

# **Mineral Resources and Other Legislation Amendment Bill 2006**

## **Explanatory Notes**

### **General Outline**

#### **Short Title**

The short title of the bill is the Mineral Resources and Other Legislation Amendment Bill 2006.

#### **Policy Objectives**

The objectives of the Bill are to amend:

- the *Mineral Resources Act 1989* (“the MR Act”) to facilitate the commercial development of the Aurukun bauxite deposit by providing legislative assurance for a simplified process to achieve certainty of mining tenure for the preferred bidder. In promoting the development of the Aurukun Resource, the State is seeking to optimise economic, social and financial outcomes for the benefit of the State and the local region, including the Indigenous Parties; and
- the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) and the *Petroleum (Submerged Lands) Act 1982* (PSL Act) to:
  - provide a consistent legislative regime for all offshore pipeline licences and provide legislative certainty for the proponents of the PNG Gas Pipeline Project in relation to which safety regime applies; and
  - to reflect the fact that the Commonwealth has recently rewritten and renamed the *Petroleum (Submerged Lands) Act 1967*. The new Act is the *Offshore Petroleum Act 2006*.
- The *State Development and Public Works Organisation Act 1971* to:

- clarify that a company wholly owned by the State and/or one or more local governments is a local body and therefore, land acquisition and other powers of the Coordinator-General can be used to facilitate works to be undertaken by such a company.

## **Reasons for the Policy Objectives**

### ***Mineral Resources Act 1989***

The State is seeking to develop the Aurukun Bauxite Resource and establish new downstream processing capacity in Queensland. In promoting the development of the Aurukun Bauxite Resource, the State is seeking to optimise economic, social and financial outcomes for the benefit of the State and the local region, including the Indigenous Parties.

The Aurukun Bauxite Resource is a significant, undeveloped resource situated in western Cape York, Queensland, Australia. The Aurukun Bauxite Resource has been estimated to contain more than 480 Mt of dry beneficiated bauxite at 52.8% Al<sub>2</sub>O<sub>3</sub> and 8.0% reactive silica at a 9.75% reactive silica cut-off grade. It is one of a limited number of large bauxite deposits in the world currently available for ownership and development.

The State is seeking to facilitate the commercial development of the Aurukun bauxite deposit by providing legislative assurance for a simplified process to achieve certainty of mining tenure for the preferred bidder.

### ***Petroleum (Submerged Lands) Act 1982***

Offshore pipeline licensing is regulated under both Commonwealth and State legislation - the *Petroleum (Submerged Lands) Act 1967 (Cth)* and the *Petroleum (Submerged Lands) Act 1982 (Qld)* (PSL Act).

State jurisdiction under the PSL Act applies from the baseline of the territorial sea to a point three nautical miles seaward of that baseline. The normal territorial sea baseline corresponds with the low water line along the coast, including the coast of the mainland of Queensland. However, it also includes some straight baselines between the mainland and adjacent islands. Such straight baselines occur in the Torres Strait with the effect that some 15 to 20 kilometres out to sea in that area is on the landward side of the territorial sea baseline. This means that those 15 to 20 kilometres of sea fall under the P&G Act, which was designed for land-based activity, rather than the PSL Act.

The PSL Act will clarify the State's jurisdictional control of sub-sea pipelines and better align it with the soon to commence *Offshore Petroleum Act 2006 (Cth)*.

## **How the Policy Objectives will be achieved**

### ***Mineral Resources Act 1989***

The Bill will authorise the establishment of a significant part of the legislative framework to be used to facilitate the Aurukun Project ("the Project"). Specifically, the amendments will give approval to the amendment of the MR Act to:

- establish two new Parts in the MR Act to support the particular commercial requirements of the Project while still retaining the State's administrative mining processes;
- authorise the grant of necessary mining tenure to a party who enters into a contractual arrangement with the State for the development of the Aurukun Resource; and
- refine the limits and application of other legislation with respect to the Project.

### ***Petroleum (Submerged Lands) Act 1982***

The PSL Act is to be amended to allow for pipelines in waters seaward of the coastline of Queensland at mean low water mark and landward of the inner limit of the territorial sea of Australia to be covered by that Act, rather than the P&G Act as has been suggested. The purpose of the proposed amendments is to provide a better differentiate between the State and Commonwealth jurisdictions for offshore pipeline licences.

