Official Response, Reimaging decision-making processes for Queensland mining

Addressed to Fleur Kingham Chair of Queensland Law Reform Commission and associates,

Opening Statement

This response is composed by Dale Forrester

I am actively engaged in both smaller scale projects and mid-tier ASX listed companies in the mining and resource sector in Queensland. my collective experience in the industry positions me to provide insights into the proposed reforms and their potential impacts on all stakeholders involved. I appreciate the opportunity to contribute our perspectives and recommendations.

Responses to Consultation Questions

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

Response:

Yes, I agree that the process requires reform, and we support the guiding principles outlined in the document. We believe that a focus on fairness, efficiency, effectiveness, and modernity is essential to improving the decision-making processes surrounding mining leases and associated environmental authorities.

In particular, I strongly advocate for the inclusion of both industry and Native Title input throughout the entire process. Ensuring that all stakeholders, including Aboriginal peoples and Torres Strait Islander peoples, have meaningful opportunities to participate and contribute is crucial to achieving equitable and transparent outcomes.

Moreover, we encourage reforms that prioritize shortening the timelines for granting applications and reducing costs for all parties involved. This will not only improve the efficiency of the system but also provide greater certainty for both industry and communities.

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?

Response:

I agree that the strengths and problems outlined in the document are correctly identified. However, my primary concerns centre around the current timeframes, which are exceedingly long and create unnecessary delays in the decision-making process. This inefficiency negatively affects all stakeholders involved, from the industry to Native Title holders and the broader public.

Furthermore, I believe that petroleum, coal, and gas should be separated from all other minerals in this framework due to the vastly different mining processes and risks associated with these resources. The inclusion of these sectors alongside other minerals in a single process has detrimental impacts on the overall efficiency of the mineral industry and adds unnecessary complexity.

Additionally, I stress that changes to the system need to be carefully structured to prevent the weaponization of the legal process by miners, landholders and Native Title parties. Currently, the framework allows for such tactics, which can lead to excessive delays, increasing costs, and ultimately hindering project development. A tiered system should be employed based on environmental authority conditions and operational disturbance footprint. Submissions that fall under standard environmental authority conditions should undergo an expedited process to assist the state and applicants in moving through the system more efficiently.

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

Response:

I agree that the process needs reform, particularly with a focus on expediting the process and cutting costs to bring Queensland in line with other resource states like Western Australia. This model would significantly improve the value proposition for the public, the state, landholders, and Native Title parties, ensuring a more streamlined and effective process.

However, I have serious concerns regarding the level of private information proposed to be made publicly available. In particular, financial, production, and personal privacy-related documents should be carefully considered, and only the absolutely necessary information should be included in the public domain. Protecting sensitive data is critical to maintaining privacy and trust in the system.

The statutory criteria should also account for the development of critical minerals and expedite projects that fall into this category, in line with the Federal Government's Critical Minerals Strategy. The importance of these minerals to both state and national interests cannot be overstated, and fast-tracking such projects would be in Queensland's strategic interest.

Applicants must be involved in the decision-making process at all stages and should be given opportunities to provide additional information or make alterations to their applications to address areas of contention or concern. This would help expedite the approval process for both Mining Leases and Environmental Authorities.

Finally, I believe the process should be tiered according to the environmental impact and commodity type. This would ensure a fair and equitable process, reducing unnecessary costs for the state, applicants, and other parties involved. A tiered system would allow for more efficient use of resources, focusing on high-risk projects while streamlining approvals for lower-risk operations.

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

Response:

Open house sessions and public meetings would be costly and unnecessary for applicants applying for standard or near-standard Environmental Authority (EA) conditions, as these proposed operations will generally have a minimal environmental footprint. These types of participation processes should be reserved for circumstances where they can help expedite the decision-making process or address significant public or state concerns.

For standard EA applications, where environmental impacts are low, such extensive public consultation should only be initiated after the submission process and if there are specific concerns raised that warrant further public involvement. This will ensure that resources are focused on more complex projects with larger environmental or social impacts, without placing undue burdens on smaller or low-risk operations.

