

13 February 2025

Queensland Law Reform Commission

By email: LawReform.Commission@justice.qld.gov.au

To the Queensland Law Reform Commission,

RE: Consultation Paper – November 2024: Conscious consistency: mining and other resource production tenures

This submission is in response to the Queensland Law Reform Commission's (QLRC) review of mining lease objection processes. Specifically, we provide comments on the QLRC November 2024 Consultation Paper – Conscious consistency: mining and other resource production tenures.

ABOUT LOCK THE GATE

Lock the Gate Alliance Limited (**Lock the Gate**) is a national grassroots organisation made up of over 120,000 supporters and more than 150 local groups who are concerned about the risks associated with coal mining, coal seam gas and fracking. These groups are located in all parts of Australia, including the Surat Basin and comprises farmers, First Nations Peoples, conservationists and urban residents.

Lock the Gate welcomes the opportunity to contribute to this review with our own experiences and amplifying the experiences of individuals and groups in the Alliance. We strongly support future changes to the process for assessing and approving applications for resource tenures (and associated environmental authorities) under the *Greenhouse Gas Storage Act 2009*, *Geothermal Energy Act 2010*, and *Petroleum and Gas (Production and Safety) Act 2004* (collectively referred to in this submission as 'other resource proposals') to allow for improved participation, decision-making and review processes, and better alignment and consistency with proposed future mining lease reforms. We support the recommendations set out in the QLRC November Consultation Paper and seek to address the Consultation questions in Appendix B in the following submission.

A summary of our recommendations are as follows:

1. Make consistent public notification requirements across all resource tenure applications, including exploration. Direct notice should be given to individuals and organisations likely to be affected by such proposals.
2. The scope and extent of public participation needs to be consistent between all resource

proposals, including mining. All resource applications should be available to the public. Public notification must include access to key documents and information.

3. A central, government-run online portal with information, notification, consultation should be created for mining and all other resource proposals.
4. Align and make consistent and mandatory consideration by decision makers of 'public interest' across all resource proposals.
5. Introduce statutory requirements consistently across all resource proposal decisions to include, as mandatory considerations, the views, rights and interests of Aboriginal and Torres Strait Islander Peoples, particularly in relation to land, culture and cultural heritage.
6. Ensure consistency in review processes across resource tenure applications, in line with the QLRC's proposed changes to the mining lease review process.
7. Ensure RIDA applications under the Regional Planning Interest Act 2014 are undertaken at the same time as other major applications, to ensure the integrity of decision making. We also recommend that cumulative and contextual impacts of a project are considered.
8. Require the location of all infrastructure for a project be notified in applications and specified in maps attached to environmental authority applications, to ensure meaningful environmental and social impact assessment.
9. Notification, consultation and appeal rights are to be consistent across all other resource proposals processes.
10. Introduce the requirement to assess the cumulative impact of all resource projects as part of the standard criteria for environmental authorities. Consider a further review of the efficacy of the 'proponent led' structuring of gas approvals.

1. Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for considering reforms to the processes for deciding other resource proposals?

Yes - the guiding principles of 'fair, efficient, effective and contemporary' are appropriate for considering reforms to the processes for deciding other resource proposals. Pivotal to the four principles is ensuring that processes for notifying and consulting the community on proposals are consistent across all resource application processes, and that there are adequate opportunities for members of the public to review decisions.

2. Should we recommend that there is a consistent process by applying the consultation proposals for mining to other resource proposals?

Yes - it is confusing and inaccessible for the community when the processes for different resource proposals are inconsistent in notification, consultation, how decisions relating to approvals are made, and what avenues for review are available. Petroleum leases should be subject to public notification similarly to mining leases. Exploration leases and associated environmental authorities should also be subject to public notification. In our previous submissions to the QLRC (dated 30 September 2024) we highlighted the inaccessibility of the mining process, where multiple authorisations and approvals are situated on different webpages, making it difficult to follow an application through its process. This difficulty is amplified where there is no other information on an application process for tenures online, such is the case with other resource proposals. Not only does it frustrate community members who find out too late about a project that may directly impact them, but it erodes public confidence in good government and governance and is incredibly inefficient.