## **Alternatives to the Bill**

There are no non-legislative methods by which the objects of the Bill can be achieved.

## **Estimated administrative cost to the Government for implementation**

There are no administrative costs to the Government in relation to the Bill.

## **Consistency with Fundamental Legislative Principles**

The Bill was drafted with regard to fundamental legislative principles.

Fundamental legislative principles arise with respect to two proposed amendments to the MR Act. The *Judicial Review Act 1991* will not apply to a decision made under Part 6A of the MR Act in relation to the granting of a mineral development licence. The restriction on the operation of the *Judicial Review Act 1991* is consistent with the approach adopted by parliament for other such developments on the basis of the significant costs and capital requirements for these developments and the need to limit the ability of third parties to unreasonably delay the development and operation of such projects.

The Land and Resources Tribunal usually has a role in providing a recommendation to the Minister for any lease to be issued under the MR Act. Because the terms of the development and the terms of any mineral development licence and subsequent lease will have been agreed between the State and the successful proponent prior to the grant of any tenure, this particular role of the Land and Resources Tribunal will be redundant.

## **Consultation**

### **Community**

#### *Aurukun*

The proposed amendments to the MR Act are targeted at the Aurukun Project to the extent it applies to the Aurukun Resource Area on Cape York. The Wik and Wik Way Peoples are the native title holders of the Aurukun Resource Area and the Aurukun Shire Council, whose constituency consists predominantly of the Wik and Wik Way Peoples, is the lessee of the majority of the Aurukun Resource Area and is the owner for the purpose of the MR Act.

Whilst the proposed amendments have not yet been discussed with them, both parties are part of the Competitive Bid Process and comprehensive commercial agreements are being negotiated with them as part of that process. They will also be consulted about the proposed amendments as part of that process.

#### *PNG Pipeline*

There has been no consultation with the proponent on the proposed amendments.

## **Government**

### *Aurukun*

Representatives of the Department of the Premier and Cabinet, the Coordinator-General, Queensland Treasury, the Department of Natural Resources, Mines and Water, and the Department of Justice and Attorney-General were consulted in relation to the Bill.

### *PNG Pipeline*

Officers from Coordinator-General and the Department of the Premier and Cabinet have been consulted on the proposed amendments.

## **Results of consultation**

## **Community**

### *Aurukun Project*

Whilst affected parties have not yet been consulted, it is unlikely that they will have any objection to the proposed amendments as the amendments do not diminish the party's rights in any way and are being done to facilitate the commercial agreements that are being negotiated.

## **Government**

All Department's consulted support the Bill.

## **Notes On Provisions**

## **Part 1                      Preliminary**

### **Short title**

Clause 1 is the citation for the short title of the Act -the *Mineral Resources and Other Legislation Amendment Act 2006*.

## **Commencement**

Clause 2 provides that Part 5 commences on assent with the exception of clauses 12 and 13 which are to commence on a day to be fixed by proclamation.

Clauses 12 and 13 amend Queensland's *Petroleum (Submerged Lands) Act 1982* to ensure consistency with the Commonwealth *Offshore Petroleum Act 2006*. The Commonwealth legislation is expected to commence later this year once all States and Territories have amended their Petroleum (Submerged) legislation. For this reason, clauses 12 and 13 will not commence until the Commonwealth legislation commences.

## **Part 2                      Amendment of Mineral Resources Act 1989**

### **Act amended in pt 2**

Clause 3 provides that Part 2 amends the *Mineral Resources Act 1989*.

### **Insertion of new pt 6a**

Clause 4 inserts the new Part 6A for the mineral development licence for the Aurukun Project. The Aurukun Project is a bauxite and alumina development project of State significance that has been actively promoted by the Queensland Government internationally.

Part 6A is one of two new parts to be added to the MR Act that will only apply to the Aurukun Project to support the particular commercial requirements of the Project while retaining the State's administrative mining processes.

To ensure the successful proponent has the necessary mining tenure to fulfil its contractual arrangements with the State, the usual precursor tenure of an exploration permit has been dispensed with.