Additionally, industry consultation should be integrated into any significant decisions that affect the industry as a whole. Including the industry’s input on overarching policy and procedural changes ensures that reforms are practical, achievable, and aligned with industry best practices, ultimately benefiting all stakeholders.

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

Response:

Currently, the Land Court plays a critical role in ensuring fair compensation agreements are reached. However, legislators must carefully consider how the removal of the objections hearing could impact private interests, particularly in cases where adversarial parties exploit the process. Without proper safeguards, there is a risk that landholders and Native Title parties could use compensation negotiations as a way to hinder application processes and demand excessive, unjustified compensation. This not only increases the costs and timeframes for applicants but also places an unnecessary strain on the state's resources.

I have observed significant issues with some Native Title parties and landholders who have weaponized the current process, deliberately drawing out negotiations by refusing to engage

in good faith. These parties often cease negotiations altogether, declaring that the process is unfair, even when ample opportunities for fair negotiation have been provided. Such tactics can delay applications by many years, causing direct harm to applicants and slowing down the entire process.

A system must be put in place to ensure that these "bad actors" are held accountable and that this kind of behaviour is addressed moving forward. It is vital to implement measures that prevent the misuse of the application and objection process as a stalling tactic or a tool to extract unjust compensation. Ensuring that negotiations are conducted fairly and efficiently is in the best interests of all stakeholders—applicants, the state, Native Title holders, landholders, and the broader public.

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?

Response:

Yes, tailored participation processes are essential. The Environmental Authority (EA) disturbance size and type, along with the type of mineral being extracted, should be the primary governing factors when considering applications. These criteria will allow for a more targeted and efficient process that reflects the actual risks and impacts associated with different types of projects.

Applications for minerals should be segregated from those for oil, gas, and coal, as the latter have vastly different environmental impacts and regulatory requirements. Standard EA applications, which typically have minimal environmental disturbance, should progress through a simplified and expedited process. This approach would ensure that both the state and the miner can achieve beneficial outcomes more efficiently, avoiding unnecessary delays while maintaining appropriate environmental protections.

The forms of participation should reflect the scale and impact of the project. Smaller projects with standard EAs and minimal risk should not require extensive public consultation, allowing these lower-impact operations to proceed swiftly. This will help ensure that the state's resources are used effectively while facilitating timely project approvals that benefit both the state and the applicants.

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

Response:

I have observed significant conflicts of interest affecting local Indigenous Native Title groups, often exacerbated by corruption at managerial levels. These conflicts can severely impact the rights and rewards of local communities and miners, creating barriers to equitable participation in the decision-making process. Such issues are well-known throughout the industry and must be urgently addressed.

To ensure that the new participation process is accessible and responsive to the diverse needs of communities, it is crucial to implement robust safeguards against corruption. Legal application processes should be structured in a way that prevents them from being hijacked by corrupt individuals who may exploit these processes for their own benefits.

This includes ensuring transparency and accountability at all levels of the application and consultation processes. By establishing clear guidelines and oversight mechanisms, we can help build trust between Indigenous communities, miners, and the state. Furthermore, providing education and resources to local Indigenous groups about their rights and the application processes will empower them to engage effectively and protect their interests.

Overall, a commitment to integrity and fairness in the new participation process will help mitigate the risks posed by corruption and ensure that all stakeholders, particularly local communities, can benefit equitably from resource development.

Q8: What are your views on Proposal 2 (a central online Government portal)?

Response:

Yes, I believe that establishing a central online portal to view and increase transparency regarding the current status of applications is a significant step forward. Such a portal would enhance accessibility for all interested parties, allowing them to easily track the progress of applications and stay informed.

Interested parties should have the ability to apply for updates on specific applications, with all applicants who request updates publicly listed. This would promote accountability and transparency, ensuring that the application process is open to scrutiny. Additionally, applicants should be notified of any requests for updates related to their application, fostering better communication between the government, the applicants, and the community.

Furthermore, applicants should have the ability to access and view all submissions and advice pertaining to their application. This transparency will not only help applicants understand the context and feedback surrounding their submissions but will also build trust in the process by allowing them to see how their applications are being evaluated and considered.

Overall, the implementation of an online portal would be a crucial tool for enhancing communication, transparency, and accountability in the application process.

