**13 September 2024**

Queensland Law Reform Commission
*Reimagining decision-making processes for Queensland Mining*
Review of mining lease objection processes
Consultation paper July 2024
via email glrc-miningobjections@justice.qld.gov.au

Dear President Kingham,

**RE: Consultation paper – *Reimagining decision-making processes for Queensland Mining***

Thank you for the opportunity to make a brief submission on behalf of the members of Australian Energy Producers on the consultation paper *Reimagining decision-making processes for Queensland Mining* as part of the Commission's Review of mining lease objections processes.

Australian Energy Producers is the peak national body representing Australia's upstream oil and gas exploration and production industry. Queensland's natural gas is pivotal to the energy system transformation — both in Australia and more broadly within South-East Asia — providing the firm dispatchable energy required to unlock our renewable energy potential and powering Australian industries including those processing the critical minerals necessary for net zero.

While we appreciate the petroleum legislation is not the primary focus of the review, we recognise that regulatory harmonisation occurs across resource industry regulation in Queensland. This harmonisation aligns legislation in order to increase consistency. The most obvious example of this is the *Mineral and Energy Resources Common Provisions* (MERCP) legislation. However, in practice, this sometimes means that solutions which have been tailored for a specific bespoke issue affecting one resource type, can become a default one-size-fits-all approach for all commodities.

Queensland's history of promoting and implementing regulatory harmonisation means that there is a risk that specific recommendations for mining lease objections being taken out of context and applied to other forms of production tenure under other resource Acts, such as the *Petroleum & Gas Acts* (1923 and 2004), the *Geothermal Energy Act* (2010), the *Greenhouse Gas Storage Act* (2009), the *Regional Planning Interest Act* (2014), the *Strong and Sustainable Resource Communities Act* (2017) and their potential application under the *State Development and Public Works Organisation Act* (1971) by the Coordinator General.

Australian Energy Producers notes the intention of the Commission (section 15, page 6 of the Consultation paper) to publish a further paper in November 2024 to address the question of whether the Commission's recommended *mining* changes could be extended to other resource

production tenures. We are concerned that releasing that consultation paper in November may not allow sufficient time for Queensland's oil & gas producers to consider the mining industry's response to the Commission's proposals and suggest that there should be more time between the September deadline and the scheduled release of the next petroleum focused consultation paper in November.

We remain keen to co-host a workshop with the Commission and petroleum members *before* the scheduled November release of a new paper to discuss the application of these proposals to petroleum lease processes. This as an important opportunity to share their views on issues such as:

- the current regulatory processes in practice from an applicant's perspective;
- the life cycle of a petroleum or gas development; and
- the potential implications of applying the Commission's proposals to oil and gas production tenure.

In this regard, Australian Energy Producers suggest that the current mining focused consultation paper's characterisation of the current mining processes (pages 8-11) is too narrow. The paper seems to adopt the perspective of a person lodging an objection rather than reflecting the broader perspective of all stakeholders including investors, the community, the project's potential workforce, or the local businesses who may make up the project supply chain.

From an industry perspective, the summary of problems (page 10) seems to presume that all mining lease application inherently benefit from the scrutiny of a merits review. Paragraph 31, page 9 notes as a strength of the current mining decision-making process that *"The Land Court has specialist expertise in land, mining, environmental and cultural heritage disputes. Through its jurisdiction under the cultural heritage Acts, it has developed specialist expertise about cultural heritage of Aboriginal peoples and Torres Strait Islander peoples."* While it is true that the Land Court has developed these areas of expertise, we would note that the mining regulator also has deep specialist expertise in each of these areas. It is preferable for the regulator to have these skills to ensure the best quality decisions are being made on the best available advice, rather than relying on a highly skilled Court merits review as a safety net.

It is worth noting in applying the Commission's four guiding principles (page 7), that a review process creates an inherent tension between the principles of *fairness* and the principle of *efficiency*. In reforming the mining lease objections processes, the consultation paper should also discuss how to best strike the right balance between these two principles, rather than assuming that merits review intrinsically adds value to the subsequent decision. For example, a merits review which makes a recommendation that aligns with, or confirms, the decision maker's inclination may involve considerable expense, time and not substantially change the quality of the decision or the availability of information. In that case, the principle of *efficiency* would seem to have been sacrificed in the interests of the principle of *fairness*.

