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12 September 2024

Fleur Kingham, President
Queensland Law Reform Commission
L30, 400 George Street
BRISBANE QLD 4000

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

Dear Ms Kingham

Re: Review of the Mining Lease Objections Process

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

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 Queensland Government in proactively engaging with impacted agricultural stakeholders.

AgForce mostly supports the proposals set out in the consultation paper. For ease of reference AgForce will make comment below on the questions posed in the consultation paper in chronological order.

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.

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Question 2 – 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?

AgForce agrees with the listed strengths and problems with the current processes listed in paragraphs 28-48. AgForce does not have any further points to add.

PROPOSAL 1 – REFRAMING THE PARTICIPATION PROCESSES

Question 3 – What are your views on proposal 1?

AgForce mainly agrees with proposal one except for paragraph (c).

- (a) AgForce agrees with the proposal to change the role of the Land Court and remove the objections' hearing and to allow the Land Court to review Government decisions. AgForce also supports limiting the evidence available to the Land Court upon review to the same evidence that was before the original decision maker, with the discretion to admit new evidence in exceptional circumstances.
- (b) An integrated, non-adversarial participation process is also supported as it would support the miner's ability to understand the interests and concerns of interested and affected parties.
- (c) AgForce does not agree with (c) under proposal 1. AgForce believes that the current Native Title 'future acts' regime and cultural heritage laws are sufficient safeguards for Aboriginal and Torres Strait Islander peoples.

INTRODUCING NEW FORMS OF PARTICIPATION

Question 4 – What forms of participation should be included in the new participation process?

AgForce sees that there are strengths and weaknesses of each of the proposed participation processes however, would recommend that at least the following forms of participation are included in the new process:

- Community Advisory Committee/Reference Group
- Written Submissions or comments
- Public Meetings

AgForce has excluded information sessions/open houses from the forms of participation that we believe should be included in the new participation process. From experience, there usually is not a lot of interest or attendance in information sessions and AgForce sees that the resources devoted to these sessions could be better utilised elsewhere.

AgForce believes that a community advisory group is the preferred option over a community leaders' council as it ensures local perspectives are paramount and also allows local government and relevant entities to be involved. The involvement of the community advisory committee being able to draft assessment reports and conditions of approval is ideal and keeps the process and concerns raised at a community level. AgForce sees that the group should be made up of local landholders who understand the impacts on agricultural land, local council and the Chamber of Commerce. However, one disadvantage of this option is that the majority of mining leases are sought in areas that are not heavily populated, with the majority of the region's population living significant distances out of town. This could create issues with the ability to get to meetings and raises the issue of remuneration of members. An allowance of virtual meetings would go some way to diminishing the burden of members, in particular landholder members, on the advisory group.

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The reason why this option is preferred over a community leader council is because AgForce feels that this is overly burdensome on representative groups. For example, whilst AgForce appreciates the opportunity to provide comment on proposed mining projects, it is unrealistic to expect efforts can be invested into each and every proposal.

However, AgForce sees benefit in large, high impact proposals being assessed by a community leaders' council once certain criteria are triggered, such as those listed in paragraph 117 of the consultation paper.

Whilst AgForce sees the benefits in a public hearing, public meetings are preferred as to allow for open discussion between the miner, Government and the public. Written submissions are also an essential part of the process.

Question 5 – How would removing the objections hearing affect private interests?

AgForce seeks to ensure that the private interests of all people and businesses involved in primary production and supporting industries are not adversely affected by the proposed change.

The host landholder/s, neighbouring landholders, the broader community and the economy to which they contribute, may all be impacted by a mining project. Currently, any person can make an objection and participate in the objections hearing process. However, as noted at paragraph 48 of the Consultation Paper, there are barriers, including insufficient resources and insufficient access to objective scientific analysis, to allow meaningful participation in the current processes.

As a general proposition, AgForce believes proposed new land uses that could have a detrimental impact on existing agricultural land uses or the health or safety of people in agricultural areas should require independently informed, rigorous, objective and transparent assessment by an accountable authority.

AgForce therefore supports the removal of the objections' hearing process for mining leases, so long as the replacement participation, decision-making and review processes meet the above objectives for all stakeholders, including the landholders whose private interests are directly and indirectly affected.

Question 6 – Should there be a 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?