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

Response:

Applicants should be provided with access to all submissions related to their applications. This transparency would allow applicants to consider any changes they may be able to make to alleviate any perceived problems or concerns raised by interested parties. By enabling applicants to understand the specific concerns of stakeholders, the process can be expedited, allowing for quicker resolutions to any issues that may arise.

This proactive approach not only helps address concerns promptly but also fosters collaborative dialogue between applicants and affected parties. By facilitating this communication, we can ensure that all stakeholders feel heard and respected, ultimately leading to more efficient decision-making and smoother application processes.

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

- **(a)** mining leases?
- **(b)** associated environmental authorities?

Response:

I believe that the current notice pool for mining leases and Environmental Authorities (EAs) is sufficient. The existing mechanisms in place effectively ensure that relevant stakeholders and interested parties are informed of applications and their potential impacts.

Maintaining the current notice requirements allows for adequate communication and engagement without overburdening the process with excessive notifications. This balance is essential to ensure that the application processes remain efficient while still providing transparency and accessibility for those directly impacted by mining operations.

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

Response:

I believe that the current process for notifying Aboriginal peoples and Torres Strait Islander peoples is sufficient. The existing mechanisms effectively ensure that relevant Indigenous communities are informed about mining proposals and can participate in the decision-making processes that affect their rights and interests.

Maintaining these notification processes allows for adequate communication while ensuring that stakeholders are appropriately engaged without overwhelming them with excessive notifications. I recommend continuing with the current practices, as they provide a solid foundation for informing Indigenous communities about projects that may impact them.

Q12: What are your views on Proposal 3 (Independent Expert Advisory Panel)?

Response:

Yes, I support the creation of the Independent Expert Advisory Panel (IEAP). Establishing the IEAP would provide valuable expertise and guidance in the decision-making process for environmental authority applications. By bringing together a diverse range of experts, the panel can ensure that decisions are informed by the best available scientific, technical, and cultural knowledge.

This initiative would not only enhance the quality and transparency of the assessments but also foster greater trust among stakeholders, including Indigenous communities, industry, and the state. An independent panel would play a crucial role in addressing concerns and ensuring that all relevant factors are considered before decisions are made.

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

Response:

The criteria for forming an Independent Expert Advisory Committee (IEAC) for an environmental authority application should include:

1. **Experience in Similar Project Types and Scales:** Members should have a proven track record in projects that are comparable in nature and scale to the application at hand. This experience is vital for providing relevant insights and recommendations.
2. **Familiarity with the Local Area:** Committee members should possess knowledge of the local environmental, social, and cultural context. Understanding the unique characteristics of the area will enable them to assess potential impacts accurately and provide informed advice.

By ensuring that the committee is composed of experts with relevant experience and local knowledge, we can enhance the effectiveness and credibility of the advisory process.

Q14: What are your views on Proposal 4 (amendment to statutory criteria)?

Response:

Yes, I support the proposed amendment to the statutory criteria. Updating the criteria is essential to ensure that they reflect contemporary standards and adequately address the complexities of modern mining operations. These amendments will promote better decision-making, enhance environmental protections, and align the regulatory framework with community expectations.

Q15: What are your views on Proposal 5 (consideration of Aboriginal and Torres Strait Islander rights and interests)?

Response:

Yes, I support Proposal 5, which emphasizes the importance of considering the rights and interests of Aboriginal and Torres Strait Islander peoples in the decision-making process. It is essential to recognize and respect the cultural, environmental, and social connections that Indigenous communities have with their lands.

Incorporating these considerations into the statutory criteria will ensure that decisions are made with a holistic understanding of their impacts on Indigenous rights and interests, fostering a more equitable and inclusive regulatory framework.

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

- **(a)** public interest?
- **(b)** adverse environmental impacts?
- **(c)** the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture, and cultural heritage?
- **(d)** any other criteria?

Response:

Yes, the decision-maker for the mining lease application should be required to consider the decision (and reasons) of the decision-maker for the environmental authority application. This holistic approach ensures that all relevant factors are taken into account when assessing applications.

