GLENCORE

4 October 2024

Queensland Law Reform Commission
PO Box 13312
Brisbane, QLD 4003
LawReform.Commission@justice.qld.gov.au

To whom it may concern,

RE: Response to the Queensland Law Reform Commission's consultation paper on 'Reimagining decision-making processes for Queensland mining'.

Glencore Coal Australia (Glencore) welcomes the opportunity to provide a submission on the Queensland Law Reform Commission's consultation papers reviewing the mining lease objections process and involvement of Aboriginal and Torres Strait Islander people. A mining lease is one of the key approvals required for Glencore to undertake its mining operations in Queensland. Having a certain, transparent, and efficient approval and objection process is critical to the business and for the public interest of Queenslanders.

Glencore is one of Australia's most diversified mining companies and we have been investing in Australia for more than 25 years. We are one of Australia's largest producers of coal, metals and minerals which are used all over the world. Glencore is a responsible operator. We place significant importance on protecting our people, respecting the environment, being valued by the communities we were operate and acting with integrity.

Last year the Glencore coal business made a total direct economic contribution in Queensland of $7.7 billion. Our coal operations employed over 4,000 people and we spent $4.2 billion on goods and services working with 2,270 suppliers. Our Queensland coal business paid $3 billion in taxes and royalties.

Overview of Glencore Position

This section provides an overview of Glencore's position on the key aspects of the mining lease objections process.

(a) In general, Glencore supports the current mining lease objection process in Queensland. Whilst there is scope for improvement that would achieve efficiencies, streamlining and reduce duplication, Glencore considers the existing fundamental steps in the objection process to be appropriate for new mining leases that are above a certain trigger threshold.

(b) A clear notification process calling for objections to be lodged by a certain date is a key feature of the current mining lease application process and should remain in any

revised process. It provides certainty as to what objections the mining lease applicant must address, and what matters the decision maker must consider. There needs to be a clear cut-off point in the process after which no further objections can be made to provide certainty of process and timing.

(c) The Land Court is the appropriate forum for the impartial hearing of objections to a mining lease, but ultimately its function should be to make recommendations to the Minister. The final decision on whether a mining lease should, or should not, be granted is properly a decision for Government Minister's, having regard to the Land Court's recommendation. The decision to grant a mining lease is a decision that Government must make in accordance with the governing legislation and its objectives and includes having regard to what the Government on the day considers to be in the overall public interest.

(d) As a result of Glencore's support for the decision-making responsibility of the Land Court and the Minister, Glencore supports the current order in the application process where the Land Court hearing precedes the final Ministerial decision.

(e) Whilst not an option canvassed in the QLRC Consultation Paper, one matter that Glencore considers could be actioned to improve the overall efficiency of and streamline the existing processes is to remove the judicial review of the Land Court's recommendation to the Minister, before a Ministerial decision has been made. This could be done without detracting from the overall fairness and transparency of the mining lease application process. The Land Court does not make a final decision on a mining lease application, but rather a recommendation that is a consideration the Minister must have regard to when making a decision to grant or reject a mining lease application.

The Minister's decision itself is subject of the judicial review. The interim judicial review of a Land Court recommendation, before the Minister has even made a decision, is an unnecessary step that can substantially extend the time, and costs associated with mining lease applications. If judicial review is removed at this stage, anyone who seeks to challenge the recommendations made by the Land Court can still do as part of any judicial review of the Minister's decision. There is precedent for such a position – for example, certain decisions of the Coordinator General under the *State Development and Public Works Organisation Act 1971* (SDPWO Act) are not capable of judicial review.

(f) Glencore recognises Aboriginal and Torres Strait Islander people as key stakeholders for its mining operations and has agreements with Aboriginal and Torres Strait

Islander people in respect of many of its Queensland mining operations. Glencore supports the existing specific legislation that recognises the rights of Aboriginal and Torres Strait Islander peoples to participate in the mining lease application process, such as the *Native Title Act 1993* (NT Act) and the *Aboriginal Cultural Heritage Act 2003* (ACH Act), and recognises the standing of the Aboriginal and Torres Strait Islander groups, entities and individuals under such legislation.

Glencore does not support the proposal in the Consultation Paper for the introduction of a new Aboriginal and Torres Strait Islander Advisory Committee. We believe this would lead to increased complexity, conflict and duplication in engagement with Aboriginal and Torres Strait Islander peoples. The *NT Act* and the *ACH Act* already mandate engagement with Aboriginal and Torres Strait Islander parties that have obtained standing under that legislation, have specific negotiation processes that are required to be followed, and specific dispute resolution procedures if agreement cannot be reached. Introducing another body and forum for addressing similar issues would be duplicative and unnecessarily add additional complexity and conflict to the mining lease process.