To achieve the stated aim and to retain continuity with the existing provisions relating to the grant of a mineral development licence some sections from the existing Part 6 will be applied, some will not apply at all and in some instances new provisions have been created.

## **New Part 6A Mineral development licence for Aurukun**

### **New Section 231A – Application of pts 6 and 6A**

New section 231A lists the existing sections from Part 6 (Mineral Development Licences) that will not apply to a mineral development licence for the Aurukun Project.

Where sections continue to apply but include references to sections that have been disappplied, the references to those disappplied sections are to be disregarded.

Table 1 gives an indication of the linkages between the existing sections of Part 6 that do not apply for the Aurukun project, the sections that do apply, and the new sections that have been created or modified specifically for the project.

**Table 1: Part 6 to 6A**

<b>Sections not applying</b>	<b>Sections applying without modification</b>	<b>New modified sections</b>
179		
180		231B
181(2)		
182		
183		231C
	184	231D
185		
186		231E
	187	
188		
189		
	190	
	191	
192		231F
	193	
194		231G
	194AAA	



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<b>Sections not applying</b>	<b>Sections applying without modification</b>	<b>New modified sections</b>
	194AA	
	194AB	
	194AC	
194A		
	197	
197A		231H(1)-(5)
197B		231H(6)
	197C	
	197D	
	197E	
	197F	
	198	231I
	199	
	200	
	201	
	202	
	203	
	204	
	205	
	206	

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<b>Sections not applying</b>	<b>Sections applying without modification</b>	<b>New modified sections</b>
	207	
208		
	209	231J
210		
	211	
	212	
214(1)(a)		
	215	
	216	
217		
218		
219		
220		
221		
222		
223		
	224	
225		
	226	
226AA		

<b>Sections not applying</b>	<b>Sections applying without modification</b>	<b>New modified sections</b>
	226A	
	227	
	228	
	229	
	230	
	231	

To aid in cross-referencing relevant sections, the heading of each modified or newly created section includes, where relevant, a reference in brackets to the section of the Act that it is replacing.

### **New Section 231B – Only eligible person can apply for and hold mineral development licence**

New section 231B retains eligible person criteria. The Dictionary includes a definition of an eligible person for this part.

The restricted area (RA315) that exists over the whole of the land for the Aurukun Project will continue over the land after the mineral development licence is granted.

### **New section 231C – Application for mineral development licence**

New section 231C provides the simplified application requirements for an Aurukun mineral development licence.

### **New section 231D – Alternative way of describing mineral development licence**

New section 231D includes discretion to allow alternative methods of describing the mineral development licence in the application.

### **New section 231E – Minister may grant or reject application for mineral development licence**

New section 231E retains the Minister’s discretion as to the granting of the mineral development licence.

### **New section 231F – Initial term of mineral development licence**

New section 231F allows an initial term of 5 years for the mineral development licence. If an extension is sought, it must be applied for.

### **New section 231G – Conditions of mineral development licence**

New section 231G applies modified conditions of the mineral development licence.

### **New section 231H – Renewal of licence**

New section 231H allows a renewal of the mineral development licence. The section refers to the Aurukun agreement, a defined term, which is a primary precursor to any renewal. If the agreement has ended for any reason whatsoever, no extension is possible. Only one extension of up to 5 years is possible.

### **New section 231I – Requirements for assigning or mortgaging mineral development licence**

New section 231I provides an additional limitation on the assignment or mortgage of a mineral development licence. The nature of the Aurukun development requires such a limitation.

### **New section 231J – Contravention by holder of mineral development licence**

New section 231J allows cancellation of a mineral development licence for failure to comply with the Aurukun agreement in addition to any other rights under the existing section 209.

### **New section 231K – Review of decisions**

New section 231K removes the right of review of a grant of a mineral development licence under the *Judicial Review Act 1991*. The exclusion of judicial review is an approach that has been previously agreed to by

Parliament on the basis of the significant costs and capital requirements for developments such as the Aurukun Project and the need to limit the ability of third parties to unreasonably delay the development and operation of such projects.

### **Insertion of new pt 7AAA**

Clause 5 inserts the second new Part for the granting of a mining lease for the Aurukun project.