Failure to publicly notify for petroleum leases means that there are no available checks and balances on government power, and while, in some applications the relevant Minister is to make a decision based on “the public interest”, the public is not actually able to provide comment on what they determine is in their interests. This does not align with the Australian Government’s commitment to being a world leader in ESG (environmental, social and governance) performance which includes accountability and functional rule of law. It also does not align with the Queensland Government’s commitment to [Strengthen ESG credentials and protect the environment](#).

Additionally, there are no direct notification requirements for other resource proposals noted in the consultation paper. This means that affected landholders may only find out about a project once it’s approved, if they have missed public notification of the proposal. We support greater consistency across all resource application processes, with other resource application processes being brought into line with the proposed mining processes suggested by the QLRC. This greater consistency will ensure that the public, including affected landholders, will be notified and can provide their own submissions to a government application process for resource production. This is in line with ESG principles, and is consistent with similar laws in other Australian jurisdictions.

Recommendation 1

Make consistent public notification requirements across all resource tenure applications, including exploration. Direct notice should be given to individuals and organisations likely to be affected by

such proposals.

3. Is the rationale for the consultation proposals for mining also appropriate and justifiable for other resource proposals? If so, would the consultation proposals need to be tailored, and if so, how?

Yes, the rationale for the consultation proposals for mining are also appropriate and justifiable for other resource proposals. It is unclear why there is a difference between other resource proposals, but they are just as significant (and of the public interest) to the community, and to the environment, and consistency is key. Social impacts, impacts on landholders and the community, and impacts on the environment are often similar across proposals, and it makes sense that consultation is consistent.

We do not support the tailoring of consultation proposals, as per our last submission. We can see, now, the impacts of different processes for different resource proposals - that is, confusion and inaccessibility. Landholders and the community should know what to expect when dealing with resource proposals - the basics should be there, across resource proposals. Any tailoring of consultation should be over and above a basic, consistent approach (which currently does not exist).

4. What should be the scope and extent of public participation in processes to decide other resource proposals?

The scope and extent of public participation in processes to decide other resource proposals should be the same for what is proposed for mining proposals, as set out in our previous submission. All resource proposals should have consistent scope and extent for public participation. In addition, access to information should be consistent across all resource proposals.

As other resource tenure applications do not involve any notification or consultation process, information about the detail of such projects is sometimes not available to the public (unless an EA application is notified, or the proponent provides details of the project online, but even then this information needs to be sought out, and is not in a centralised government website). As noted in the QLRC consultation paper at paragraph 14, applications for authorities to prospect, petroleum lease and other petroleum tenures are not published and are not on a public register. Similarly, for greenhouse gas storage applications, applications are not published and are not on a public register.¹ It is unclear

¹ QLRC November Consultation Paper, paragraph 23.

why information is not publicly available for any of these projects. Projects of this kind are of immense interest to the public. The Queensland Government's plans to deal with climate change and our energy transition is of critical importance. Ensuring that the public has access to information on current proposals for other resource proposals is crucial.

We submit that notification processes, access to project information, the ability to make a representation to a consultation, and the ability to participate in the process by seeking a review of a decision should all be streamlined and consistent between mining and other resource proposals. Public notification must include access to key documents and information accompanying such applications (including the location of future wells - discussed further below), that will allow members of the public (particularly those directly affected by a proposal), full information about the proposal and how it will likely affect them.

Recommendation 2

The scope and extent of public participation needs to be consistent between all resource proposals, including mining. All resource applications should be available to the public. Public notification must include access to key documents and information.

5. Should the consultation proposal for an online portal apply for other resource proposals? Are there any additional notification requirements?

We commented on the need for such an online portal in our previous submission (of 30 September 2024) in relation to mining. The consultation proposal for an online portal needs to apply to other resource proposals too. It is essential that there is one, centralised point of information for all resource projects. As mentioned above, information and opportunities to participate and be consulted for proposals - indeed information on projects in general - are currently located on a number of different websites (sometimes even the proponent's website). This is confusing and is often opaque. Strengthening the Queensland Government's ESG credentials necessitates clear and readily available access to information on resource projects.

In addition to having a centralised, government-run online portal, the public should be able to sign up to alerts for specific proposals (as they are able to in other jurisdictions). Given that these proposals are often in regional areas with limited access to the internet, direct notice should be given to neighbours potentially impacted by a proposal.

Recommendation 3

A central, government-run online portal with information, notification, consultation should be created for mining and all other resource proposals.

