

CENTURY ZINC PROJECT BILL 1997

EXPLANATORY NOTES

Title of the Bill

Century Zinc Project Bill

Policy Objectives of the Legislation

The objectives of the legislation are to facilitate certain aspects of an agreement made under the right to negotiate provisions of the *Native Title Act 1993* (Cth) regarding the establishment of a zinc mine, port facility and miscellaneous transport infrastructure corridor, to ensure that native title is not extinguished and to enable the determination of a development application on certain land in north-west Queensland.

Achieving the Policy Objectives of the Legislation

The proposed legislation achieves these objectives by:

- providing for the resumption of native title to enable the grant of leases;
- allowing for the resumption of native title and an easement for the purposes of a miscellaneous transport infrastructure corridor from the north-west minerals province to the Port of Karumba;
- providing for the payment of compensation with respect to resumption;
- ensuring that native title is not extinguished by anything done under the legislation and that the non-extinguishment principle applies;

- enabling the cancellation of an existing term lease and mining leases which may be invalid because of native title;
- enabling the grant of a new term lease and new mining leases to replace those which may have been invalid because of native title;
- providing for the vesting of land at the Port of Karumba in the Ports Corporation of Queensland to enable the grant of leases;
- providing for rights with respect to the construction of infrastructure within the miscellaneous transport infrastructure corridor;
- providing for a Ministerial call in power with respect to the development of particular land.

Administrative Cost

The administrative costs to Government will be those normally associated with the resumption of interests under the *Acquisition of Land Act 1967*. Compensation rights of current land owners and others with an interest in the land will not be changed by the Bill.

Fundamental Legislative Principles

The Bill is consistent with the fundamental legislative principles. Whilst the Bill removes the right of a lessee to be notified or to object to the resumption of an easement, the Bill provides a lessee with a right to apply to the Land Court for compensation. Potential native title holders have already given their agreement to the taking of native title through the right to negotiate procedures of the *Native Title Act 1993* (Cth). In this regard, the Bill is consistent with the *Native Title Act 1993* (Cth) and provides for the acquisition of native title in the same manner as other interests in land may be taken. The Bill ensures the native title which is or may be taken will not be extinguished. Extensive site clearance work by aboriginal people in accordance with cultural heritage legislation over the area proposed for resumption and grant of titles will be completed by the time the Act is proclaimed.

Consultation

Consultation has occurred with:—

- the Department of the Premier and Cabinet;
- the Department of Economic Development and Trade;
- the Department of Transport;
- the Department of Mines and Energy;
- the Department of Main Roads;
- the Department of Local Government and Planning;
- the Department of Natural Resources;
- Queensland Treasury;
- the Crown Solicitor; and
- the Solicitor-General.

NOTES ON CLAUSES

Clause 1 sets out the short title of the proposed Act.

Clause 2 provides for the commencement of the Act on a date to be fixed by proclamation. This will ensure that time is allowed for cultural heritage survey work to be completed before the Act commences.

Clause 3 provides that the purpose of the Act is to facilitate certain aspects of an agreement made under the right to negotiate provisions of the *Native Title Act 1993* (Cth) relating to the establishment of the Century mine, a miscellaneous transport infrastructure corridor, facilities at the Port of Karumba, the construction of associated works and the proposed development of certain land.

Clause 4 provides that the dictionary in schedule 4 of the Act defines terms used in the Act.

Clause 5 provides for the resumption of native title which may continue to exist at the Century mine site and on certain land at the Port of Karumba. That resumption is necessary to ensure that valid leases can be issued at the mine site and at the Port of Karumba. If necessary, clause 5 also enables the resumption of native title and an easement which may be required in order to establish a miscellaneous transport infrastructure corridor under the

Transport Infrastructure Act 1994.

Clause 6 provides that the *Acquisition of Land Act 1967* applies to the resumption of interests under *Clause 5* except for the sections listed in *Schedule 2*. This is because the resumption is or may be effected by this Act instead of the usual processes. This clause also provides that, subject to the agreement, compensation is payable with respect to the resumption.

Clause 7 provides that, for the purposes of the *Acquisition of Land Act 1967*, the State is the constructing authority, the lessee of a lease affected by the resumption is an owner of land and sets out how a claimant applies for compensation.

Clause 8 provides that the purpose of Part 3 of the Act is to remove any doubt regarding the validity of leases granted to Century Zinc Limited which may have arisen because of the *Native Title Act 1993 (Cth)*, the *Native Title (Queensland) Act 1993* and in the light of certain decisions of the High Court of Australia.

