

DALRYMPLE BAY COAL TERMINAL (LONG-TERM LEASE) BILL 2001

EXPLANATORY NOTES

POLICY OBJECTIVES

The purpose of this Bill is to provide for the exclusion of the long-term leases of the Dalrymple Bay Coal Terminal (DBCT) land, plant and equipment from the operation of section 121 of the *Property Law Act 1974*.

REASONS FOR THE BILL AND ACHIEVEMENT OF POLICY OBJECTIVES

The Queensland Government has decided to grant a long-term leasehold interest over DBCT. The lessee will be granted a lease over the onshore land, the offshore land and the plant and equipment associated with DBCT.

The leases restrict the lessee's ability to assign or deal with the leases without the consent of the lessor, DBCT Holdings Pty Ltd (which is wholly owned by the State). The leases provide that DBCT Holdings Pty Ltd must not unreasonably withhold or delay its consent to the assignment of the lease where the new lessee entity satisfies a number of conditions detailed in the lease documents. These conditions are consistent with the requirements that the lessee had to satisfy in order to originally be granted the long-term lease.

This restriction is necessary to ensure that the State retains the ability to vet whether a new lessee entity has the financial and technical expertise, capability and commitment to develop and operate the terminal in a manner which optimises the efficiency of, and protects, the terminal, the coal chain and the competitiveness of the Central Queensland coal industry.

To ensure the efficacy of these provisions and that the State's interest in DBCT is protected, the Bill puts in place a mechanism for exempting the leases from the operation of section 121 of the *Property Law Act 1974* which might otherwise provide broader rights of assignment to the lessee that cannot be overridden by the provisions of the lease.

ALTERNATIVES TO THE BILL

Given that it is not possible to contractually override the operation of section 121 of the *Property Law Act 1974*, there are no other alternatives to restrict the lessee's ability to assign the leases.

ESTIMATED COST FOR GOVERNMENT IMPLEMENTATION

There is no anticipated cost to the Government of implementing the Bill.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

It may be argued that the Bill affects the rights and liberties of the lessee as it limits the right of the lessee to assign the leases to a third party. However, the Bill has sufficient regard to those rights and liberties. The regime contained in the lease documentation allows the lessee to assign the leases to a third party provided it can be demonstrated to the satisfaction of DBCT Holdings that the third party has the capacity, capability and commitment to develop and operate the terminal in accordance with the Government's objectives. This restriction is necessary given the strategic importance of DBCT in the Central Queensland coal industry.

The Bill does not override or otherwise affect the contractual rights of the lessee under the leases. It merely allows for the inclusion in the lease of provisions which are necessary for the protection of the State's significant interests. As noted below, the preferred bidder has agreed to this assignment regime.

CONSULTATION

The competitive bid process has, from the outset, been premised on a set of contractual arrangements which are structured so as to protect the long-term interests of DBCT, the coal chain and the Central Queensland coal industry. A key element of these protections is a restriction on assignment of the leases which ensures that the lessee (and its permitted assigns) at all times maintains the skills and resources to efficiently manage the lease. In this regard, the preferred bidder has acknowledged that the State needs to take all steps necessary to ensure the integrity of the contractual provisions and is aware that there are issues associated with section 121 of the *Property Law Act 1974*.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Act.

Clause 2 provides that section 121 of the *Property Law Act 1974* does not apply to an exempt lease.

Clause 3 provides that the Minister may, by written instrument, declare a lease granted by DBCT Holdings Pty Ltd, Ports Corporation of Queensland or the State over all or part of the Dalrymple Bay Coal Terminal to be an exempt lease. The lessee must be given a copy of this instrument. A declaration of an exempt lease must be gazetted within 21 days of the making of the instrument. Failure to provide a copy of the instrument to the lessee or publish a gazette notice setting out the declaration does not affect the validity of the instrument.