Detailed submissions

Glencore provides comments in response to many of the specific questions posed by the QLRC Consultation Paper in the following sections of this submission.

Glencore supports the overall objectives of the review in principle i.e. fairness, transparency, efficiency of the process, and supports reforms that result in improvements to the effectiveness of process.

Whilst Glencore supports a number of the reforms these reasons, we consider that a number of the proposed reforms do not assist in achieving the goals outlined in the consultation paper for the reasons set out under each relevant response below.

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

The guiding principles of 'fair, efficient, effective, and contemporary' are generally appropriate and beneficial for reforming the current processes. However, the processes proposed to achieve these principles need to be carefully considered to ensure that these objectives are achieved. As part of this, the impact of any reforms requires careful consideration to guard against allowing vexatious objections and/or objections without sufficient factual evidence or merit deliberately delaying the mining lease approval process - which in itself is often the objective of these parties rather than prosecuting a genuine point of objection.

Glencore considers that the current regime already provides a robust assessment process, which includes adequate and appropriate opportunities for public participation. Specifically, this includes opportunities for interested parties to make submissions to the Department of Environment, Science and Innovation (DESI) during the assessment stages, and in turn make objections to Land Court.

While the rigour of the current process is supported in principle, protracted assessment and approval timeframes, as well as the duplication of processes, lead to increasing costs and timeframes for project approvals and act to deter investment, without necessarily improving outcomes.

Glencore supports reforms that improve the effectiveness and efficiency of the process, which includes ensuring sufficient tailoring for smaller or minor mining lease applications for discrete matters (for example, haul roads) that the process reflects the scale and significance of the application.

The adoption of the guiding principles leading to reforms that, if implemented, reduce complexity, improve timelines, and ensure clear and consistent decision-making is supported as this would positively impact all parties the mining industry by providing more certainty and reducing the costs and delays associated with obtaining approvals.

However, it is crucial that these reforms do not impose additional layers of regulation or procedural burdens that could offset these benefits. The reforms should aim to make the process more streamlined and aligned with the needs of modern mining operations.

Q2: Do you agree these are the strengths and problems of the current processes? Are there others not mentioned here which are appropriate to be considered for reform of the current processes?

As outline above, Glencore is generally supportive of the current mining lease objection process in Queensland. Whilst there is scope for improvement, Glencore considers the existing fundamental steps in the objection process provide the opportunity for public participation in the Government's decision-making processes, which is fundamental to instilling community confidence in the regulation of the mining industry.

The problems identified, such as the timeliness, complexity, duplication, and costs of the current processes, are particularly important matters for the mining industry. These issues contribute to protracted assessment and approval timeframes, which can delay project development and increase costs, undermining project timelines and financial planning. For proponents, this not only affects project viability but also deters potential investment in Queensland's mining sector.

One example of this, and an area for improvement, is the interactions with the *Regional Planning Interests Act 2014* (RPIA).

The RPIA and the associated regulations require a mining company to obtain a "*regional interest development approval*" (RIDA) when undertaking mining activities on land used for certain purposes - such as when the mining activities will take place on land regarded as 'strategic cropping land' or land being used for a 'priority agricultural land use'. The RIDA is required in addition to a mining lease and an environmental authority to undertake mining activities. It is currently an entirely separate approval process and is potentially subject to appeals that are heard by the Planning and Environment Court. It is possible that a person might be granted a mining lease and an environmental authority but not a RIDA, meaning that mining is not permitted, even though the government has granted the person a mining lease and is authorised to undertake activities under the environmental authority.

Glencore has had experience with the requirement to obtain a RIDA in addition to a mining lease and submits that this is an inefficient process which creates unnecessary duplication in the overall approval process for a mine.

The Land Court and the Minister administering the MRA already have regard to the alternate uses of land when deciding whether or not to recommend or grant a mining lease. This currently includes considering specific criteria such as whether the grant of the mining lease 'conforms with sound land use management' and whether 'taking into consideration the current and prospective uses of the land, the proposed mining lease is an appropriate land use', as well as whether the grant of the mining lease is in the public interest.

The landowner of that land (if not the mining company) already has objection and compensation rights in respect of any mining lease grant under the MRA. In addition, the same issues may be considered to some degree in a context of considering the grant, and conditions of, an environmental authority, and if a project requires an environmental impact statement (EIS), that EIS will almost certainly address the impacts on the existing land use. Therefore, the existing requirement for a separate application for, and grant of, a RIDA revisits the same issues again in order to obtain another separate approval from the government to undertake the same mining activity.

