AgForce Queensland Farmers Limited
ABN 57 611 736 700

Tenth Floor, 200 Mary Street, Brisbane, Qld, 4000
PO Box 13186, North Bank Plaza, cnr Ann & George Sts, Brisbane Qld 4003

Ph: (07) 3236 3100
Fax: (07) 3236 3077
Email: agforce@agforceqld.org.au
Web: www.agforceqld.org.au

Ref: MG/AF/GG25002

14 February 2025

Fleur Kingham - President
Queensland Law Reform Commission
Level 30
400 George Street
BRISBANE QLD 4000

By Email: qlrc-miningobjections@justice.qld.gov.au

Dear President Kingham

Re: Review of the Mining Lease Objections Process
Conscious Consistency: Mining and Other Resource Production Tenures

AgForce Queensland Farmers Limited (AgForce) is a peak organisation representing Queensland's cane, cattle, grain and sheep, wool & goat producers. The cane, beef, broadacre cropping and sheep, wool & goat industries in Queensland generated around $10.4 billion in on-farm value of production in 2021-22. AgForce's purpose is to advance sustainable agribusiness and strives to ensure the long-term growth, viability, competitiveness and profitability of these industries. Over 6,000 farmers, individuals and businesses provide support to AgForce through membership. Our members own and manage around 55 million hectares, or a third of the state's land area. Queensland producers provide high-quality food and fibre to Australian and overseas consumers, contribute significantly to the social fabric of regional, rural and remote communities, as well as deliver stewardship of the state's natural environment.

AgForce welcomes the opportunity to make this submission to the Queensland Law Reform Commission in response to the Mining Lease Objections Process Review Consultation Paper. As communicated to the Queensland Government previously in relation to land uses that compete with agriculture, such as renewable energy projects and small-holder mining, AgForce stands by Board-endorsed Land Use Protection Principles (see Appendix 1). In line with these principles, AgForce supports the Queensland Government in proactively engaging with impacted agricultural stakeholders.

Thank you for the opportunity to provide comment on the Mining Lease Objections Process Review.

AgForce will provide answers to the Consultation Paper's questions however, wishes to make the below additional comments.

Whilst we acknowledge that this Consultation Paper is not considering the processes that applies to exploration permits, we do wish to make the following statements by way of background and keep in mind the implications of the exploration stage. Exploration can cause significant damage and losses for the individual landholders, namely farmers/graziers, who are required to co-exist with the resource exploration activity.

Continued/ …

Question 1 – Are the guiding principles of 'fair, efficient, effective and contemporary' appropriate for reform of the current processes?

AgForce supports and believes that the guiding principles are appropriate for reform of the current processes and would like to make the below points:

Fair – The process cannot be 'fair' without consideration of State Planning Policy, without effective stakeholder engagement consultation and consideration. Applications must be notifiable, public and allow for public submission. A minister should not be required to approve a lease based on only the state interest of resources.

Efficient – The process cannot be 'efficient' without sufficient time and process for proper stakeholder engagement consultation and consideration. There is no explanation as to what 'unnecessary delay' means, for whom and regarding what. Rushed processes to mute stakeholders with legitimate questions and concerns, particularly regarding science, technology, unresolved impacts on co-located land use, end up amplifying problems which could have been identified, potentially making management more costly and eroding intergenerational equity.

Effective & Contemporary – The process cannot be 'effective' and will not be 'contemporary' if it is focused only on ongoing investment and sustainable growth in mining. Sustainable development and particularly in relation to Australia's ESG OECD obligations, requires consideration of original and future land use, ongoing co-existing land use and the impacts and costs of the resource industry upon this.

AgForce sees that oversight should also be included in the principles. Without effective oversight democracy is eroded, miners cannot simply be relied upon to be responsible or act with social licence as their financial obligation is to their shareholders to maximise their profits. Oversight by the regulator must be embedded in law so that the regulator is empowered to act when required. An example of how badly things can go wrong when the regulator is not empowered to oversee is the development of CSG mining in priority agricultural areas where the miner has been empowered to oversee itself by self-assessing its compliance with the *Regional Planning Interests Act 2014* (RPI Act) and not have to provide any evidence as to that compliance to the regulator or the impacted landholder.