6. How should the following interests be considered in the decision-making processes for other resource proposals:**(a) the public interest?**

'Public interest' is included as a factor in some decisions under other resource proposal legislation, however it is not applied consistently. For example, in approving initial development plans for petroleum leases the public interest is considered in the context of whether petroleum production under the lease will be optimised in the best interests of the State, having regard to the public interest. The relevant Minister must also consider the 'public interest' in deciding whether to grant a greenhouse gas lease and a geothermal lease. There is no requirement for the Minister to consider the public interest in the approval of a petroleum lease, though there is a requirement for the Minister to consider the public interest when deciding an environmental authority (which is required for the grant of a petroleum lease).

We agree with QLRC that 'public interest' is a "critical consideration when designing a process that is fair, efficient, effective and contemporary".² Given the impacts of resource development and the increase in public awareness of the impacts of these proposals, 'public interest' considerations are likely to change over time, and should be a consistent consideration in all resource proposals. 'Public interest' considerations allow for decision makers to consider not just the interests of proponents, but the interests of landholders - farmers who not only look after their land for their livelihoods, but who are critical to our food supply. That the Minister is not required to consider the public interest when considering a petroleum lease is inconsistent with mining lease processes, and those for greenhouse gas and geothermal leases. It is unclear why there is such an inconsistency between resource approval processes.

Recommendation 4

Align and make consistent and mandatory consideration by decision makers of 'public interest' across all resource proposals.

² QLRC November Consultation Paper, paragraph 99.

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

It goes without saying that the rights and interests of Aboriginal Peoples and Torres Strait Islander Peoples in land, culture and cultural heritage need to be mandatory and consistent considerations in decisions related to resource proposals. Particular efforts should always be made by the Queensland Government to ensure the engagement and participation of Aboriginal and Torres Strait Islanders across resource proposal processes to ensure the rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage are protected.

As stated in our previous submission dated 30 September 2024, we continue to support the proposal for the introduction of new statutory criteria to require decision makers to consider the rights and interests of First Nations Peoples, in mining lease processes and across all other resource proposal approval processes. In addition to obtaining the advice of the Aboriginal and Torres Strait Islander Advisory Committee and by a member of the new Independent Expert Advisory Committee, we would support additional resources allocated by government to ensure fulsome participation by any First Nations impacted.

Recommendation 5

Introduce statutory requirements consistently across all resource proposal decisions to include, as mandatory considerations, the views, rights and interests of Aboriginal and Torres Strait Islander Peoples, particularly in relation to land, culture and cultural heritage.

7. Should the review consultation proposal for mining apply for other resource proposals?

Like notification and decision-making processes, there is also a difference in review processes between mining leases and other resource tenure applications. This also needs to be made consistent. We note that our concerns with respect to review processes is focussed on the ability for third party submitters to have decisions reviewed.

As we set out in our previous submission, we support a mining lease review process that includes a Land Court hearing after a decision has been made by the relevant authority (rather than the Land Court making a recommendation to a Minister who ultimately has the final decision). Post decision merits review ensures adequate accountability for government decision making, and is in alignment

with environmental, social and governance principles. We support a revision to review processes for other resource application processes that includes a similar approach to what we've suggested for mining lease processes.

As it currently stands, there is no opportunity for third parties to appeal decisions on other resource tenure decisions to the Land Court, partly because there is limited or no opportunity for third parties to be notified and make submissions. Whilst there is still the option for judicial review, this is a more limited option of review for community members, as the grounds which can be raised are limited. It may also be difficult for third parties to establish standing to bring an action. Judicial review also carries greater costs risks – where costs follow the event, rather than in the Land Court where there is a presumption that parties bear their own costs. We note that there is an opportunity for third parties to make submissions on environmental authorities, and to seek internal review and a Land Court review of these decisions, but only with respect to site-specific and major amendment applications. As most exploration tenures are approved via standard applications, there is no opportunity to make submissions.

Recommendation 6

Ensure consistency in review processes across resource tenure applications, in line with the QLRC's proposed changes to the mining lease review process.

Other matters

- 8. Are there any issues or opportunities arising from interactions with decisions made under other Acts that we should consider?**

Timing of applications under the *Regional Planning Interests Act 2014*

Similar to Recommendations 1 and 2 above, it is important that there is consistency between processes related to other resource proposals. For example, current timing of consultation and decisions on Regional Interests Development Approval (RIDA) applications are *after* major approvals are granted, such that RIDA decisions appear to be a *fait accompli*. We recommend that RIDA applications under the *Regional Planning Interests Act 2014* are undertaken during a tenure application process.