It is an unnecessary administrative burden and is inefficient because it imposes additional costs and time on the process to obtain mining approval. The RPIA legislation is also very inflexible and applies the same strict criteria to all mining projects and all land without any regard to the project specific merits of whether a mine should proceed or not. Not all mines are the same, and nor are all existing land uses. Therefore, Glencore submits that a RIDA should not be required as these matters can be appropriately considered and addressed through the process of obtaining a mining lease and an environmental authority to undertake mining.

Additional focus on streamlining processes, balancing stakeholder interests, and adopting adaptive regulatory approaches could further enhance the effectiveness and efficiency of the mining approval processes in Queensland. These reforms, if implemented thoughtfully, could reduce delays and costs for the industry while maintaining high standards of environmental and community protection.

Q3: What are your views on proposal 1? (Reframing Participation Processes)

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

Glencore does not support proposal 1. However, Glencore does consider that there is scope to amend aspects of the current system to improve the overall efficiency of the process and reduce duplication as outlined above.

In addition to the statements made in our introductory paragraphs, Glencore makes the following additional observations:

- Glencore disagrees with the statement in paragraph 68, dot point 3. Local Government has opportunities to participate in the site-specific EA application or amendment process through the public notification and submission process as well as the objections process. Similarly for an EIS process, the public participation opportunities afforded to the public and local council include for the Terms of Reference, EIS submissions, Supplementary EIS re-notification and draft EA conditions.
- Glencore supports the existing specific legislation that recognises the rights of Aboriginal and Torres Strait Islander peoples to participate in the mining lease application process and is concerned that the proposal to establish an Aboriginal and Torres Strait Islander Advisory Committee has the potential to create uncertainty and duplicate existing statutory processes.

A considered implementation is crucial to ensuring that any changes do not introduce new delays or uncertainties that could unreasonably impact project development.

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

As outlined above, in general, Glencore supports the current mining lease objection process in Queensland.

Below are Glencore's further comments on the forms of participation that are being considered in the new participation process:

- **Written Submissions or Comments:** Written submissions are a formal and structured way for stakeholders to express concerns and suggestions. Glencore supports the current process that includes the requirement to put submissions in writing within a prescribed period of time. This process ensures procedural fairness and that the mining company has a documented record of all issues raised, which can be responded to. It can also help in refining the project, as it allows the company to consider and take into account the matters raised and, where appropriate, modify aspects of its project to address valid concerns. Overall, this provides greater certainty to all parties, including public participants.
- **Other forms of public participation**: Glencore and many other proponents use other forms of informal and formal public consultation on a project specific basis. Additional forms of public participation should remain at the discretion of the mining proponent rather than being mandated. For example, information sessions can be used by mining proponents seeking approval for projects which can allow the company to provide information to stakeholders in a manner tailored to both parties' needs. This can be mutually beneficial but that is not always the case and it should remain at the discretion of the proponent.

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

As outlined above, in general, Glencore supports the current mining lease objection process in Queensland. We otherwise reiterate our comments set out elsewhere in this submission regarding opportunities to improve the overall effectiveness and efficiency of the process and reduce duplication.

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?

The concept of a tailored participation processes depending on the nature and scale of the project has merit for certain applications as it has the potential to improve the effectiveness and efficiency of the process for discrete and minor applications that do not require the same level or rigour as a larger or more complex application.

For example, an application for a mining lease for a haul road for an existing mine is likely to differ significantly to a mining lease application for new greenfield mine. Glencore considers that introducing appropriate thresholds (like there are for when an EIS is required) that align with the appropriate level and scale of public participation would greatly improve the effectiveness and efficiency of the current process.

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

As outlined above, in principle, Glencore supports the objectives of the review i.e. fairness, transparency, efficiency of the process. Whilst Glencore is generally supportive of the existing participation mechanisms that form part of the current mining lease objection process in Queensland, it supports reforms to participation processes that streamline and improve existing statutory processes rather than duplicating them.

In this regard, as outlined above, it recognises that there are opportunities for improvement, including that there is value in creating thresholds and tailoring participation processes relative to the size, nature and risk of the proposal, combined with other proposals outlined in this submission, such as the proposal to establish a central online portal, all of which would assist in ensuing any reforms are accessible and responsive to the diverse needs of communities.