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

AgForce would agree that a consistent approach in line with the mining proposals should be applied to other resource proposals with discretion. Where there are significant and/or technical differences in the activities and their impacts, appropriate recognition of these should be reflected in the proposals.

Question 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?

AgForce agrees that the rationale for the consultation proposals for mining is also appropriate and justifiable for other resource proposals however, would recommend that the consultation proposals are tailored to accommodate the nuances of each resource type.

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

AgForce sees that all stakeholders must be able to directly participate in some way.

Continued/ …

The public should be notified for all Environmental Authority amendments and submissions should be able to be made in response to these submissions as even 'minor' amendments can have significant impacts to stakeholders. AgForce is of the view that the arbitrary thresholds in the *Environmental Protection Act 1994* (EP Act) do not follow the precautionary principle or the sustainable development principles.

AgForce sees that applications and initial development plans for Petroleum Leases, Geothermal Leases, Greenhouse Gas and Carbon Capture Storage projects should be made publicly available and be open for submission as they provide details of the nature and extent of the proposed activities.

Whilst a regional interest development approval made prior to a grant of resource authority under the RPI Act may be suitable for open cut mining activity, it would not be suitable for other resource production tenures such as CSG mining, greenhouse gas storage or geothermal. As the mining activity is widespread it will likely have varying impacts which can only be identified based on the particular mining development. Unlike an open-cut surface mine where the mine pit is identified in advance, other resource projects such as CSG mining evolves and changes as the project develops, rendering the regional interest development approval made in advance unsuitable.

AgForce is also of the view that submitters on any resource industry Environmental Authority should have rights to appeal to a court of competent jurisdiction. It is not equitable that submitters on greenhouse gas storage (GHG) and geothermal leases have no rights as to this. Where material evidence comes into existence, additional evidence should be able to be admitted during the appeals process.

There is a significant power imbalance between multinational corporations and landholders/stakeholders and sometimes information is not able to be sourced in limited time frames. The miner has often had years to plan their projects and obtain reports, the landholder/stakeholder often has only a very short time. Under the OECD guideline, this is a power imbalance which needs to be considered in the proposals recommended by the QLRC.

Additionally, AgForce recommends that paragraph 109 should also consider the State Planning Policy and provide protection for Important Agricultural Areas, existing/potential land use as well as surface water and groundwater.

In Queensland, surface water in the Murray Darling Basin, other than that already authorised to be taken, belongs to the Commonwealth Environmental Water Holder (CEWH). Projects must comply with *Water Act 2007* (Water Act), *Environmental Protection and Biodiversity Conservation Act 2014* (EPBC Act), RPI Act. AgForce recommends that these should all be considered within the consultation process.

Proposal 1 – 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; and
(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.

Regarding Paragraph 111, AgForce urges the Queensland Law Reform Commission to ensure that resource projects have landholder and community participation in the design and assessment stage to support early identification of key concerns and gather information for decision-making. This is also required under OECD Guidelines.

Continued/ …

AgForce also urges the QLRC to identify landholders as a key individual stakeholders separate from the community. The interests of a landholder far exceed those of the general community as the landholder is required to 'coexist' with the resource industry and will experience unique impacts that should not be diminished.

AgForce would also like to express that Paragraph 111 should also recognise that landholders are the current custodians of the land and should be entitled to recognition and consultation as a stakeholder, rather than being one of many stakeholders classed as 'community'. Landholders in co-located resource developments are the stakeholders with the most at risk and should not be marginalised.

Regarding the non-adversarial participation processes, consultation should not be limited to community advisory committees or reference groups, or a community leader council. It is essential that anybody can make a submission and that information sessions for impacted landholders, public meetings and also open house for community members, are mandatory. Effectively these are required under the OECD Guideline. Submissions should be properly considered and genuine communication with submitters should occur, rather than some stakeholders being classified as 'ideologically opposed' and their concerns ignored. The concept of committee or group consultation is open to reduction bias and require administration of governance, oversight, transparency and accountability to remove opportunities for corruption and predetermination of outcome by stacking the membership with representatives who are not impartial. It is easy to shut down conversation by way of choosing who is on a committee.