## **New Part 7AAA Mining lease for Aurukun project**

### **New section 318AAA – Application of pts 7 and 7AAA**

New section 318AAA sets out the application of parts 7 and 7AAA. Part 7AAA only applies to a mining lease granted under this part where the holder is a party to the Aurukun agreement and the agreement has not been terminated. If, for example, a lease granted under this part is assigned and the new holder is not a party to the agreement, then the lease will be administered under Part 7 of the MR Act.

The section also lists the existing sections from Part 7 (Mining leases) that will not apply to a mining lease for the Aurukun Project.

Where sections continue to apply but include references to sections that have been disappplied, the references to those disappplied sections are to be disregarded.

Table 2 gives an indication of the linkages between the existing sections of Part 7 that do not apply for the Aurukun project, the sections that do apply, and the sections that have been modified or created specifically for the project.

**Table 2: Part 7 to 7AAA**

<b>Sections not applying</b>	<b>Sections applying without modification</b>	<b>New modified sections</b>
232		
233		318AAB
	234	
	235	
	236	
	237	
	238	
239		
	240	
	241	318AAC
	242	
	243	
	244	
245		318AAD
	246	
247		
248		
249		

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<b>Sections not applying</b>	<b>Sections applying without modification</b>	<b>New modified sections</b>
250		
251		
252		318AAE
252A		
252B		
252C		
252D		
253		
254		
255		
256		
257		
258		
259		
260		
265		
266		
	267	
268		
269		

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<b>Sections not applying</b>	<b>Sections applying without modification</b>	<b>New modified sections</b>
270		
271		
272		
273		318AAF
	274	318AAG
275		
276		
	276A	
	276B	
	277	
	278	
278A		
	279	
	279A	
280		
	281	
	282	
283		
	283A	
	283B	



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<b>Sections not applying</b>	<b>Sections applying without modification</b>	<b>New modified sections</b>
284		318AAI
285		
	286	
286A		318AAJ
	286B	
	286C	
	286D	
	286E	
	286F	
	287	
	288	
	289	
	290	
	290A	
	294	
	295	
	296	
	297	
	298	
	299	

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<b>Sections not applying</b>	<b>Sections applying without modification</b>	<b>New modified sections</b>
	300	318AAK
	301	
	302	
	303	
	304	
	305	
	306	
	307	
	308	318AAL
	309	318AAM
	310	
	311	
	312	
	313	
	314	
	316	
	317	
	318	

To aid in cross-referencing relevant sections, the heading of each modified or newly created section includes, where relevant, a reference in brackets to the section of the Act that it is replacing.

### **New section 318AAB – Only eligible person can apply for and hold mining lease**

New section 318AAB retains the eligible person requirement. The Dictionary includes a definition of an eligible person for this part.

As the Aurukun Project is concerned with the extraction, transportation and processing of bauxite, an eligible person can only apply for and hold a mining lease for bauxite.

The restricted area (RA315) that exists over the whole of the land for the Aurukun Project will continue over the land after the mining lease is granted.

### **New section 318AAC – Alternative way of marking out land proposed to be subject of mining lease**

New section 318AAC includes discretion to allow alternative methods of marking out land if appropriate.

### **New section 318AAD – Application for grant of mining lease**

New section 318AAD provides simplified application requirements for a lease.

### **New section 318AAE – Additional matters for application**

New section 318AAE is a much simplified requirement for information to be endorsed on the lease application. It also includes discretion to allow alternative methods for describing a mining lease in the application.

### **New section 318AAF – Mining lease must include all surface of land**

New section 318AAF requires the mining lease to include all the surface of the land.

### **New section 318AAG – Holder of mining lease to mark boundary posts**

New section 318AAG allows discretion as to the marking of boundary posts.

**New section 318AAH – General conditions of mining lease**

New section 318AAH provides the general conditions of the mining lease.

**New section 318AAI – Initial term of mining lease**

New section 318AAI sets out the simplified provisions for the initial term of the lease.

**New section 318AAJ – Renewal of lease**

New section 318AAJ sets out how a decision on a lease renewal application is made.

**New section 381AAK – Requirements for assigning, mortgaging or subleasing mining leases**

New section 381AAK provides an additional limitation on the assignment, mortgage or sublease of a mining lease. The nature of the Aurukun development requires such a limitation.