AgForce supports a consistent public participation process for all projects because of the risks that could come with tailored participation processes, including those listed at paragraph 121 of the Consultation Paper.

Question 7 – How can we ensure the new participation process is accessible and responsive to the diverse needs of communities?

Among other things, by ensuring the right to participation is not limited only to those with vested private interests.

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PROPOSAL 2 – A CENTRAL ONLINE PORTAL

Question 8 – What are your views on proposal 2?

AgForce agrees with proposal 2 to establish a central portal that gives public access to up-to-date information. AgForce also recognises that many of our members still rely on newspapers and traditional mail services for information so we would urge the new process to retain the requirement of a written notice in an approved newspaper.

Question 9 – What additional notice and information-sharing requirements should be included in legislation as part of the new participation process?

AgForce agrees that advertising in newspapers is still necessary.

AgForce agrees that it is a good idea for lawyers who represent landholders to be able to sign up to receive notices and alerts from the online portal. This allows lawyers to have an idea as to the types of projects happening in particular regions which may impact their clients.

At this stage AgForce does not have anything further to add to this question.

Question 10 – What direct notice requirements should be included for applications for:

(a) Mining Leases?

In addition to those ‘affected persons’ currently listed within the *Mineral Resources Act*, AgForce sees that direct notices should be given to neighbouring landholders who may not directly adjoin the land used for the proposed mining lease if they are within a reasonable proximity where it could be expected that their interests may be affected by the proposed mining lease eg, by dust or noise pollution. What constitutes ‘reasonable proximity’ would be dependent on the scale of the project, size of the host, distance to neighbouring properties and other factors.¹ Direct notices should also be given to landholders who reside on the same gazetted road² that is used to get to the proposed mine site as there may be concerns with increased traffic, specifically on dirt roads that ordinarily do not see much traffic. This should be irrespective of whether their property is only on one side of the road or the road ‘cuts’ through their property.

(b) Associated Environmental Authorities?

AgForce would recommend that neighbouring landholders (those adjoining and those in close proximity) should be given direct notice of the associated environmental authority. AgForce sees that the definition of close proximity in this case should consider landholders whose interests could be impacted by lack of compliance with the conditions attached to the associated environmental authority, for example, landholders downstream of the proposed mining lease area who wouldn’t ordinarily be impacted but for lack of compliance.

Question 11 – What else is required to notify Aboriginal peoples and Torres Strait Islander peoples who may have an interest in the mining proposal?

AgForce has no comment on this question.

PROPOSAL 3 – AN INDEPENDENT EXPERT ADVISORY PANEL

Question 12 – What are your views on proposal 3?

¹ When assessing what is a reasonable proximity it must be remembered that in some areas neighbouring homesteads can be 50-100km or more away and there may not be any impacts to these neighbours from the mining lease.

² Referring to the road used to travel from say the nearest town to the host property.

AgForce supports the establishment of an Independent Expert Advisory Panel, but feels the limited scope of its role as presently proposed is a missed opportunity. Continued/ ...

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First, the Independent Expert Advisory Panel's role should not be limited to the environmental authority application and should instead also extend to matters relevant to the mining lease application.

Also, the timing of its involvement in the process should be reconsidered. It would enhance the participation process if the Independent Expert Advisory Panel were to be constituted and engaged early in the application process and its findings published at the outset of the participation phase, along with the subjective analysis presented by the project proponent.

This would support the aim of the participation process to allow early identification and resolution of key concerns and promote inclusive participation from those who do not have the resources to engage their own experts.

Question 13 – What should be the criteria to form an Independent Expert Advisory Committee for an environmental authority application?

Notwithstanding, comments made in response to question 12 (above) with regard to an Independent Expert Advisory Committee should not be solely for environmental authority applications, AgForce supports establishing specified criteria that triggers the formation of an Independent Expert Advisory Committee, which will go some way to creating community trust, rather than leaving this process up to Government discretion. AgForce agrees with the criteria listed in paragraph 172 of the consultation paper

PROPOSALS 4 AND 5 – AMENDED STATUTORY CRITERIA FOR DECISIONS

Question 14 – What are your views on proposal 4?

AgForce suggests proposal 4 should be varied so that advice of the Independent Expert Advisory Panel is also relevant to decisions about mining lease applications, but otherwise supports proposal 4.

Question 15 – What are your views on proposal 5?

