



30 September 2024

Queensland Law Reform Commission

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

To whom it may concern,

RE: Submissions – QLRC Mining Lease Objections

Background

1. The North Queensland Land Council (**NQLC**) is a recognised Native Title Representative Body (**NTRB**) under the *Native Title Act 1993* (Cth) (**Native Title Act**). NQLC represents registered native title bodies corporate, commonly referred to as Prescribed Body Corporate (**PBCs**) and native title claimant groups across the North Queensland region.
2. The NQLC representative area extends from the Daintree and 4km northwest of the Bloomfield Rivers in the east to just south-east of Ilbilbie and just west of Hayden and east to include the waters that are within the Exclusive Economic Zone of Australia. This includes the Cairns and Port Douglas regions and the adjacent coastal waters.
3. These submissions are in response to the Review of Mining Lease Objections Processes Consultation Paper (**Consultation Paper**) released by the Queensland Law Reform Commission (**QLRC**).
4. NQLC represents Native Title Holders and claimants in negotiations and agreement making for mining leases and mining claims under the ‘right to negotiate’ under section 29 of the *Native Title Act 1993* (Cth) (**Native Title Act**).
5. There are currently 143 ML applications in the right to negotiate in the NQLC region.
6. The largest barriers preventing Traditional Owners engaging with the objection process for ML applications are:
 - a. lack of resources to engage;
 - b. lack of funds to fully engage with the objection process through the Land Court;
 - c. lack of information;

- d. applicant non-compliance with notification requirements and providing relevant documents with reference to section 252A of the *Mineral Resources Act 1989* (Qld) (**Mineral Resources Act**); and
 - e. Traditional Owners are not considered to be an ‘*affected person*’ as defined in the MRA.
7. NQLC has prepared these submissions on their own behalf as an NTRB providing legal assistance in relation to mining matters, and on behalf of the native title parties across our region. In September 2024, NQLC conducted consultation with QLRC and representatives of PBCs within the NQLC region, feedback and recommendations from the consultation has been included within this submission.

Mineral Resources Act – ‘affected person’

Recommendation: The definition of ‘affected person’ under the Mineral Resources Act be amended to include registered native title claimants and registered native title body corporates.

8. Currently under the Mineral Resources Act, Traditional Owners are not included in the definition of ‘affected person’. Under section 252A of the Mineral Resources Act, an applicant for a mining lease must provide affected persons with a copy of the mining lease notice and mining lease application. The information contained in a mining lease application contains the information that would be required to inform both the decision to object to a mining lease and the grounds of an objection.
9. In the recent decision of *Harvey v Minister for Primary Industry and Resources* [2024] HCA 1 (**Harvey**), the High Court of Australia ruled that native title parties have the same rights as ordinary title holders. This includes a right to be notified, to object and to be consulted, in relation to the 'creation of a right to mine'. The High Court held:
- a. under s24MD(6A) of the Native Title Act, the Native Title Holders had the same procedural rights as if they held ordinary (freehold) title to the relevant area; and
 - b. under s24MD(6B) of the Native Title Act, the Native Title Holders had a right to be notified, to object and to be consulted.
10. In April 2024, NQLC was informed that the Department of Resources had changed its policy on the notification requirements for mining lease and mining claim applications. As such, the current policy requirement is that when notifying affected persons for MLs and mining claim applications applicants are to forward relevant documents as noted in section 252A of the Mineral Resources Act to registered native title claimants or registered native title body corporates at public notification stage. In the correspondence received by NQLC it states that is a ‘mandatory requirement to ensure compliance with the *Racial Discrimination Act 1975*’.
11. NQLC recommends that the definition of ‘affected person’ under the Mineral Resources Act be amended to include registered native title claimants and registered native title body corporates to provide regulatory certainty to ML applicants, and to ensure those with native title interests are provided with the

information required to make a decision whether to object to a mining lease or mining claim on their country.