**New section 381AAL – Contravention by holder of mining lease**

New section 381AAL allows the lease to be cancelled if the Aurukun agreement has not been complied with. This power is in addition to any other cancellation power.

**New section 381AAM – Limitation on surrender of mining lease**

Section 381AAM operates to prevent the lessee from arbitrarily surrendering the lease if unable to comply with the Aurukun agreement. The discretion to accept such surrender will rest with the Minister.

**Amendment of schedule (Dictionary)**

Clause 6 includes the amendments to the Dictionary.

## **Part 3                      Amendment of Local Government (Aboriginal Lands) Act 1978**

### ***Act Amended in pt 3***

Clause 7 provides that this part amends the *Local Government (Aboriginal Lands) Act 1978*.

### **Amendment of s 27**

Clause 8 inserts an amendment into the *Local Government (Aboriginal Lands) Act 1978* (the Act) to remove section 27(2). Section 27(2) referred to the *Aborigines Act 1971* which was repealed in 1984. The amendment brings the Act up to date and removes any possible doubt that the entry and approval requirements in the MR Act are the only requirements applying for mining in the local government area.

## **Part 4                      Amendment of Petroleum and Gas (Production and Safety) Act 2004**

### ***Act amended in pt 4***

Clause 9 provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

### **Amendment of s 5 (Application of Act to coastal waters of the State)**

Clause 10 includes a note to clarify that the *Petroleum (Submerged Lands) Act 1982* extends to pipelines in the coastal waters of the State.

## **Part 5                      Amendment of Petroleum (Submerged Lands) Act 1982**

### ***Act amended in pt 5***

Clause 11 provides that this part amends the *Petroleum (Submerged Lands) Act 1982*.

### **Amendment of s 4 (Definitions)**

Clause 12 amends section 4 (Definitions). The amendment is being made in the definition of *the adjacent area* to remove redundant words and to ensure the definition covers pipelines in coastal waters of the State.

### **Amendment of s 4 (Definitions)**

Clause 13 amends section 4 (Definitions). The amendments are being made to replace the definition of *Commonwealth adjacent area* with *Commonwealth offshore area*. This change is to ensure consistency with the *Commonwealth Offshore Petroleum Act 2006*, which is expected to commence later this year.

### **Amendment of s 5 (Effect of territorial sea baseline changes on pipeline licence)**

Clause 14 amends section 5 to ensure consistency with the *Commonwealth Offshore Petroleum Act 2006*, which is expected to commence later this year.

### **Amendment of s 9 (Definitions for div 2)**

Clause 15 amends section 9 to ensure consistency with the *Commonwealth Offshore Petroleum Act 2006*, which is expected to commence later this year.

### **Amendment of section 11 (Minister as Designated Authority)**

Clause 16 amends section 11 to ensure consistency with the *Commonwealth Offshore Petroleum Act 2006*, which is expected to commence later this year.

### **Amendment of s 12 (Delegations under Commonwealth Act)**

Clause 17 amends section 12 to ensure consistency with the Commonwealth *Offshore Petroleum Act 2006*, which is expected to commence later this year.

### **Amendment of s 13 (Public servants performing functions under Commonwealth Act)**

Clause 18 amends section 13 to ensure consistency with the Commonwealth *Offshore Petroleum Act 2006*, which is expected to commence later this year.

### **Amendment of s 59 (Unit development)**

Clause 19 amends section 59 to ensure consistency with the Commonwealth *Offshore Petroleum Act 2006*, which is expected to commence later this year.

## **Part 6                      Amendment of State Development and Public Works Organisation Act 1971**

### **Act amended in schedule (Dictionary)**

Clause 20 is self-explanatory.

Clause 21 amends the meaning of local body to include a corporation wholly owned by the State, or by the State in conjunction with one or more local governments, or by one or more local governments.

## **Part 7                      Amendment of Wild Rivers Act 2005**

### ***Act amended in pt 6***

Clause 22 provides that this part amends the *Wild Rivers Act 2005*.

**Amendment of s 46 (Meaning of Aurukun project)**

Clause 23 amends the meaning of the Aurukun project.