors who do not wish to participate in the hearing still have their concerns considered by the Court. While this process increases accessibility for non-active objectors, in practice, it can lead to complications for the applicant, the statutory party and the Court in understanding the nature of the objection raised, the evidence that may support or detract from the objection and the appropriate response to that objection (whether by conditions or some other practical measure). The Association considers that if the notification and pre-decision-making participation stages are made more accessible, then it would be obviate (or at least reduce) the need for non-active parties in any hearing before the Land Court.

56. Insofar as the participation of Aboriginal or Torres Strait Islander peoples in Land Court hearings are concerned, the Association considers that the First Nations protocol adopted in the *Waratah* proceedings was a step forward to ensuring First Nations people can meaningfully participate in the proceedings. The Association does not consider that any legislative changes need to be made to include or address the protocol. It suggests that the appropriate way in which this may be managed is through practice directions to be issued by the Court as to the way in which evidence from Aboriginal or Torres Strait Islander peoples is managed and received in that Court.

Proposal 2:	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

Q8: What are your views on proposal 2?

57. The Association sees merit in a central online portal to facilitate public notifications and to give up-to-date information about mining proposals and decisions including the particulars detailed in paragraph 140 of the Consultation Paper.

58. From a legislative perspective, section 156 and 157 of the EPA already makes provision for the publication of application notices and documents on a website and public access

to those documents, with regard to site-specific applications. The EPA will need to be amended to insert notification requirements. The MRA will also need to be amended to provide for publication in an online format (section 252A) and provisions similar to sections 156 and 157 of the EPA will need to be included in the MRA.

Q9: What additional notice and information sharing requirements should be included in legislation as part of the new participation process?

59. The Association considers that an additional public notice requirement is required for Aboriginal and Torres Strait Islander peoples. Acknowledging that the use of written notification may have limitation (for instance, for notification of those people not do predominantly or usually get their information in writing), the Association supports the proposals at paragraph 144 of the Consultation Paper to ensure that Aboriginal and Torres Strait Islander peoples have adequate notice of any proposed project.

60. Otherwise, the Association is of the view that no additional notice or information-sharing requirements are necessary as the existing notification and publication requirements, combined with the proposed online forum will have maximum reach to interested parties.

Q10: What direct notice requirements should be included for applications for:

(a) *mining leases*

(b) *associated environmental authorities*

61. The Association is of the view that amendments should be made to the MRA and the EPA to ensure that the direct notice requirements are consistent with each other. It considers that the approach in the EPA for direct notice of an EIS (as set out at paragraph 149 of the Consultation Paper) is an appropriate course to take for both Acts to ensure that notice is given to all directly interested parties.

62. Otherwise, the Association is of the view that, subject to the use of an online portal permitting registration of interested parties, there is no need for additional direct notice requirements. The registration process is in effect an 'opt-in' process for alerts in relation to mining lease applications. This registration ought not be limited to specific parcels of land, though that may be an option, and should permit the broadest possible notification process.

Q11: What else is required to notify Aboriginal peoples and Torres Strait peoples who may have an interest in the mining proposal?

63. As set out above, the Association supports the suggested notification proposals for Aboriginal peoples and Torres Strait peoples set out in paragraph 144 of the Paper.

64. Otherwise, the Association is of the view that, subject to the use of an online portal permitting registration of interested parties, there is no further need for additional notification requirements. The Association also notes that there may be an opportunity for the use of the Mining Lease Application Form to be amended to identify any Native Title groups, or recognised indigenous representative groups in the area, in a similar way as is required by the present question 6. In the event that groups are identified, a direct notification could occur through the portal to those identified parties.

Deciding each application

Proposal 3:	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

Q12: What are your views on proposal 3?

65. The Association sees merit in the formation of an Independent Expert Advisory Panel comprised of experts appointed by the Government with recognised expertise in matters relevant to the assessment of environmental authority applications.