Paragraph 35, page 10 says that "*The primary way to participate in the current process is by objecting to an application*". We believe that the primary point for participation is through the terms of reference for the environmental impact statement (EIS) and engaging in the public consultation processes. This mechanism can be constructive and iterative rather than adversarial. An objection should be the last resort rather than the primary avenue of participation.

Paragraph 36 says, "*There is a lack of safeguards to ensure rigorous, independent merits assessment of all mining activities that may pose an elevated risk or community concern.*" This statement reflects an assumption that the regulator is ill-equipped to administer their own assessment processes. An experienced and well-resourced regulator should be the main mechanism for addressing risk or community concern.

We would have liked to see more discussion in the consultation paper from the perspective of an applicant for a production lease. For example:

- How is good quality, deep, iterative consultation with stakeholders recognised in a procedural sense in these assessment processes? How does a regulator (or a Court reviewing the decision) recognise the effort to engage well with stakeholders?
- How does a community which has had their concerns heard and addressed signal that acceptance to a regulator? Is it merely the absence of an objection?
- How does an objections process weigh up the views of a broadly supportive community, but with a small minority of vocal objectors?
- How can an environmental impact statement (EIS) process be designed so that the applicant is not collecting public good information to establish a regulatory baseline?
- When the Coordinator General steps into the role of decision maker under the *State Development & Public Works Organisation Act*, why is that seen as less of a merit review (or as a decision of less merit) than the Court's formal review?

Finally, Australian Energy Producers endorses the sentiment of paragraph 43 (page 11). *"The complexity, duplication and costs of the current process may be exacerbated by interactions with other approval processes, such as those for water, regional planning and federal native title and environmental approvals."* While the overlaps, inconsistency and uncertainty associated with national assessments are very difficult, we would also highlight that all this cost, delay and uncertainty occurs in a world of 'lawfare' (as noted in paragraph 47), where key stakeholders will deliberately instigate legal actions to *"disrupt and delay key projects and infrastructure while gradually eroding public and political support for the industry"*[1]

The cost of delays can be substantial. The Productivity Commission's 2020 inquiry into Resource Sector Regulation estimated that "*a one-year delay for a gas project could cost in the order of 10 per cent of its net present value"* and that "*delay costs can dwarf the direct costs of*

[1] "*Stopping the Australian Coal Export Boom*" Funding proposal for the Australian anti-coal movement, November 2011, Greenpeace, Coalswarm, Graeme Wood Foundation, KM_754e-20160524192153 (parliament.qld.gov.au)

*regulatory obligations such as assessment documentation and studies, even though these can run into millions of dollars."*[2]

Resource assessments are also treated on a very different basis to planning decisions. Point in time planning decisions are made on the basis of the laws at the time an application is *lodged*, whereas by contrast, it's very common for resource regulations to be revised, updated or even have new regulatory requirements introduced during a project's life (such as in post approvals) or assessment process — and the application is assessed against the regulatory requirements at the time the decision is *made*. The resource industry wears the risk of regulatory changes (and uncertainty) that occur while an assessment process is underway.

Requiring decision makers to consider the rights and interest of Aboriginal and Torres Strait Islander peoples in land, culture and cultural heritage sounds like a structural improvement. The implementation of such processes will need to be resourced with appropriate expertise and experience to allow transparent, high-quality and timely decision making. We suggest that the Commission map out a counterfactual case study of how these decision-making structures might be applied in a recent contested mining decision. It would be helpful for all stakeholders to see the status quo decision making processes mapped against the proposed new structures.

Thank you again for the chance to provide a 'placeholder' submission on the reforms proposed to mining lease processes. We look forward to discussing how these proposals might be applied to oil & gas tenures.

In summary we recommend that the Commission:

1. consider allowing stakeholders more time to digest the mining industry feedback on these reform proposals before releasing a paper in November 2024 on their potential application to other resource tenure processes; and
2. map out a case study of how their reform proposals might have delivered a better decision-making process as a way of illustrating the nature of the changes from the regulatory status quo .

If you have any questions about any matters raised in this submission, please contact [redacted] on [redacted] or [redacted]

Yours sincerely,

[redacted]

Queensland Director
**Australian Energy Producers**

[2] "*Resource Sector Regulation*" Productivity Commission 2020 www.pc.gov.au/inquiries/completed/resources/report/resources-overview.pdf