We also recommend that cumulative and contextual impacts of a project are considered – in RIDA applications, 'activity' is narrowly construed.

Recommendation 7

Ensure RIDA applications under the *Regional Planning Interest Act 2014* are undertaken at the same time as other major applications, to ensure the integrity of decision making. We also recommend that cumulative and contextual impacts of a project are considered.

9. **Is there anything else you would like to tell us about the current processes for deciding other resource proposals or any additional options for reform of these processes you would like us to consider?**

Detailed information required in applications

We understand that for petroleum and gas activities, RIDA applications are usually made once a proponent has a better understanding of the location of wells and that this might occur after an approval has been granted.

It is not good environmental governance, however, to approve petroleum tenure applications and associated environmental authorities without knowledge of the location of wells. Whilst this is now, seemingly, common practice, there is no way an environmental authority, or an environmental impact assessment, can be properly assessed and approved without an understanding of the impacts of a project, and one can only understand the impacts of a project once a location for the project (and in this case, each of the wells and associated infrastructure), is planned, and specific impacts assessed. Upfront knowledge of the location of wells will ensure that the impacts of a proposal on regionally significant land are assessed as such, but also that applications under the *Regional Planning Interest Act 2014* are assessed in a timely and contemporaneous manner. It will also ensure that environmental authorisations or environmental impact assessments are assessed with full and proper information on the actual impacts of the project.

Recommendation 8

Require the location of all infrastructure for a project be notified in applications and specified in maps attached to environmental authority applications, to ensure meaningful environmental and social impact assessment.

Notification and review rights for exploration permits

While we realise that the consultation paper specifically excludes processes that apply to non-production tenures (such as exploration permits), we know that exploration also has an impact on the productive capacity of land, in addition to the environment. Accordingly, it is important that notification, consultation and appeal rights are consistent across exploration activities for all resource proposals.

Recommendation 9

Notification, consultation and appeal rights are to be consistent across all other resource proposals processes.

Cumulative impact

The cumulative impact of proposals is not required to be assessed under Queensland legislation, even though the cumulative environmental impacts on projects is often immense. Under the *Petroleum and Gas (Production and Safety) Act 2004*, proponents are permitted to 'salami-slice' large proposals into smaller ones, so that proponents can avoid assessing the impacts of a larger project, and instead have smaller projects assessed (with presumably less of an impact).

For example Arrow prepared a voluntary environmental impact statement for bilateral assessment of its proposed Surat Gas Project in 2012, and on the basis of this EIS secured Federal approval for 6500 coal seam gas wells in 2013 (approved until 2080). The Queensland Department of Environment and Heritage Protection (as it then was) also assessed Arrow's SGP EIS and imposed conditions on the project. However there was no State appeal option for impacted landholders or community groups over the project at this stage, as there was no environmental authority decision. Instead State approvals for the SGP have proceeded via environmental authorities and petroleum leases that cover only small fractions of the 6500 wells. For instance, Lock the Gate recently requested an internal review of an amendment to an environmental authority for the Surat Gas Project that pertained to only 39 proposed gas wells. The scale of clearing, water take and greenhouse gas emissions for these 39 wells pales into insignificance when compared to the scale of the entire SGP, but the decision maker is only entitled to consider the impacts of this tiny slice. Objection rights also only adhere to these slices, and the full impact of the project is not considered when assessing EAs and PLs.

This often means that gas EAs are rarely subject to environment impact assessment at a state level, limiting the effective assessment of environmental impacts of a proposal and objection rights only adhere to the micro EAs and PLs.. As the cumulative impacts of projects are not required to be assessed, this is a loop hole around effective and complete environmental assessment of proposals. Allowing this current practice is against good ESG principles.

Recommendation 10

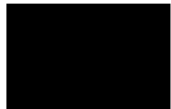
Introduce the requirement to assess the cumulative impact of all resource projects as part of the standard criteria for environmental authorities.

Consider a further review of the efficacy of the 'proponent led' structuring of gas approvals.

CONCLUSION

We thank you for the opportunity to make these submissions and look forward to receipt of your response.

Yours sincerely,



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Lock the Gate Alliance Limited