In addition to the existing criteria, I propose incorporating the importance of the project to the area it is intended to serve. This includes considering aspects such as:

- Employment opportunities generated by the project,
- The supply of critical minerals,
- Financial benefits to both the state and the local area, and
- Economic advantages for the miner and their employees.

Taking these factors into consideration will enhance the overall assessment of applications and help promote developments that provide meaningful benefits to the community and the state.

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?

Response:

Yes, I believe that all applications should be subject to maximum timeframes for key decision-makers and advisory groups to adhere to. The current process is incredibly open to interpretation, and timeframes are often abused, resulting in dysfunction that is detrimental to businesses trying to operate within these frameworks.

These timeframes should be directly linked to the proposed operations' disturbance footprint. Specifically, they should differentiate between applications with standard conditions for Environmental Authorities (EAs) and those that involve significant operations requiring site-specific EA applications. Establishing clear and enforceable timeframes will enhance efficiency, provide greater certainty for applicants, and ensure that decision-making processes are timely and accountable.

Q18: What are your views on Proposal 6 (review by the Land Court)?

Response:

I believe that the miner should have the opportunity to be involved in the Land Court process. This involvement would allow miners to address any concerns raised during the review and make necessary changes to their applications. By enabling miners to participate actively in the Land Court proceedings, we can facilitate a more collaborative approach that helps expedite the application process.

This proactive engagement not only addresses specific issues but also promotes a more efficient resolution, ultimately benefiting all stakeholders involved in the mining application process.

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

Response:

Standing to engage in the combined review process should be granted only to those who have formally participated in the decision-making process before a decision is made. This ensures that all parties involved have a genuine interest in the matter and have contributed to the discourse surrounding the application.

Additionally, the costs associated with the review process should be borne by the parties involved, particularly for standard Environmental Authority (EA) applications. This "hard cost modality" approach would promote accountability and discourage frivolous challenges, ultimately streamlining the review process and reducing unnecessary burdens on the system.

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?

Response:

The Land Court should have the power to form its own independent decision on the application. Granting the Land Court this authority would enhance the effectiveness of the review process by allowing it to address concerns and make determinations based on the evidence presented.

This independent decision-making capability ensures that all relevant factors are thoroughly considered, leading to more informed and equitable outcomes for all parties involved. It also promotes accountability within the decision-making framework, ensuring that decisions are made based on merit rather than administrative constraints.

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

Response:

A "hard cost modality" should be implemented, as this is the fairest model, particularly for standard Environmental Authority (EA) applications. Under this approach, each party would be responsible for their own costs incurred during the merits review process.

This model encourages accountability and discourages frivolous objections or appeals, as parties would be more mindful of the costs associated with their involvement. By ensuring that costs are managed fairly, we can promote a more efficient and effective review process that benefits all stakeholders involved.

Q22: Should there be a legislated pre-lodgement process?

Response:

No, pre-lodgement meetings should be voluntary and primarily necessary for site-specific applications, as these have a more significant impact compared to standard Environmental Authority (EA) applications. Mandating pre-lodgement meetings for all EA applications would likely slow down the approval process for standard applications, creating unnecessary delays and burdens for miners and the Department of Environment and Science (DES).

Implementing mandatory pre-lodgement meetings across the board would draw additional time and resources from all parties involved, without providing substantial benefits. It is essential to maintain flexibility in the process to ensure that it remains efficient and responsive to the specific needs of different types of applications.

Q23: Is there anything else you would like to tell us about the current processes?

Response:

I believe we have covered the most pressing issues with the current system in our earlier answers, which also outline beneficial ways to proceed for all involved stakeholders. My recommendations aim to enhance efficiency, transparency, and fairness within the application processes.

I am happy to be contacted for further discussions on these topics and to assist in refining our advice to ensure that the reforms effectively address the needs of all parties involved.

Q24: Are there any additional options for reform of the current processes you would like us to consider?

Response:

Unfortunately, I have only had three days to review the document since learning about the proposed reforms following the meeting in Mareeba. However, I would like to express my willingness to assist wherever possible.

I believe that engaging affected parties and subject matter experts is crucial for effective reform. I am open to collaboration and would appreciate the opportunity to contribute my insights and expertise to help move the process forward where feasible.

Signed

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   Dale Forrester
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