

31 January 2025

Queensland Law Reform Commission
Conscious consistency: mining and other resource production tenures
Review of mining lease objection processes
via email qlrc-miningobjections@justice.qld.gov.au

Dear President Kingham,

Thank you for the opportunity to make a submission on behalf of the members of Australian Energy Producers on the consultation paper, [Conscious consistency: mining and other resource production](#) as part of the Commission's [review of mining lease objections processes](#). The primary focus of the review's consultation has been on the mining lease objections processes. However, the Commission has also been asked to consider whether any proposed mining changes might also be applied to other resource production tenures, including petroleum.

Australian Energy Producers note that because of the exclusive focus of the review on mining processes, the proposals would represent a dramatic change for the petroleum production tenure process, resulting in wide-ranging negative implications for Queensland's energy security, economic growth, and resource investment. Security of tenure is a key factor in petroleum company decision making and any new uncertainty decreases the appeal of investment in Queensland.

Australian Energy Producers **recommends the Commission not suggest any** changes to petroleum lease assessment, due to the following key reasons:

- There has not been enough time or focus to fully consider the application and potential impacts to the petroleum tenure process.
- The proposals duplicate existing petroleum processes, reducing efficiency and increasing delays.
- Establishing an Independent Expert Advisory Committee Panel (IEACP) greatly amplifies the risks for a project proponent.
- The proposed Aboriginal and Torres Strait Islander Advisory Committee (ATSIAC) is unlikely to deliver on stakeholder expectations
- For petroleum projects, the EA application stage of a project is the appropriate time to engage the public.
- Lawfare was not adequately considered by the Commission.
- Merits review is not appropriate for this tenure process.

Further detail and discussion on each of these points, along with some additional points of consideration are provided below.

There has not been enough time or focus to fully consider the application and potential impacts to the petroleum tenure process.

The review has specifically focused on mining lease objections. Australian Energy Producers remain concerned that imposing a set of bespoke mining reforms onto a quite different petroleum lease assessment framework requires much more consideration. While consultation on mining lease applications has run since 5 June 2023, the time for the petroleum industry to consider the proposed reforms has only been since 15 November 2024.

Further, the differences between mining and petroleum have not been sufficiently considered. A petroleum project differs materially from mining in scale, duration, and development profile. For example, the progressive rehabilitation of wells in a gas project occurs in tandem with the development of new wells (unlike a mine). Spatially, petroleum lease generally cover a much large area (but with significantly less total impact)¹.

Petroleum has greater flexibility to manage infrastructure to coexist with existing land use and environmental and cultural values. Beneficial reuse of water has also been a significant benefit to the agricultural industry during droughts.

Decisions about production, including whether it is in the public interest, are made through the entire lifecycle of petroleum tenure.

Exploration tenure (an Authority to Prospect) is released for competitive bidding with a consideration of the public interest in the release. Unlike exploration tenure for minerals, the merit of production is established by the elected Minister at the point of grant of petroleum exploration permit, which means that many areas nominated by industry for exploration are not released for tender.

The proposals duplicate existing petroleum processes, reducing efficiency and increasing delays.

The paper recommends additional public comment and challenge steps through the Land Court. All applications for natural gas production, gas pipeline and liquefied natural gas (LNG) processing plant projects are already subject to a strict public comment, assessment, and approvals process, including through an environmental impact statement (EIS) process.

A regional interests development approval (RIDA) may also be required where a resource activity is proposed in an area of regional interest under the *Regional Planning Interests Act*

¹ The average size of a PL is 1,000 percent larger than a QLD coal mining lease (average of 26,000 hectares for petroleum vs 2,300 hectares for a coal mine). – calculated with <https://qldglobe.information.qld.gov.au/>

2014. All CSG production also requires referral under the Federal *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act), which also includes mandatory public participation and possible legal challenge. The EPBC Act already requires advice from an Independent Expert Scientific Committee (IESC).

The lived experience of the Commonwealth's Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development (IESC) has been that the outcomes for projects have not vastly been different than before but working through process adds significant time to project approvals. The management measures for managing potential impacts remain largely unchanged or duplicative of existing QLD requirements.

Establishing an Independent Expert Advisory Committee Panel (IEACP) greatly amplifies the risks for a project proponent.

Australian Energy Producers note that the Commission's [consultation summary](#) records divergent stakeholder views on the role, value and efficiency of establishing an Independent Expert Advisory Committee Panel (IEACP) and how that expert advice might interact with the advice from the Aboriginal and Torres Strait Islander Advisory Committee (ATSIAC). Like many of the other industry stakeholders who provided comments to the Commission on the mining proposals, our concern is that these new Committee processes are complex, cumbersome, and contentious to establish. There is also significant duplication with the Commonwealth IESC.

Australian Energy Producers does not support applying this proposed mining model to petroleum production tenures because so many new sources of uncertainty can only create delays and confusion in what is already a protracted tenure assessment by international standards.

The proposed Aboriginal and Torres Strait Islander Advisory Committee (ATSIAC) is unlikely to deliver on stakeholder expectations.

Queensland has well-established regulatory processes around Native Title and Cultural Heritage regulations. New guidelines are also emerging for the proper administration of the new Human Rights Act considerations. Australian Energy Producers are concerned the new ATSIAC structure may be set up to fail when stakeholders with high expectations do not understand the full scope of the existing project assessment processes. The potential for costly processes, overlap, conflicts of interest and duplication (with the IEACP and IESC) compounds our concerns. We can see only risks in applying this proposal to petroleum tenures.

For petroleum projects, the EA application stage of a project is the appropriate time to engage the public.

A Petroleum Production Lease only gives a petroleum company the exclusive right to apply for subsequent approvals. An EA is mandatory for the award of a production lease, they are site and impact specific and are an appropriate public participation point.

Lawfare was not adequately considered by the Commission.

The industry has concerns that well-intended tenure reforms inadvertently create more opportunities for lawfare and vexatious challenges. The industry's position is that climate policy is a matter of Government policy and should not be implemented via piecemeal appeals at a project approval level.

A recent legal challenge on an offshore gas field found that in order to frustrate or delay the project, the legal representatives, the Environmental Defenders Office and their consultant engaged in misconduct, including the distortion and manipulation of evidence, coaching of witnesses, and the fabrication of evidence.²

Merits review is not appropriate for this tenure process.

In the context of the Queensland system of petroleum tenures, a decision on a petroleum lease is not an isolated decision but an accumulation of considered assessment. In this context, we believe that a full merits review by third-party stakeholders of the awarding of the production tenure is not appropriate because there are already opportunities for stakeholders to submit their views, particularly during the subsequent EA stage. The legislation should be focused towards accepting the regulator's decisions with avenue of appeal for third parties based on judicial review.

Petroleum tenures are designed to link from exploration to production.

While presented in the Commission's consultation paper as an oversight or flaw in the regulatory framework, provisions identified by the review reflect deliberate policy decisions. For example, the requirement that a Minister *must* grant a production license if all requirements are met (covered in paragraph 15) is a deliberate and common feature of Australian resource tenure. An entitlement to move to a production title has always been recognised in petroleum legislation to encourage investment. Exploration acreage is released with this explicit.

² See *Munkara v Santos NA Barossa Pty Ltd (No 5) [2024] FCA 717*.

Given all these factors, we do not believe that current recommendations can be made without a broader policy consideration. Australian Energy Producers conclude **there is not a rationale for change for petroleum tenure processes.**

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

Yours sincerely,

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General Manager, States & Territories and
Queensland Director
Australian Energy Producers