66. As to the composition of the panel, the Association considers that while relevant guidance can be taken from the Independent Expert Scientific Committee (**IESC**) and New South Wales's Independent Expert Advisory Panel for Mining, it considers that the panel should also include experts in:

    (a) cultural heritage and Aboriginal and Torres Strait Islander environmental and social knowledge; and

    (b) greenhouse gas emissions and climate change.

67. As to the former, it considers that the inclusion of an expert in cultural heritage and Aboriginal and Torres Strait Islander environmental and social knowledge will assist the decision-maker in understanding any issues raised either by the Aboriginal and Torres Strait Islander Peoples Committee or any other participant regarding impacts of a proposed project on Aboriginal and Torres Strait Islander peoples.

68. As to the latter, in the Association's experience, the impact of greenhouse gas emissions and climate change is raised in many objections. The science regarding these matters is complex and ever evolving and the Association considers that the decision-makers would be better assisted by expert scientific advice on these issues prior to making a decision.

69. Finally, while the Association supports the formation of an Independent Expert Advisory Panel, it recommends that clear legislative guidance be given so that any report(s) produced by the panel can be understood not only by the decision-maker but by any future parties to the Land Court hearing (or the Land Court itself). In this respect, any report should make clear the questions that the Independent Expert Advisory Panel were asked and the material(s) they were provided with in order to answer those questions.

Q13: What should be the criteria to form an Independent Expert Advisory Committee for an environmental authority application?

70. The Association considers that it is important to set criteria around the suitability of projects to be considered by the Independent Expert Advisory Committee. It does not consider that the involvement of the Independent Expert Advisory Committee will be necessary in smaller or simpler projects, for example a small fossicking project. It does, however, consider that the referral could be triggered by, for example:

    (a) the scale, risk and impact of the project;

    (b) whether the project is a coordinated project declared as such under the SDPWO Act;

    (c) whether the application is a site-specific application;

    (d) whether, in the case of amendments to environmental authority application, the application is a major or minor change;

    (e) whether the project proposed is a greenfield or brownfield site; and

    (f) the level of community concern.

71. As to the concern of government discretion, the Association does not share the views expressed in the Consultation Paper that referral of matters to the Independent Expert Advisory Committee should not be a matter of government discretion. The Association suggests that a combined approach be taken whereby specified criteria be listed (such as those identified above) and a final criterion could be added to allow the government to refer the matter to the committee for "*any other reason"*.

72. In terms of the composition of the committee, the Association supports the appointment of generalised experts as used in other models, such as the IESC model and the New South Wales's Independent Expert Advisory Panel for Mining. It suggests that the eligibility criteria for appointment ought to include suitable post graduate level educational qualifications and recognised licenses, combined with a minimum of 10 years in the field experience.

73. Insofar as cultural heritage and native title is concerned, the Association suggests that the eligibility criteria be reflective of the scope of matters to be considered by the decision-maker – including native title, cultural heritage and human rights matters. Regardless of the selection criteria included, the Association recommends that the criteria for appointment be both transparent and publicly available.

Proposal 4:	The statutory criteria in the Mineral Resources Act and the Environmental Protection Act should be amended to require the relevant decision-maker to consider: (a) for decisions about mining lease and associated environmental authority application – information generated through the new participation process (b) for decisions about environmental authority applications – any advice of the Independent Expert Advisory Committee.

Q14: What are your views on proposal 4?

74. The Association supports the amendments to the statutory criteria as proposed.

75. To the extent an amendment(s) is made regarding consideration of information generated through the new participation process, the Association recommends that legislative guidance be given as to how participation in the form of meetings or information sessions (or other forms of oral participation) be recorded. In this regard, the Association supports the types of reports identified at paragraph 175 of the Consultation Paper.