Clause 9 provides for the cancellation of Century Zinc Limited's previous term lease 205674 of Lot 6 on CP892041 and the grant of a new Term lease of Lot 6 on CP892041 to Century Zinc Limited. This Clause is intended to ensure that Century Zinc Limited is granted a lease which is valid in relation to native title. *Clause 9* provides that the new lease is taken to be granted under the *Land Act 1994* and is on the same terms and conditions as the former lease. The new term lease will start on the commencement of the section. *Clause 9* ensures that anything done under the former lease is taken to have been validly done under the new lease.

Clause 10 provides for the cancellation of Century Zinc Limited's previous mining leases 90045 and 90058 and the grant of new mining leases 90045 and 90058 to Century Zinc Limited. This Clause is intended to ensure that Century Zinc Limited is granted mining leases which are valid in relation to native title. *Clause 10* provides that the provisions of the *Mineral Resources Act 1989*, Section 318 which relates to rehabilitation of the land will not apply to the former leases only because of their cancellation. *Clause 10* provides that the mining leases start on the commencement of the section and are on the same terms and conditions as the former leases. This Clause ensures that anything done under the former leases is taken to have been validly done under the new leases.

Clause 11 vests certain land at Karumba in the Ports Corporation of Queensland as strategic port land under the *Transport Infrastructure Act*

1994. Clause 11 also effects an acquisition of a lease held by the Far North Queensland Electricity Board over one of the lots which is vested in the Ports Corporation of Queensland. Compensation for that acquisition is payable by the Ports Corporation of Queensland but the amount and conditions of the compensation are to be determined by the Governor in Council.

Clause 12 declares that the easement taken under the Act is a public utility easement under the *Land Act 1994*, is a miscellaneous transport infrastructure corridor under the *Transport Infrastructure Act 1994* and is taken to have been acquired by the chief executive for the State under the *Transport Planning and Coordination Act 1994*. *Clause 12* also provides that, to ensure the construction, operation and maintenance of miscellaneous transport infrastructure in the corridor, a licence under the *Transport Infrastructure Act 1994* in relation to the infrastructure may be enforced against any person having an interest in land affected by the easement.

Clause 13 ensures that, subject to obtaining the consent of the responsible entity, miscellaneous transport infrastructure can be constructed across roads, reserves, watercourses and other land mentioned in schedule 1, part 1, item 7 by providing that the rights and obligations conferred or imposed by the easement apply to such land.

Clause 14 provides that Part 4 only applies in relation to development proposed to be undertaken under a development application made to the Burke Shire Council by the Bidunngu Aboriginal Land Trust in relation to the land described in the clause.

Clause 15 gives the Minister the power to call in a development application referred to in clause 14 at any time.

Clause 16 provides that a development application may be called in by written notice to the council and sets out what the Minister may do with respect to the called in application. *Clause 16* also provides what the notice must state and to whom copies of the notice must be given.

Clause 17 provides how the Minister is to deal with a development application once it is called in and sets out the powers that the Minister has in relation to the application. *Clause 17* also provides that if the application is called in there is no right of appeal and any appeal which has been made is of no further effect. The council must provide the Minister with all reasonable assistance including certain specified assistance. *Clause 17* also sets out that the Minister must give notice of the decision to the applicant

and the council and that the Minister's decision is taken to be the decision of the council.

Clause 18 declares Parliament's intention that the Act and anything done under the Act will not extinguish native title and that the non-extinguishment principle in the *Native Title Act 1993 (Cth)* applies to the Act and anything done under the Act.

Clause 19 provides that, for the purposes of the *Native Title (Queensland) Act 1993*, resumption under Clause 5 is taken to be an acquisition of land under a State Compulsory Acquisition Act. This ensures that relevant provisions of the *Native Title Act 1993 (Cth)* apply to the taking of native title under the Act.

Clause 20 provides that the statement relating to the non-extinguishment of native title contained in Schedule 4 is taken to be included in each interest granted under the Act.

Clause 21 provides that the Governor in Council may, within two years, make regulations under the Act to describe the boundaries of the land affected by a proclamation under the Act. This provision is necessary because it is not possible to finally determine the boundaries of the corridor until cultural heritage and other survey work has been completed.

Schedule 1 lists the land in which native title and an easement are or may be taken.

Schedule 2 lists the provisions of the *Acquisition of Land Act 1967* which will not apply to resumption under Clause 5, such as those which relate to notification and the right of objection.

Schedule 3 lists the lands which are to be vested in the Ports Corporation of Queensland as strategic port land.

Schedule 4 contains a statement which each interest granted by the Act is taken to include.

Schedule 5 contains a plan of the route referred to in Schedule 1.

Schedule 6 provides an explanation of terms used in the Act.

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Century Zinc Project

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