12. Additionally, under section 252B of the Mineral Resources Act, an applicant for a proposed mining lease or mining claim must provide a declaration demonstrating compliance with the information sharing outlined above. NQLC is aware that currently this requirement is not being complied with and it is submitted that false declarations are not being adequately monitored by the Department of Resources. Since the change of policy in April 2024, NQLC has only received the information required under section 252A on a few occasions. Assessments of these declarations need to be verified by the Department of Resources to ensure that appropriate information sharing has occurred with Traditional Owners at the application notification stage.

Recommendation: Department of Resources to enforce Native Title Holder engagement throughout the mining lease and mining claim application process.

Native Title Act

13. The current mining objection process in the Land Court under the Mineral Resources Act does not coincide with timeframe or requirements of the right to negotiate process under the Native Title Act. There are two major issues with the interaction between the Native Title Act and the objections process:
 - a. Timeframes; and
 - b. inconsistency of processes.

Timeframes

14. Under the current mining objection process, there is a 20-day timeframe after notification to lodge an objection to the grant of a mining lease.
15. Due to non-compliance with notification requirements as outlined at [10], often Traditional Owners are not made aware of a mining lease application until they receive a section 29 notice under the Native Title Act. Section 29 notices are issued months after public notification, and therefore the objection period has closed by the time Traditional Owners are aware of the mining lease application.
16. PBCs generally, do not have the resources to monitor mining lease application notifications with the Department of Resources and the timeframes imposed put significant pressure on PBCs to be able to adequately consult with community members about mining on country. Please see below for recommendations on timeframes.

Inconsistent process

17. If a PBC or native title claimant group lodges an objection to a mining lease application, there is still a requirement that they must engage in good faith with the right to negotiate under section 29 of the Native Title Act.

18. Due to the non-integrated process between the mining objection process through the Land Court and the right to negotiate under the Native Title Act, Traditional Owners are forced into a position to having to engage in negotiations whilst also actively objecting to a mining lease.
19. If a PBC or native title claimant group does not wish to engage in negotiations due to an ongoing objection in the Land Court, this exposes them to significant risk if the matter is taken to the National Native Title Tribunal (NNTT) for future act determination application where the NNTT could determine the act of mining can be done with no further input from the Native Title Holder.
20. NQLC recommends an integrated model with the Native Title Act that does not require Native Title Holders to engage in active negotiations while pursuing an objection to a mining lease application.

Aboriginal Cultural Heritage Act 2003 (Qld) Recommendation: The Land Court must consider impacts to cultural heritage when assessing objections to MLs.

21. In Queensland, Aboriginal cultural heritage is governed under the *Aboriginal Cultural Heritage Act 2003 (Qld) (ACHA)*. The ACHA includes two main mechanisms for the protection and management of cultural heritage:
 - a. the cultural heritage duty of care; and
 - b. provisions for the development of cultural heritage management plans / or ‘*another agreement*’.
22. In the mining lease objection Land Court decision *Cobbold Gorge Tours Pty Ltd v Terry* [2023] QLC 7 (Cobbold Gorge), it was held that the Native Title Act and ACHA provide adequate protection to cultural heritage.
23. The assumption that the Native Title Act and ACHA offer adequate protection to cultural heritage in relation to mining is a falsity.
24. The statement of the Land Court in Cobbold Gorge makes the assumption that miners have an understanding of the cultural heritage duty of care and their obligations under the ACHA.
25. The protection of cultural heritage requires active engagement with Traditional Owners and ideally entering into a best practice Cultural Heritage Management Agreement so that all parties can manage cultural heritage under clear processes.
26. It is recommended that the Land Court must consider impacts to cultural heritage when assessing objections to mining lease applications.

Consultation with Traditional Owners in our region

Recommendation: Only the Traditional Owners of the country directly affected by a proposed mining lease should have the right to lodge objections against the grant of a mining lease on native title or cultural heritage and environmental grounds.