76. Separately, the Association notes that the Consultation Paper does not address the participation of the applicant for a mining lease and/or environmental authority in the new participation process. While the Association commends the proposal to allow further participation to reflect community needs, it also recommends that the Commission consider how the applicant may respond to information generated in the new process. To do otherwise may result in procedural unfairness to the applicant and/or may limit the potential for practical solutions to be developed at an early stage which may address, at least in part, community concerns.

77. The Association suggests that, where appropriate, amendments should also be made to the process to enable the applicant to reply to information generated through the new participation process.

Proposal 5:	The statutory criteria in the Mineral Resources Act and the Environmental Protection Act should be amended to require the relevant decision-maker to consider the rights and interests of Aboriginal and Torres Strait Islander peoples in land, culture and cultural heritage

Q15: What are your views on proposal 5?

78. The Association does not object to amending the MRA and the EPA as proposed.

79. However, the Association agrees with the observation at paragraph 181 of the Consultation Paper that careful consideration must be given to how the statutory criteria are drafted. In this regard, the Association recommends that, if the statutory criteria are amended as proposed, a careful approach is taken to ensure that inconsistencies between the MRA, EPA, *Native Title Act* 1993 (Cth), Cultural Heritage Acts and the HRA (to the extent it relates to section 28 of that Act) are minimised. The Association considers that inconsistencies in approach across these Acts may result in confusion as to how the rights and interests of Aboriginal and Torres Strait Islander peoples may be addressed and taken into consideration.

80. In this regard, the Association recommends that consideration be given to ensuring that any statutory criteria adopted for a particular topic or issue deal comprehensively and finally with all matters relevant to the particular topic or issue for the mining proposal, rather than leave particular matters to be later dealt with under other legislation. Any deferral of matters to a later time may result in matters being left unaddressed, involve

duplication, or give rise to inconsistencies between obligations or between obligations and authorised activities. For example, it may be considered more appropriate to include statutory criteria expressly addressing cultural heritage under the Cultural Heritage Acts (such as through a cultural heritage study under one or other of those Acts) rather than to defer such matters for consideration at a later time under those Acts.

81. In this regard, the Association supports the proposal in paragraph 178 of the Consultation Paper for inclusion of "*an additional statutory criterion in the Mineral Resources Act 1989 and the Environmental Protection Act 1994 requiring decision-makers to consider Aboriginal and Torres Strait Islander rights and interests"*. It is noted, however, for the reasons stated above, that approach may involve more than one additional criterion.

Q16: Should the decision-maker for the mining lease application be required to consider the decision (and reasons for decision) of the decision-maker for the environmental authority application in reaching their decision on the statutory criteria for:

(a) *public interest?*

(b) *adverse environmental impact?*

(c) *the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage?*

(d) *any other criteria?*

82. The Association understands that this question is directed to addressing concerns regarding overlapping statutory criteria and the perception that there is duplication between the processes under the MRA and the processes under the EPA.

83. In the Association's view, one key area of overlap relates to the requirement under the MRA for the decision-maker to consider adverse environmental impacts from the proposed mining lease. Adverse environmental impacts are considered in detail as part of the process for an application for an environmental authority (or an amendment to an environmental authority). To limit duplication, the Association agrees with the proposal that any decision-maker under the MRA be required to consider the decision (and reasons for decision) of the decision-maker for the environmental authority in reaching their decision on adverse environmental impacts. Some departmental pre-decision consultation and coordination is also desirable. Different departments deal with different aspects, (e.g., impacts on water impacts on quality and groundwater dependent ecosystems v water take impacts on landowners). This can lead to decisions which can result in conflicting project requirements because of the different departmental focus. In some cases that may be inevitable because of the different focus but in other cases it may be avoidable if the departments consulted each other. Requiring the MRA decision-maker to take into account the EPA decision after it is made may have a limited impact on addressing this issue. In the decision making under the Planning Act, referral agencies are required to be co-ordinated in their response. That is not to say that there may not be different requirements imposed by different departments but that they are garnered together in a consolidated response.