AgForce does not support this proposal. AgForce questions how this proposal will interact with existing Native Title and cultural heritage protections and processes. The views of Aboriginal and Torres Strait Islander peoples who have continuous ties to the specific land in question should be the only group able to provide comment.

Question 16 – Should the decision-maker for the mining lease application be required to consider the decision (and reasons for decision) of the decision-maker for the environmental authority application in reaching their decision on the statutory criteria for:

(c) Public Interest?

AgForce favours the option set out in paragraph 200 that departmental guidelines are published clarifying the meaning of public interest under each Act and the inclusion of an explanation in the process the decision-maker will use to assess the public interest. AgForce would recommend that the views of the relevant local governments are also included in the guidelines about public interest. The guidelines should also be able to be localised for different regions.

(d) Adverse Environmental Impact?

AgForce sees that the perceived duplication of this criteria is acceptable and reflects the importance of safeguarding the environment and minimising environmental impacts, informed by the context of the relevant act under which the criteria is established.

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(e) *The rights and interests of Aboriginal peoples and Torres Strait Islander peoples in land, culture and cultural heritage (see proposal 5)?*

AgForce has no comment on this question.

(f) *Any Other Criteria?*

AgForce has no comment on this question

Question 17 – 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?

AgForce considers the section 269(4)(m) criteria, being the appropriateness of the proposed mining use of the subject land in light of the current and prospective uses of that land, should be expanded so that the decision maker is required to consider the relative economic, cultural and environmental merits of competing land uses, taking into account projections beyond the life of the proposed project.

PROPOSAL 6 – REVIEWING THE GOVERNMENT’S DECISIONS

Question 18 – What are your views on proposal 6?

AgForce supports proposal 6 and sees the benefits to the Land Court’s proposed functions listed in P6 (a)-(d). 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.

OTHER MATTERS FOR CONSIDERATION:

Question 19 – What preconditions, if any, should there be to commence combined review?

AgForce sees that open standing should be maintained with no restrictions such that anyone objecting to a proposed mining use has a right to be heard in the Land Court in an appeal setting. Whilst AgForce is of the view that the host landholder’s interests are the most affected, AgForce does appreciate that there may be other legitimate interests affected and we see that there would be considerable difficulty in defining fair, clear and unambiguous standing criteria. AgForce trusts that the court processes will distinguish illegitimate claims brought without a proper basis.

Question 20 – 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?

AgForce sees that the Land Court should have the power to substitute its own decision on the application. AgForce agrees this prevents political influence (actual or perceived) and upholds the credibility of the Land Court.

Question 21 – Should each party pay their own costs of the merits’ review or should a different rule apply?

AgForce sees that the current costs rules of the Land Court are one of the benefits of the current system and would advocate for option 3 – ‘hard costs neutrality’ as our preferred option. This allows the current costs system to be kept so that each party bears their own costs, irrespective of the outcome of the litigation, but allows the court discretion to make a different order if there has been conduct on behalf of a party considered to warrant a costs order. This allows an applicant to make a claim without having the fear of a big expense. AgForce does not see that the comment regarding the ability of applicants to engage Counsel when a costs order may be at risk is significant as Counsel has the discretion not to accept a case if they believe there is no prospect of success.

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INTERACTIONS WITH OTHER LAWS

Question 22 – Are there any issues arising from interactions with decisions made under other Acts that we should consider?

AgForce has no comment on this question.

Question 23 – What opportunities are there, if any, to integrate interacting Queensland Acts with the processes to decide mining lease and associated environmental authority applications?

AgForce has no comment on this question.

OTHER MATTERS

Question 24 – Should there be a legislated pre-lodgement process?

AgForce agrees that a pre-lodgement process encourages early engagement and sees that legislating the process would be beneficial for all participants to better understand the project. A similar model to that adopted in British Columbia where major projects are required to undergo a formal pre-application process as part of the environmental assessment process is warranted.

Question 25 – Is there anything else you would like to tell us about the current processes?

Whilst AgForce appreciates this consultation paper is in response to the objections process and provides pathways for resolution of issues with a proposed mining lease, it is also important to note that the vast majority of mining lease applications are small family-owned operations who generally get along with the landowners.

Question 26 – Are there any additional options for reform of the current processes you would like us to consider?

AgForce has no comment on this question.

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

Yours faithfully

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