Proposal 2 – Notification and Information Sharing:

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

AgForce sees that the proposal for an online portal should also apply to other resource proposals. AgForce also recommends that the online portal contains information relating to compliance returns and defects.

AgForce recommends that information should be published on a public online website. AgForce would also recommend that the existence of the website/portal should be made known to landholders through direct communication.

All applications should be public and able to be submitted on. Without this aspect, effective stakeholder engagement cannot occur. It is also in practical terms required for Australia to have a framework which complies with OECD stakeholder consultation requirements.

Proposal 3 – An Independent Expert Advisory Panel should be established that is:

(a) Comprised of people with recognised expertise in matters relevant to the assessment of environmental authority applications
(b) Formed as project-specific committees to give independent expert advice to inform decisions on environmental authority applications that meet specified criteria

AgForce recommends that the membership of any Independent Expert Advisory Panel should be published and that there are mechanisms in place to ensure proper governance, oversight, accountability and transparency including strict controls over who has the choice of the membership and who they report to. Landholders should also be included as members with expertise relevant to the assessment of environmental authorities in relation to agricultural entities, even in the case where no 'formal' qualification is held (expertise would be obtained from life on the land).

Continued/ …

Proposal 4 – The statutory criteria in the Mineral Resources Act 1989 and the Environmental Protection Act 1994 should be amended to require the relevant decision-maker to consider:

(a) For decisions about mining lease and associated environmental authority applications – information generated through the new participation process
(b) For decisions about environmental authority applications – any advice of the Independent Expert Advisory Committee

AgForce is of the opinion that the concept of the Independent Expert Advisory Panel is sound, but it is imperative that it has proper governance, oversight, accountability and transparency and it has the necessary range of suitably qualified experts in its membership.

Proposal 5 – Consideration of Aboriginal and Torres Strait Islander rights and interests

Question 6 – How should the following interests be considered in the decision-making processes for other resource proposals:

(a) The public interest?
(b) The rights and interests of Aboriginal?

AgForce will only make comment on subsection (a) of question 6

AgForce is of the view that the impact on landholders and the public interest (State Interest as expressed though State Planning Policy) cannot be considered or assessed when the landholders impacted (the primary stakeholder in context of residual and unforeseen impacts) do not have any information. As mentioned above, the implementation of notification requirements and the ability for the public to make submissions is critical to this. In the absence of information effective consultation and consideration cannot be achieved.

Mining and other resource production does not operate in isolation. The co-located land use and all the restrictions and obligations the users of that land must comply with and their interests, must be considered in resource industry application decisions and operational regulations. This is particularly the case with farmers and/or graziers where contamination of stock/crops and/or water need to be considered as this has the potential to have catastrophic consequences for market access and jeopardises agriculture's contribution to Queensland's GDP, with the latest data showing agriculture contributes around $23.56 billion to Queensland's GDP.[1] Not only can agricultural businesses be jeopardised, but contamination of ground water will leave communities in these areas without a water supply.

Following on the issue of co-located land uses, AgForce is concerned that the public interest is not sufficiently considered when assessing whether the associated environmental authority should be granted. There is no consideration of pre-existing land use or land use capability as an Environmental Authority effectively only protects against activities considered to be or cause environmental harm under the EP Act. There is no consideration afforded for farm use of land or farm use of water (other than water quality). Effectively this shortcoming enables the resource industry to destroy or diminish the productive capacity and future capability of land without assessment and without protection which AgForce views as unacceptable.

'The public interest' for any resource related application and assessment should in all resource industry applications (exploration and production) be assessed with reference to the State Planning Policy.

Continued/ …

[1] https://www.daf.qld.gov.au/news-media/campaigns/data-farm/primary-industries

The State Planning Policy sets out the objectives and direction of the State in protecting the interests of current and future generations and considers the principle of 'sustainable development' on a state-wide intergenerational equity basis. The State Planning Policy for Agriculture needs to be forefront in considering public interest as it prioritizes agricultural land use over resource development in Important Agricultural Areas. Noting that Important Agricultural Areas (identified as priority agricultural areas under Regional Plans) comprise less than three percent of Queensland. The OECD Guidelines and the definition of 'sustainable development' should also be embedded in the decision-making process.

