

AURUKUN ASSOCIATES AGREEMENT REPEAL BILL 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Short title

The Act will be known as the *Aurukun Associates Agreement Repeal Act 2004*.

Objectives of the Bill

The objectives of the Bill are to:

- (a) repeal the *Aurukun Associates Agreement Act 1975*;
- (b) provide that the agreement scheduled to the Act has no force and effect and has had no force and effect since 31 December 1988;
- (c) provide that the mining lease granted under the agreement Act is cancelled;
- (d) provide that 20 business days after the repeal of the Agreement Act the State will reimburse Aluminium Pechiney Holdings Pty Ltd (Pechiney) the amount of \$572,160 being mining lease rental and interest;
- (e) provide that the State will pay an amount of costs, to be assessed on a standard basis for the proceedings commenced by the State in the Supreme Court, Brisbane to enforce the surrender of the mining lease granted under the *Aurukun Associates Agreement Act 1975*;
- (f) provide that no other form of compensation or payment is payable to Pechiney or any other person arising out of or connected with the operation of the *Aurukun Associates Agreement Repeal Act 2004*;
- (g) provide that the State is not liable for any claim arising out of or in any way connected to the cancellation of the mining lease; and

- (h) consequentially amend the following Acts by omitting reference to the *Aurukun Associates Agreement Act 1975*:

Aboriginal Land Act 1991

Environmental Protection Act 1994

Integrated Planning Act 1997

Integrated Planning and Other Legislation Amendment Act 2003

Land Act 1994

Land and Resources Tribunal Act 1999

Local Government (Aboriginal Lands) Act 1978

Mineral Resources Act 1989

Transport Infrastructure Act 1994

Reasons for the Bill

This proposal relates to the *Aurukun Associates Agreement Act 1975*.

The *Aurukun Associates Agreement Act 1975* was enacted to authorise the making of an agreement (the Agreement) between the State of Queensland and Tipperary Corporation, Billiton Aluminium Australia BV and Aluminium Pechiney Holdings Limited ('Pechiney'). The Agreement entered into on 22 December 1975 is a schedule to the *Aurukun Associates Agreement Act 1975*.

Section 3 of the *Aurukun Associates Agreement Act 1975* provides that the Agreement is given the force of law "as though the Agreement were an enactment of this Act."

Pursuant to Clause 2 Part III of the Agreement, Special Bauxite Mining Lease Number 9 (now Mining Lease Number 7032 (the mining lease)) was granted to the three abovementioned companies. The mining lease is over land situated in the Aurukun area of western Cape York.

Since 10 December 1985, Pechiney has held 100 per cent interest in the mining lease.

Clause 14 (3) of Part III of the Agreement required the lessee to commence construction of an alumina refinery within the leased area or elsewhere in the State of Queensland by 31 December 1983. With such construction not having occurred, the Governor in Council twice granted an extension to Pechiney, first to 31 December 1988 and secondly to 31

December 1989. However, this latter extension was invalid as it was granted after the original extension had expired.

Pechiney, in breach of clause 14 (3) of Part III, did not commence construction of the refinery by the prescribed time. The effect of the breach by Pechiney of this statutory obligation is provided for at clause 14 (4) of Part III of the Agreement:

“If on or before the 31st day of December 1983 the Companies...shall not have commenced the construction of the refinery...the Companies shall surrender the special bauxite mining lease and this Agreement shall as from such date be of no force or effect whatsoever.”

In accordance with clause 14(4) of Part III of the Agreement, the Agreement was of ‘no force and effect’ immediately after 31 December 1988 upon Pechiney’s failure to commence the refinery by the first extended date namely, 31 December 1988.

The State’s position is that whilst the mining lease is currently still on foot:

- it is a mere husk without any rights or entitlements under it; and
- it only exists for the purpose of surrender.

On 22 October 2003, the Honourable Premier and Minister for Trade, Peter Beattie MP, demanded Pechiney surrender the mining lease by delivering the lease document to the then Department of Natural Resources and Mines by noon on 24 October 2003. As Pechiney did not deliver the document within the stipulated time, the State commenced legal proceedings in the Supreme Court, Brisbane. Those proceedings are still current and conceivably, may not be finally determined for several more years.

The Government has decided that the future utilisation of the Aurukun mineral resources and commitment to investment will be the subject of an international expression of interest (EOI) process. However, before the State can proceed to optimise the utilisation of the Aurukun resources, it must first be able to deal with the subject land. If the State were to proceed with the Supreme Court litigation, the State would be precluded from dealing with the subject land unless, and until the Court proceedings have been determined in its favour.

Way in which the policy objective is to be achieved

In order for the State to proceed with the proposed international EOI, the mining lease must first be surrendered by Pechiney or cancelled. The Bill effectively achieves this by providing that the mining lease is cancelled.