84. As to public interest, the Association considers that the public interest criterion should remain in both the MRA and the EPA. As identified in the Consultation Paper, the

objects of the MRA and the EPA are different and as such, the public interest consideration should be dealt with differently under each Act.

85. That said, the Association does not have a difficulty with the decision-maker under the MRA being required to consider the decision (and reasons for decision) of the decision-maker for the environmental authority application insofar as the public interest is concerned, provided that it is only one factor to be taken into account. In the Association's view, the consideration of the public interest under the MRA should remain a separate exercise for the decision-maker under that Act.

86. As to the rights and interests of Aboriginal peoples and Torres Strait Islander peoples, subject to the comments above regarding additional adopted statutory criteria, the Association has no objection to the decision-maker under the MRA being required to consider the decision (and reasons for decision) of the decision-maker for the environmental authority application insofar as Aboriginal and Torres Strait Islander peoples are concerned.

87. Otherwise, the Association does not consider that the decision-maker under the MRA should be required to consider the decision (and reasons for decision) of the decision-maker under the EPA in relation to criteria other than that already identified in the Consultation Paper.

Q17: Are there additional reforms to the statutory criteria under the Mineral Resources Act 1989 and the Environmental Protection Act 1994 that you would like us to consider?

88. The Association considers that there is scope for further amendments to be made in relation to the criteria under the MRA.

89. There are four further areas that the Commission may wish to consider:

(a) ***First***, in the experience, there is some duplication in the evidence or information provided to address the criteria in the following sections of the MRA:

(i) sections 269(4)(a) and 269(4)(g);

(ii) sections 269(4)(b), 269(4)(c), 269(4)(i) and 269(4)(m); and

(iii) sections 269(4)(k) and 269(4)(l);

(b) ***Secondly***, in the Association's experience of the Association's members, there is a lack of clarity as to the scope of matters to be considered falling within section 269(4)(g) of the MRA. This is particularly so given the separate requirement under section 269(4)(a) to consider whether the provisions of the Act have been complied with. While the Association does not suggest removing the criterion in section 269(4)(g), it considers that there is scope for further guidance to be given as to the matters that may be considered as part of section 269(4)(g);

(c) ***Thirdly***, the Commission may wish to consider the purpose of the criterion in section 269(4)(l) of the MRA. The Association submits that the criterion may not be necessary because the decision-maker's consideration of each of the factors in section 269(4) together with the objections lodged is often more than sufficient for the decision-maker to determine, absent specific criteria regarding good reasons, whether the application should be approved or refused; and

(d) ***Lastly***, the Association considers that there may be scope to tailor the factors under section 269(4) of the MRA depending on the type of project that is proposed. For example, it may not be necessary for the decision-maker to consider each of the factors identified for smaller projects (for example, a small fossicking project) and/or where the project being proposed is a brownfield site. As to the latter, the criterion in section 269(4)(f) of the MRA may not be necessary because the applicant already has the necessary financial and technical capabilities arising from its operation of an existing mining lease.

Proposal 6:	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 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

Q18: What are your views on proposal 6?

90. The Association considers that there are potential advantages and disadvantages to proposal 6 as outlined below.

<u>Potential advantages</u>

91. The Association generally agrees with the potential benefits of the proposal which are identified in the Consultation Paper, including that:

(a) altering the involvement of the Land Court in the decision-making process so that instead of providing recommendations prior to government decisions it performs a review function after those decisions are made, being a more conventional role for a Court or Tribunal to perform;

(b) the present model of referring every mining lease application to the Land Court upon any objection being made, forces parties into an adversarial setting at the first step of the decision-making process. Limiting the Court's function to reviewing decisions (whether on the merits or judicial review grounds) upon an application being made allows applicants and those in opposition alike, to determine themselves whether to trigger review in the Land Court;