Proposal 6 – Review by the Land Court should be available after the Government has decided the mining lease and environmental authority applications. Decisions of the Land Court should be appealable to the Court of Appeal on the grounds of errors of law or jurisdictional error. The Land Court should:

(a) conduct proceedings after decisions on both applications are made
(b) conduct combined (merits and judicial) review
(c) conduct the review on the evidence before the primary decision-makers, unless exceptional circumstances are established
(d) apply existing practices and procedures

AgForce largely agrees with Proposal 6 to bring the jurisdiction of the Land Court into line with that of other courts. AgForce views this as bringing the Land Court's function and role into a true role of a conventional court and maintaining the separation of powers. AgForce again reiterates where material evidence has come into existence this should qualify as exceptional circumstances and be permissible to be admitted before the Land Court in its review of the Government's decision.

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

Resource application processes including consultation should be amended so that they comply with the OECD Guidelines and international definition of 'sustainable development'.

Figure 5 should include a Landholder Advisory Committee, as the current holders of the land (landholders) are the current custodians of the land and have the most interest in and in-depth knowledge of the current issues impacting the land, risks to the land, and constraints on the land.

AgForce would like to see the water trigger be applied to GHG storage and Geothermal Energy as Queensland is heavily dependent on both surface water and groundwater, the Queensland government should lobby the Commonwealth for amendment of the EPBC Act to include these in the Water Trigger.

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

AgForce sees that the Queensland Law Reform Commission should also consider the Water Act, any relevant Intergovernmental Agreements between the Commonwealth and the States and the CSG Joint Industry Framework.

Question 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?

AgForce has provided additional comment throughout the submission above.

Continued/ …

ESG Principles:
The Consultation Paper notes a rising focus on ESG principles, but there is no clear explanation as to how the proposals are compliant with the international ESG principles which Australia must follow due to its adherence, signature, or membership of various OECD, ILO and UN guidelines, conventions and principles. ESG principles are noted by the Consultation Paper as important for Queensland's resources industry's future, but falls short on how these are practically applied to protect stakeholders, other than the resource sector itself.

Considerations for State Development:
Despite 'sustainable development' having a broadly accepted definition of *development that meets the needs of the present without compromising the ability of future generations to meet their own needs,*[2] it is not clear how these proposals will promote this to occur.

The QLRC should ensure that its proposals do not erode the rights of landholders to speed the application and development of resources industry. For example, there has been conversation in various consultations over the last few years about duplication of process however, there is no duplicate process for assessment of regional planning interest of priority agricultural land use under the RPI Act, for CSG (petroleum) mining this is not assessed under the P&G Act when the lease is approved, nor is it assessed under the EP Act because the agricultural use of land is not something that environmental harm can occur to under the interpretation of the EP Act.

Prior to the RPI Act, the *Strategic Cropping Land Act 2011* (SCL Act) prohibited an Environmental Authority from being granted for resource activities in strategic cropping areas without a SCL compliance certificate or protection decision being applied for and granted. AgForce views this previous approach as superior to the regional interests' development approval system, as the miner had no environmental authority to mine if not compliant with the SCL Act.

Lastly, no explanation has been provided by QLRC as to why their approach to reform omits reference to State Planning Policy. Notably under State Planning Policy, important agricultural areas are to be protected from current and future diminishment of land use, whereas the resource industry is protected only from future land uses which may impact on the ability to extract the resource. The current system circumvents State Planning Policy through either requiring the Minister to approve petroleum leases or enabling the Minister to approve resource leases without considering State Planning Policy and the RPI Act (as the RPI Act has precedence over other legislation).

AgForce thanks the Queensland Law Reform Commission for the opportunity to provide feedback and looks forward to continued engagement to better practices for all stakeholders involved.