Alternative ways of achieving the objective

Whilst the State may continue the Supreme Court proceedings against Pechiney, there are several factors which weigh heavily against the State doing so:

- the State has already forgone nearly 3 decades worth of contribution to the economy from potential export income, new industrial opportunities for down-stream processing and jobs for Queenslanders that should have flowed from the development of the Aurukun mineral resources under the *Aurukun Associates Agreement Act 1975*;
- given the State's position in respect of the mining lease, the cost to the tax payer of pursuing the litigation is unnecessary and unjustifiable; and
- the State is proposing to secure development of, and investment in, the Aurukun mineral resources once the mining lease is cancelled and prolonged delay in commencing the EOI process may severely frustrate the State's ability to secure such long term investment.

Consistency with fundamental legislative principles

Prima facie, the Bill does not breach the fundamental legislative principles of the *Legislative Standards Act 1992*. The Bill merely puts beyond doubt the fact that the Agreement was of no force and effect as of 1 January 1989. The State is proposing to refund the mining lease rental paid after the Agreement was terminated together with simple interest calculated on the scale as prescribed under the *Supreme Court Act 1947* (Qld). The State will also pay an amount of Pechiney's costs incurred in the legal proceedings instituted by the State in the Supreme Court, Brisbane, to enforce the surrender of the mining lease. However, such costs are to be assessed on a standard basis.

It is arguable that the effect of this Bill affects Pechiney's right to have the matter determined by a Court of competent jurisdiction. However, if

Pechiney had complied with its statutory obligation and surrendered the mining lease, the State would not have been compelled to take such legal action. Therefore, any argument that the State is affecting Pechiney's right in this manner could not have arisen.

Any such argument that Pechiney's rights are affected must be weighed against the large cost to the State in litigating this matter and the time it will take before the State can secure economic and social benefits from the development of the area's resources.

Administrative cost to government of the implementation

The cost to Government as a result of the implementation of this Bill will be the payment of monetary compensation to Pechiney in the sum of \$572,160 being refund of mining lease rental paid by Pechiney over the 1989 to 2003 period (\$518,160) and interest (\$54,000) on that amount to April 2004 calculated on a simple interest basis by applying the scale as prescribed from time to time under the *Supreme Court Act 1947* (Qld).

The legislation further provides that the State will pay Pechiney an amount for costs incurred by the company in the Supreme Court proceedings, instituted by the State to enforce the surrender of the mining lease. The payment will be made once such costs have been assessed by the Supreme Court on a standard basis.

Consultation

Consultation on this draft legislation included the following Government agencies:

- Department of the Premier and Cabinet;
- Queensland Treasury;
- Department of State Development and Innovation;
- Department of Justice and Attorney-General;
- Department of Transport;
- Department of Local Government, Planning, Sport and Recreation; and
- Environmental Protection Agency.

The Director-General of the Department of Education and the Arts was also consulted in his capacity as community champion of the subject indigenous community.

ANALYSIS OF THE BILL

PART 1—PRELIMINARY

Section 1 gives the short title to the repealing Act as the *Aurukun Associates Agreement Repeal Act 2004*.

Section 2 gives a definition of the following terminology:

“the agreement”;

“the agreement Act”;

“lease”; and

“Pechiney”.

Section 3 provides that the lease is cancelled. This will be effective upon commencement of this legislation.

Section 4 provides that the agreement has no force and effect and has not had any force or effect since 31 December 1988. This section is consistent with Clause 14 (4) part III of the agreement Act (as amended by the Governor in Council) which provided that if construction of the refinery had not commenced by this date, the mining lease must be surrendered and the agreement is no longer of any force or effect.

Section 5 provides that the agreement Act is repealed. This will be effective upon commencement of this legislation.

Section 6 provides that the State must reimburse to Pechiney the amount of \$572,160 within 20 business days after the repeal of the agreement Act (refer to section of explanatory notes titled ‘Administrative cost to government of the implementation’).

Section 6(2) provides that the State must also pay Pechiney an amount for costs, to be assessed on a standard basis, which the company has

incurred as a result of the State commencing legal proceedings in the Supreme Court, Brisbane, to enforce the surrender of the mining lease.

Section 7 (1) provides that section 7 operates subject to section 6.

Section 7 (2) provides that no amount is payable by the State in the form of compensation, reimbursement or otherwise to Pechiney or any other person either by virtue of the continuation or purported continuation of the lease after 31 December 1988, the enactment or operation of this Act or anything done to carry out or give effect to this Act.

Section 7 (3) provides that the State is not liable for any claim arising out of or in any way connected to the cancellation of the lease.

Section 7 (4) provides that this section applies despite any other Act or law.

Section 7 (5) defines the reference to “State” in section 7.

Section 8 provides that the schedule to the Act amends all Acts where the *Aurukun Associates Agreement Act 1975* is mentioned.

Section 9 provides that the *Aurukun Associates Agreement Repeal Act 2004* will expire on 31 December 2004.