27. During consultation with Traditional Owners by NQLC, views were expressed that Traditional Owners do not want people speaking for their country from elsewhere in Queensland. Just because someone is Aboriginal or Torres Strait Islander, does not necessarily mean they have authority to speak for other's country. Traditional Owners are particularly concerned about decision making being centralised by way of advisory committee based in Brisbane, rather than the relevant region.
28. Correct engagement through nominated PBCs or authorised Applicants from the native title claimant groups can assist in identifying the appropriate Traditional Owners to make decisions about their country.
29. It is recommended that restrictions be put in place so that only the relevant Traditional Owners of the country impacted by a mining lease application can lodge an objection to a mining lease on native title or cultural heritage and environmental grounds and noting that Traditional Owners' cultural heritage is intrinsically linked to the environment.

Recommendation: An online resource should be developed that holds all relevant information and dates relating to mining lease applications, objections, and grants.

30. As noted at [6] above, a significant barrier to Traditional Owners engaging in the mining lease application objection process is being aware of mining lease applications on their country and accessing the information needed to lodge an objection in the limited timeframe.
31. Traditional Owners are supportive of the establishment of an online resource that contains all the information in relation to mining lease applications, objections and grants in one place. The information that should be included is:
 - a. copies of all relevant documents including mining lease applications;
 - b. information about associated environmental authorities; and
 - c. a timetable of important dates.
32. Given the very limited resources available to PBCs and native title claimant groups in general, it is crucial that Traditional Owners have easy access to information about potential mining occurring on their Country.

Recommendation: Traditional Owners recommend the establishment of an Independent Expert Advisory Panel with the inclusion of Aboriginal and Torres Strait Islander members.

33. During consultation, Traditional Owners expressed general support for the establishment of an Independent Expert Advisory Panel as recommended in the Consultation Paper.
34. It is recommended that the Independent Expert Advisory Panel for each mining project include Traditional Owners with cultural knowledge of the Country impacted by the proposed mining. There was general concern expressed about decision making occurring in Brisbane, by those with no knowledge or

connection to the country of a proposed mine. It is not culturally appropriate for Traditional Owners to comment on others country.

Recommendation: Longer timeframes to lodge objections to mining lease applications and greater support to PBCs and native title claimant groups to assist in community consultation and culturally appropriate decision making.

35. NQLC supports that the principles of free, prior and informed consent (**FPIC**) should be a key requirement at all stages of mining projects. Early engagement with the appropriate Traditional Owners and community representatives are crucial to ensure that appropriate consultation occurs, and appropriate outcomes are achieved in relation to cultural heritage, economic development and addressing current and future community needs.
36. Conducting community consultation is a resource intensive exercise. It is recommended that the importance of community consultation is recognised when making decisions about mining on country, including whether to lodge an objection.
37. During consultation, it was expressed by one attendee that members of the group... ‘don’t feel like they are being heard or apart of any decision-making process by the time it gets to the PBC’.
38. Tight deadlines associated with considering mining leases (20 days) and deciding whether to lodge objections make community consultation very difficult for PBCs and native title claimant groups through their Applicant, especially if there are financial costs associated with information sharing and community discussion.
39. It is recommended that mining objection timeframes be increased, alternatively an option for an extension upon application, and specific funds be allocated to assist PBCs and native title claimant groups assist in community consultation and culturally appropriate decision making.

Recommendation: That past non-compliance and behaviour be considered when assessing the grant of a mining lease and when lodging an objection to a mining lease.

40. Under the Native Title Act, Traditional Owners are forced into negotiations and agreements with miners and some mining lease applicants have a previous history of non-compliance and poor behaviour. NQLC submits that mining lease applicants are not being held accountable for non-compliance of native title agreements.
41. If a mining lease applicant is a repeat offender, this should be addressed by the Department of Resources upon application in the first instance rather than placing the burden of lodging an objection on Traditional Owners. There should also be grounds afforded to the Traditional Owners for objecting to the mining lease application should Traditional Owners be aware of the applicant’s previous non-compliance.

42. There are currently no restrictions placed applicants who continually do not comply with native title agreements and engage in offensive and disrespectful behaviour towards Traditional Owners without any ability to reach agreement. NQLC submits that the Department of Resources is failing to ensure compliance, especially in relation to small scale miners. It is considered unreasonable that Traditional Owners are continually subjected to this behaviour through forced negotiations or the objection process.

I look forward to hearing from you in relation to these submissions.

Yours sincerely,



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