(c) the issues the subject of a review process may (depending on the precise scope of the right of review and standing) be expected to be narrower than the issues

which generally fall to be considered by the Land Court on an objections hearing under the current system, and the number of parties involved in an appeal may be fewer than the number of objectors often involved in objections hearings;

(d) as noted earlier, one difficulty with the current processes is that objectors often make wide-ranging unparticularised objections (in circumstances in which objectors are confined by the objections which they lodge in the application phase) and the real issues are, not infrequently, only defined after delivery of lay and expert evidence. The proposal presents an opportunity to create procedures that allows for the identification of issues early by grounds of review which may be expected to be more focused than many objections under the current processes;

(e) the absence of an internal review process, together with the proposed requirement to conduct the appeal on the same material as was before the original decision-maker has the potential for the review process to be more efficient, with earlier hearings and decisions, as compared to the existing structure for objections hearings;

(f) further efficiency in the overall final resolution of applications for mining leases and environmental authorities may also be achieved because the proposal will address the existing bifurcated avenues for challenging decisions relating to the grant of mining leases and environmental authorities (an aggrieved person may presently seek judicial review of a Land Court recommendation, and then later seek judicial review of any ministerial decision) and provide a single path via the Land Court and then the Court of Appeal to challenge; and

(g) retaining the Land Court's involvement, as the Court with specialised experience with mining leases and environmental authorities, is valuable.

Potential disadvantages

92. Depending on the precise scope of the proposed rights of review, there are also several potential disadvantages to the proposal which the Association considers it appropriate to draw to the Commission's attention.

93. ***First***, the conduct of a concurrent merits review (in which a Court or Tribunal is acting administratively)[19] and traditional judicial review (in which the same Court or Tribunal is acting judicially)[20] is not a common approach in administrative law in Australia, and has the potential to give rise to substantial procedural, jurisdictional and related disputes and uncertainties (for example, section 58 of the HRA applies to courts acting in an administrative capacity, but not courts exercising a judicial function). While the Planning and Environment Court has a kind of concurrent jurisdiction which contemplates both "merits" appeals relating to development applications, and the making of declarations, the Planning and Environment Court does not concurrently act as both an administrative body and a judicial body.

94. Further, a feature of the proposal that is somewhat unclear is what decisions may be the subject of judicial review and/or merits review. There are distinct advantages and

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19 Consultation Paper, paragraph 215.

20 Consultation Paper, paragraph 219.

disadvantages to those different modes of review. Those advantages and disadvantages take on different complexions depending on the nature and quality of the decision under review, and the procedures before the decision-maker. The utility in the process of determining whether a primary decision should be set aside on judicial review grounds would likely be usurped if, simultaneously, the primary decision were to be subject to a review on the merits and either affirmed or substituted with the correct and preferable decision (despite any legal error affecting the decision).

95. In practice, it may be challenging for the parties and the Land Court to maintain important distinctions which exist between (administrative) merits review and judicial review if both are being pursued and heard together. There may also be difficulties in identifying the proper scope of participation of statutory parties in a concurrent merits and judicial review process and in properly understanding the nature and scope of any appeals from a decision made in relation to a combined administrative merits review and judicial review to the Court of Appeal.

96. ***Secondly***, the Consultation Paper suggests that the proposed merits review contemplated by the proposal will involve a "*reconsideration of the facts, law and policy of the original decisions*" (emphasis added). Earlier, the Consultation Paper recognises that "[t]*here are fundamental public interest considerations in decisions about the use of public resources*" associated with the grant of mining leases and environmental authorities.[21]

97. It may not be desirable for appointed judges (rather than elected members of government) to become the ultimate arbitrators of the fundamental public interest considerations associated with decisions to grant mining leases and environmental authorities through an expansive (administrative) merits review process which involves the Land Court being asked to substitute its own views about policy and public interest for those of the relevant minister. In the experience of the Association's members, it is relatively uncommon for ministerial decisions at State and Federal level, which involve an assessment of public interest, to be subject to a merits review which extends to the policy of the original decision. Indeed, the Planning Act has express provisions permitting a Minister to "call-in" decisions where there is a State interest involved so that it is the Minister rather than the Planning & Environment Court who makes the final decision.[22]