If you have any questions or require further information please contact [redacted], Policy Advisor by email: [redacted] or mobile: [redacted]

Yours sincerely

[redacted]

[redacted]
Chief Executive Officer

[2] https://www.un.org/sustainabledevelopment/development-agenda/

Appendix 1: AgForce Land use Protection Principles

Third Party Access to Farming and Grazing Lands Across Queensland

1. **Access**
   - 1.1. Process for access shall include landholder negotiations. No access prior to activities being agreed or determined and compensated.
   - 1.2. Full and frank disclosure of all likely impacts and liabilities associated with a project must be made to the landholder.
   - 1.3. Landholder negotiations shall be carried out in a manner that minimises time and financial impacts on the land holder eg, not to clash with planting harvesting or mustering activities.
   - 1.4. Access roads and tracks must be maintained, or improved where necessary, at the proponent's cost so that they are fit for purpose, support safe road use and minimise impacts on the environment and surrounding lands.
   - 1.5. Users of roads and tracks must operate in accordance with workplace health and safety (eg, safe speed limit for conditions).
   - 1.6. Landholders to have legal and relevant specialist representation fully funded by the proponent as incurred.

2. **Impact on Agricultural Land Uses**
   - 2.1. Agriculture is essential to our economy, food security and integral to our communities.
   - 2.2. Agriculture must be protected from development that compromises productivity, sustainability and accessibility.
   - 2.3. Where the long-term costs of a project exceed the long-term benefit from existing land use, the project should not be approved.
   - 2.4. Land uses that could have a detrimental impact on an existing agricultural land use or the health or safety of people in agricultural areas should require assessment by an independent, statutory authority.
   - 2.5. The independent statutory authority should be comprised of members representative of rural interests/with practical experience in assessing the impacts to rural operations/grazing/farming businesses.
   - 2.6. The authority should have strong governance standards that ensure transparency and accountability to all stakeholders.
   - 2.7. The assessment process should require the project proponent to fund independent investigation of the project's potential impacts by experts chosen by the authority.
   - 2.8. The independent experts' reports should be made publicly available alongside the project proponent's plans for the project and own assessment of likely impacts.
   - 2.9. To be properly made and considered by the authority, submissions should not need to be supported by the submitter's own evidence, it being important that a submitter's financial resources should not prevent the authority's ability to consider and address legitimate concerns.
   - 2.10. The authority's decisions should be supported by reasons and published publicly.
   - 2.11. Appeals from the authority's decisions should be considered by a court in which submitters can be heard at relatively low cost with principles similar to the Land Court eg, not bound by the rules of evidence, may inform itself in the way it considers appropriate and must act according to equity, good conscience and the substantial merits of the case without regard to legal technicalities and forms or the practice of other courts.

3. **Compensation**
   - 3.1. Landholder must be involved in assessment of impacts and calculation of compensation.
   - 3.2. Compensation must include payment for landholders' time calculated at commercial rates and payment for any negative impact on the peaceful enjoyment of land.

Continued/ …

3.3. Compensation must encompass the loss/impact on natural capital and livestock/crop production losses.
3.4. Material change in circumstances and/or unexpected consequences must trigger ability of landholder to re-negotiate compensation.
3.5. Impacted neighbours must be compensated.

4. Compliance

4.1. Compliance is a regulatory role that shall require landholder contact and on-ground inspections at not more than 6-month intervals.
4.2. Landholders should have the right, but not the responsibility to compel regulator investigation and enforcement of compliance.
4.3. Proponents and regulators must proactively identify, disclose and manage cumulative impacts.
4.4. Non-compliance should be immediately reported to the landholder and should trigger cease work.
4.5. All projects must have comprehensive monitoring and transparent reporting.

5. Rehabilitation

5.1. Land needs to be progressively rehabilitated and revegetated.
5.2. All plants and other materials used in rehabilitation must have demonstrated safe practices for biosecurity including appropriate permits, forms and checklists.
5.3. Rehabilitation and revegetation must achieve pre-existing conditions, or better.
5.4. There should be financial assurance for rehabilitation and revegetating for farming and grazing land use.
5.5. Rehabilitation must be up to date and financial assurance re-assessed prior to additional approvals or tenures being granted or renewed.

6. Biosecurity

6.1. Proponents must comply with the landholder’s farm biosecurity plan.