Aboriginal and Torres Strait Islander people play a key role in the participation process and ensuring that the process is accessible and responsive is important. In this regard, Glencore considers that the existing statutory processes currently under the NT Act and ACH Act provide appropriate mechanisms. This includes existing statutory processes that are required to be undertaken i.e. a Section 29 process or an Indigenous Land Use Agreement under the NT Act or a Cultural Heritage Management Plan under the ACH Act.

Q8: What are your views on proposal 2?

Glencore supports the establishment of a new online portal, as set out in Proposal 2, to manage access to information on applications.

This proposal has the ability to enhance transparency, streamlines the dissemination of information, and potentially reduces the administrative burden by centralising notices and updates. It could lead to more efficient project management and improved stakeholder engagement, as the portal provides a clear and consistent method for keeping all interested parties informed.

Glencore expects that any new process would provide for the upload of information to a single portal and eliminate duplication.

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

Glencore does not consider that there should be any additional notice or information sharing requirements.

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

(a) Mining leases?

Glencore supports opportunities to streamline and ensure that notice requirements are contemporary, including through the process of providing direct notice to affected parties including all landowners, registered native title claimants, adjacent property owners, and local governments by modern methods including via email.

(b) Associated environmental authorities?

As above.

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

Further to the response on Question 10 above, Glencore supports the existing processes and legislation, including those that recognises the rights of Aboriginal and Torres Strait Islander peoples to participate in the mining lease application process.

Q12: What are your views on Proposal 3?

Glencore does not support Proposal 3, which suggests establishing an Independent Expert Advisory Committee (IEAC). Adding a further expert review layer on top of the current mining lease applicant's experts, the Government's internal experts and any objector experts, with the oversight and review of the Land Court, would be further duplicative and add significant time and cost to the approval process with little, if any, benefit.

As outlined in elsewhere in this submission, we support the current process in Queensland, with proposed refinements to improve the current process which include removing duplication and streamlining processes over the introduction of a new and different system. For example, by removing the ability to judicially review the recommendation of the Land Court hearing process before the Minister has made a final decision on grant of the EA, given that there is an opportunity to judicially review that recommendation as part of any judicial review proceedings after the Minister has made their decision.

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

As set out above, Glencore does not support the proposal to form an IEAC. It instead supports the current process in Queensland over the introduction of a new and different system and further, considers that there are opportunities to improve the current process which including removing duplication and streamlining processes as outlined elsewhere in this submission.

Q14. What are your views on proposal 4?

As above, Glencore does not support this proposal.

Q15. What are your views on proposal 5?

Aboriginal and Torres Strait Islander people are key stakeholders in processes involving mining operations. Further to the comments above, Glencore supports the existing specific legislation that recognises the rights of Aboriginal and Torres Strait Islander people to participate in the mining lease application process, such as the NT Act and the ACH Act and the standing of the groups, entities and individuals under such legislation.

Glencore does not support proposal 5 as it considers that the current regime already provides adequate and appropriate opportunities for Aboriginal and Torres Strait Islander participation.

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 (see proposal 5)? (d) any other criteria?

Glencore agrees that there are benefits in the mining lease decision maker having regard to the decision regarding the environmental authority. As the legislation stands, a mining lease cannot be granted unless an environmental authority is first granted. Accordingly, a mining lease only gets to the decision point if the environmental authority has first been granted. The decision on granting the environmental authority has likely already taken into account a number of matters relevant to whether the mining lease should be granted (such as its environmental impacts). If the mining lease decision maker therefore has regard to the environmental authority decision, that likely supports the grant of the mining lease and may avoid reconsideration of the same issues by the mining lease decision maker, therefore resulting in improvements by streamlining the process.

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

Glencore supports opportunities generally that streamline the decision-making process by reducing overlaps between the statutory criteria under the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994*. This could involve creating a more integrated assessment process where overlapping criteria are addressed through a unified framework (albeit with decisions made by the relevant Minister/Chief Executive), reducing duplication and speeding up the approval process while still ensuring evaluation of all relevant factors.

Q18: What are your views on proposal 6?

Proposal 6 introduces a combined merits and judicial review by the Land Court after the government has decided on mining lease and EA applications, with direct appeals to the

Court of Appeal. Glencore does not support this proposal and rather supports in general the current mining lease objection process in Queensland.

Rather than introduce a new and entirely different system as set out in proposal 6, we consider the preferred approach (although not discussed in the Consultation Paper) is to streamline the current process where objections are subject to a merits review through the Land Court hearing process before the Minister makes a final decision on grant of a mining lease, but legislate that the Land Court recommendation to the Minister is not subject to judicial review.