98. ***Thirdly***, if there is substantial delay between when an application for a mining lease and/or application for an environmental authority is made and the ultimate hearing of any hearing in the Land Court, there may be unfairness to the applicant, or an objector, if fresh evidence can only be adduced in exceptional circumstances. Issues about material before the Court would become particularly pronounced if standing were to be simultaneously expanded to persons that do not participate in the initial decision-making process.

99. Similarly, it may be detrimental to the efficacy of decisions if limitations on material before the Court precluded (absent exceptional circumstances) leading and testing evidence from expert witnesses or the most current information on the critical issues.

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21 Consultation Paper, paragraph 81.

22 See *Planning Act 2016* (Qld), Chapter 3, Part 6.

100. ***Lastly,*** whilst the proposed model may streamline the avenues for review of decisions, adopting a model that empowers (or limits) the Land Court to affirm or quash and remit decisions to be remade, may arguably lead to inefficiencies and prolong an ultimate appeal in some instances. It may result in a 'feedback loop' of decisions being made, reviewed, quashed and remitted to be remade from which the process is repeated. That seems to be more likely to occur if the Land Court were to conduct a rehearing on the merits of the decision, but not have the power to make the decision afresh.

Issues and options

101. In light of the above matters, the Association suggests that consideration be given to the following:

(a) whether, if on a merits review, the Land Court considers there have been material errors of fact, the default outcome is a remittal to the relevant minister or decision-making body;

(b) whether the scope or availability of any merits review should be the same for all mining leases and environmental authority decisions, or whether it may be appropriate for there to be differences in the scope or availability of a merits review depending on whether the ministerial decisions concern (for example):

(i) projects of a particular scale, size or complexity (a smaller less complex mining project may not warrant a merits review);

(ii) greenfield projects as opposed to brownfield projects;

(iii) projects which have been declared to be coordinated projects under the SDPWO Act and those which have not;

(iv) whether, in the case of amendments to environmental authority applications, the application is a major or minor change;

(v) projects with a particularly high level of community concern; and

(c) whether there should be a process and power analogous to the "call-in" power which exists for planning approvals,[23] whereby the relevant ministers may decide the application(s) personally and answer to Parliament for those decisions, which would not be subject to appeal or review (save for in the case of jurisdictional error). If such a process and power were to be contemplated the following would need to be considered:

(i) whether the original departmental decision maker for both an MRA application and EPA application should be the Chief Executive of the relevant Department, rather than the Minister (such that the Minister would only make a decision on exercise of the "call-in" power); and

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[23] See *Planning Act 2016* (Qld), Chapter 3, Part 6 – particularly s 103 (see also the privative clause in section 231); *Planning Regulations 2017* (Qld), regs 46 to 50.

(ii) whether a decision by one Minister to "call-in" the decision and make it personally affects the status of the decision to be made by the other Department.

Q19: What preconditions, if any, should there be to commence combined review?

102. In practical terms, those seeking review of any decision would fall into one of two camps. First, proponents of rejected applications, and second, those who object to granted applications. Pragmatically, expanding standing beyond the class of those 'adversely affected' enlarges the class of persons who may wish to challenge an approval. A difficulty with a model that embraces open standing or standing to persons not involved in the decision-making stage is that neither the decision-maker had the benefit of their input/submission, nor would the proponent have any opportunity to put any responsive material before the decision-maker. If any independent advisory bodies are to be created, their role would also be, effectively, circumvented by would-be applicants for review that do not participate in the decision-making process.