This would remove one step in the current process that is already available to an objector through the judicial review mechanism already available to parties after the Minister makes their decision. Therefore, there is arguably no disadvantage to a mining lease objector by removing this step, as the Land Court only makes a recommendation to the Minister and the Minister's decision is still able to be judicially reviewed (including where the Minister had had regard to a flawed Land Court recommendation).

There is already existing precedent for such a step with the Coordinator General decision under the SDPWOA Act not subject to judicial review. Glencore considers that reforming the current system in this regard is a better and preferred alternative to proposal 6 that would improve the overall effectiveness and efficiency of the process and reduce duplication of the mining lease objections process.

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

As outlined above, Glencore does not support this proposal.

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?

As discussed above, Glencore does not support the proposal 6 changes.

Currently, the final decision on whether a mining lease is granted is a decision of the Minister. Glencore considers that there is sound logic to this process, and that the decision on whether a mining lease should or should not be granted is primarily a decision for the executive arm of Government, based upon what is considered to be in the best interest of the Queensland public.

Whilst there may be some legal issues involved, it is not ultimately a legal decision. Glencore considers that the Land Court is the appropriate forum for the impartial hearing of objections to a mining lease, but ultimately its function should be to make recommendations to the Minister. The final decision on whether a mining lease should, or should not, be granted is properly a decision for Government, having regard to the Land Court's recommendation. The decision to grant a mining lease is a decision that

Government must make having regard to what the Government on the day considers to be in the overall public interest.

As a such, Glencore supports the current order in the application process where the Land Court hearing precedes the final Ministerial decision.

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

Glencore supports the current process where each party pays their own costs of the merits review, although the court has a discretion to order otherwise, as is the current practice in the Land Court (referred to as 'soft' costs neutrality in the consultation paper). This approach balances access to justice with the need to discourage frivolous or vexatious claims.

Q22 Are there any issues arising from interactions with decisions made under other Acts that we should consider?

We reiterate our comments set out elsewhere in this submission.

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

We reiterate our comments set out elsewhere in this submission.

Q24 Should there be a legislated pre-lodgement process?

We reiterate our comments set out elsewhere in this submission.

Q25 Is there anything else you would like to tell us about the current processes?

We reiterate our comments set out elsewhere in this submission.

Q26 Are there any additional options for reform of the current processes you would like us to consider?

Whilst not options canvassed in the QLRC Consultation Paper, Glencore considers the following two additional options for reform of the current processes present opportunities to improve the effectiveness and efficiencies in line with the principles, and therefore should be considered:

- **Duplication of Judicial Review Processes** – we consider that removing one of the existing judicial review processes available throughout the mining application process, and specifically removal of judicial review of the Land Court's recommendation to the Minister, would improve the overall efficiency of the process for the reasons set out above.
- **Interactions with the RPIA** – further to the comments already outlined in this submission, the requirement to obtain a RIDA when undertaking mining activities

on land used for certain purposes, which involves an entirely separate approval process, in addition to a mining lease and an environmental authority, creates unnecessary duplication in the overall approval process for a mine, as well as creating inefficiencies and additional costs and time. Glencore considers that either exempting mining activities that are authorised under a mining lease or integrating this approval as part of the mining lease application process would improve the effectiveness and efficiency of the approvals process.

Response to the Queensland Law Reform Commission's consultation paper on 'Valuing the perspectives of Aboriginal and Torres Strait Islander Peoples.

Glencore reiterates that it is committed to working with Aboriginal and Torres Strait Islander peoples in a meaningful and respectful manner which brings mutually acceptable engagement and benefits to both parties. Further, as outlined above, Glencore currently has agreements and or commitments, where applicable with the traditional owners of the land in respect of its Queensland mining activities.

Glencore supports the existing mechanisms in place for engagement between resource companies and Aboriginal and Torres Strait Islander peoples that currently apply under the NT Act and the ACH Act. The new proposed process outlined in the consultation papers, would add an additional mechanism that has the ability to, is likely to lead to increased complexity, conflict and duplication in engagement with Aboriginal and Torres Strait Islander peoples. The existing legislation already mandates engagement with certain parties that have obtained standing under that legislation, has specific negotiation processes that are required to be followed, and specific dispute resolution procedures if agreements cannot be reached. Introducing another body and forum for addressing similar issues introduces the risk of additional complexity and conflict that does not currently exist.

Conclusion

In closing, Glencore confirms that in general, it is supportive of the current mining lease objection process in Queensland whilst recognising that there is scope for improvement as set out in this submission. Thank you for your consideration of this submission.

Your sincerely,

[redacted]
Deputy General Counsel
Glencore Coal Australia