103. As to standing, it is suggested that consideration be given to an approach by which a person must fall into one of the following categories in order to initiate a review in the Land Court:

(a) a natural person who has been formally engaged in the decision-making process before the original decision was made;[24]

(b) an incorporated entity which has been formally engaged in the decision-making process before the original decision was made; and

(c) possibly, an incorporated entity which meets standing requirements of the kind set out in s 487 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) or other criteria more apt to apply to associations representing Aboriginal peoples and Torres Strait Islander peoples potentially affected by the project – but it is questionable whether such bodies should be permitted to seek merits review of any kind if they have not participated in the process – it may be preferable that bodies of this kind be permitted only to seek review for legal errors (whether formally having recognised title or not).

104. The restrictions imposed on standing before the Land Court are ultimately balanced by the pre-decision-making process which can remain a process where open standing and unlimited issues of concern can be raised.

105. More generally, as identified above, consideration should be given to whether:

(a) the scope or availability of a merits review should be the same for all mining leases and environmental authority decisions, or whether it may be appropriate for there to be differences in the scope or availability of a merits review depending on whether the ministerial decisions concern (for example):[25]

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[24] See for example the approach adopted in sections 8.7 and 8.8 of the *Environmental Planning Assessment Act 1979* (NSW).

[25] The model in NSW addresses standing by referring, at the initial decision-making stage, major projects to the Independent Planning Commission, which makes a recommendation to the decision-maker. Where projects are referred to the IPC, standing to review the decision is limited to the applicant and those who made submissions before the IPC (objectors): 8.7 and 8.8 *Environmental Planning and Assessment Act 1979* (NSW).

(i) projects of a particular scale, size or complexity (a smaller less complex mining project may not warrant a merits review);

(ii) greenfield projects as opposed to brownfield projects;

(iii) projects which have been declared to be coordinated projects under the SDPWO Act and those which have not;

(iv) whether, in the case of amendments to environmental authority application, the application is a major or minor change; and

(v) projects with a particularly high level of community concern;

(b) there should be a process and power analogous to the "call-in" power which exists for planning approvals[26] whereby the relevant ministers may decide that their decisions are not subject to any merits review.

Q20: Should the Land Court have the power to substitute its own decision on the application or should it be required to send it back to the decision-maker?

106. For reasons addressed above, a structure by which the Land Court may, in the absence of legal error, set aside a ministerial decision and substitute its own decision because of a different view about matters of public policy may not be desirable.

107. On the other hand, there are legitimate grounds to seek to achieve a process which brings applications to a final resolution without undue delay.

108. In those circumstances, depending on the ultimate scope of the proposed merits review (addressed above), there is substantial merit in the final option proposed in the Consultation Paper at paragraph 238, by which the Land Court may:

(a) affirm the decision;
(b) affirm the decision with varied conditions; or
(c) send the decision back to the original decision-maker.

Q21: Should each party pay their own costs of the merits review or should a different rule apply?

109. The appropriate approach to awarding legal costs may depend in part on the extent, breadth and availability of the merits review process.

110. However, given the nature and subject matter of the decisions, an approach in which each party bears their own costs subject to the Court retaining a reasonably broad discretion to order otherwise ("soft" costs neutrality[27]) is probably preferable to one in which:

(a) costs follow the event by default (i.e. unless the Court orders otherwise); or
(b) the Court's discretion is highly curtailed and limited to circumstances in which a party engages in specific kinds of conduct in connection with the review.

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[26] See *Planning Act 2016* (Qld), Chapter 3, Part 6 and s 231; *Planning Regulations 2017* (Qld), regs 46 to 50.

[27] Consultation Paper, paragraph 243.

Interactions with other laws

Q22: Are there any issues arising made under other Acts that we should consider?

111. The Association acknowledges that the Consultation Paper gives detailed consideration to how the recommended processes would interact with the decisions made under a range of other Acts.[28] The Association agrees with the comments in the Consultation Paper that there is the potential for overlap in processes arising out of powers or processes arising out of other Acts, including, for example, under the SDPWO Act[29] and the *Water Act 2000* (Qld).[30]

112. However, the Association also notes the importance of ensuring that, so far as possible, decisions in respect of mining applications and related applications for environmental authorities appropriately deal comprehensively and finally with all relevant and significant matters. Deferral of decisions about relevant and significant matters may result in duplication of processes, failure to address issues or inconsistencies due to decisions under other legislation (for example, under the Cultural Heritage Acts).

113. In addition to the Acts identified in the Consultation Paper, the Association draws to the Commission's attention the *Environmental Offsets 2014* (Qld) (the **Offsets Act**).

114. The purpose of the Offsets Act is to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets.[31] An administering authority may choose to impose an offset condition if satisfied that a prescribed activity will, or is likely to, have a significant residual impact on a prescribed environmental matter and all reasonable on-site mitigation measures for the prescribed activity have been, or will be, undertaken.[32]

115. In the experience of the members of the Association, the adequacy (or otherwise) of offsets proposed for a mining project is frequently raised as a ground of objection to mining lease and environmental authority applications. The ability to impose an offset condition is the subject of the Offsets Act (rather than the EPA). There is, consequently, an interplay between the conditions that are imposed under the EPA and the offset condition that may be imposed under the Offsets Act.

116. That interplay becomes more complex where a project is a coordinated project under the SDPWO Act. In that instance, it is common that the Coordinator General will examine the offsets that are proposed for a mining project and whether they are inadequate. In certain instances, the Coordinator General may impose his/her own conditions relating to offsets. Where that occurs, complexities can arise between the offset conditions imposed by the Coordinator General and the offset condition that may be imposed under the EPA[33].

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28 Consultation Paper, at paragraphs 245 – 307.

29 Consultation Paper, at paragraph 260.

30 Consultation Paper, at paragraph 266.

31 See Offsets Act, section 3.

32 See Offsets Act, section 14.

33 For an illustrative example the complexities relating to offsets, see *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21.

117. The Association suggests that the Commission also consider the impact of the Offsets Act in making its recommendation as to the reform of the current objections processes.

Q23: What opportunities are there, if any, to integrate interacting Queensland Acts with the processes to decide mining lease and associated environmental authority applications?

118. The Association points to the consolidated development assessment process provided for under the Planning Act and *Planning Regulation 2017* (Qld).[34] The Association is of the view that there is an opportunity to reform the mining lease objections process such that other acts could defer to the MRA and the EPA. This would streamline the complexity of the interaction of such acts.

119. Otherwise, as set out earlier, the Association recommends that further clarity should be given regarding the interplay between the SDPWO Act, the EPA and the MRA. This is particularly so in the case of conditions that may be imposed over and above those imposed by the Coordinator General. The Association recommends that greater legislative guidance be given to the meaning of an inconsistent condition and the paramountcy of Coordinator General's conditions over other conditions that may be imposed for a project.

Other matters

Q24: *Should there be a legislated pre-lodgement process?*

120. The Association does not consider it necessary that there be a legislated pre-lodgement process for most mining projects. It does however, consider that there may be some efficiencies for applicants for smaller mining projects. It would not oppose a legislated pre-lodgement process for small scale mining projects and/or for applicants that have not previously held a mining lease and/or environmental authority.

Q25: Is there anything further that [the Association] *would like to tell* [the Commission] *about the current processes?*

121. At this stage, there is nothing further that the Association wishes to tell the Commission about the current processes.

Q26: Are there any additional options for reform of the current processes that [the Association] *would like* [the Commission] *to consider?*

122. Throughout this submission, the Association has set out some additional options for reform for the Commission to consider. Other than the options set out in this submission, there are no further options that the Association would like the Commission to consider.

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[34] Consultation Paper, at paragraph 270.

The Association is grateful for the opportunity to make submissions on the Consultation Paper and would be glad to answer any further questions you may have.

Yours faithfully,

President