

Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016 (the Bill).

Policy objectives and the reasons for them

The purpose of the Bill is to amend the special provisions in the *Mineral Resources Act 1989* that apply to an Aurukun project (the Aurukun provisions). The Aurukun provisions establish a special regime for the assessment and granting of mining tenures for an Aurukun project. An Aurukun project is a project for the extraction, transportation and processing of bauxite on land that is more or less the land described as Restricted Area 315 under the *Mineral Resources Act 1989*.

The Aurukun bauxite resource is a significant, undeveloped resource situated in western Cape York, estimated to contain more than 480 Mt of dry beneficiated bauxite. It is one of a limited number of large bauxite deposits in the world currently available for development. The government recognises that development of the bauxite resources at Aurukun has the potential to deliver very significant economic development and employment opportunities for the communities of Aurukun and the wide Western Cape York area.

At the time the Aurukun provisions were enacted in 2006, the State was 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. The State was promoting the development of the Aurukun bauxite resource, and the Aurukun provisions were designed to provide legislative assurance for a simplified process to achieve certainty of mining tenure for the preferred bidder.

The amendments will bring the requirements for mineral development licence or mining lease applications for an Aurukun project in line with the government's policy that communities are given the opportunity to object to resource projects and have the Land Court consider those objections.

Achievement of policy objectives

To achieve the policy objective to give communities the opportunity to object to resource projects affecting them, the Bill will amend Chapter 5, Part 2 and Chapter 6, Part 2 of the *Mineral Resources Act 1989*.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

There are limited implementation costs for government associated with the amendments. The amendments will give the Land Court the jurisdiction to hear objections to the grant of a mining lease for an Aurukun project. The Aurukun provisions only apply to Restricted Area 315 and there is currently only one Aurukun agreement for the purposes of the Aurukun provisions.

Consistency with fundamental legislative principles

A transitional provision is included so that the amended *Mineral Resources Act 1989* will apply to existing applications for a mineral development licence for an Aurukun project. The retrospective application of the proposed amendments to applications for mineral development licences raises a possible issue regarding consistency with the fundamental legislative principle that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively. The proposed amendments are considered to be justified as they reinstate rights of judicial review and provide other protections for landowners but do not adversely affect an existing right or obligation of the applicant retrospectively.

Consultation

Community

The proposed amendments to the *Mineral Resources Act 1989* apply to Restricted Area 315 on Cape York. The Wik and Wik Way Peoples are the Native Title holders in the Restricted Area. The Ngan Aak-Kunch Aboriginal Corporation (NAK) is the prescribed body corporate for the Wik and Wik Way Peoples and is the owner of the majority of Restricted Area 315 for the purposes of the *Mineral Resources Act 1989*.

In September 2013, approximately 730 000 hectares of land around Aurukun was transferred to the NAK as Aboriginal freehold tenure, including the majority of the Restricted Area 315.

Specific consultation on the amendments has been undertaken with the NAK.

The State is a party to an Aurukun agreement with Glencore Bauxite Resources Pty Ltd. The amendments will apply to Glencore's existing application for a mineral development licence and to any future application for a mining lease for an Aurukun project. Specific consultation has been undertaken with Glencore.

Government

The relevant agencies have been consulted including the Department of Natural Resources and Mines, Department of Justice and Attorney-General and the Department of the Premier and Cabinet.

The Office of Best Practice Regulation was consulted and confirmed that the amendments are excluded from further analysis under the Regulatory Impact Statement System.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and amends parts of the *Mineral Resources Act 1989* which are unique to Queensland.

Notes on provisions

1 Short title

Clause 1 states that when enacted, this Act may be cited as the *Mineral Resources (Aurukun Bauxite Resource) Amendment Act 2016*.

2 Act amended

Clause 2 states that this Act amends the *Mineral Resources Act 1989*.

3 Amendment of s 231A (Application of pts 1 and 2)

Clause 3 provides that section 194A and section 223 of the *Mineral Resources Act 1989* will now apply for an Aurukun project.

Section 194A gives the Land Court jurisdiction to hear and decide a proceeding about the following matters under a condition of a mineral development licence requiring compliance with the At Risk agreement—

- (a) whether hardship, as defined under the agreement, exists;
- (b) the fair market value of a property for the purposes of the agreement.

Section 223 provides a discretionary power for the Minister to direct a holder of a mineral development licence to take stated action to ease concerns of an owner of land or other mineral development licence holder.

4 Amendment of s 231G (Conditions of mineral development licence (194))

Section 231G modifies the conditions that are to be included in a mineral development licence for an Aurukun project.

Clause 4(1) inserts the requirement that a mineral development licence for an Aurukun project include a condition that the holder must comply with the mandatory provisions of the Land Access Code to the extent it applies to the holder and must ensure any other person carrying out an authorised activity for the mineral development licence complies with the mandatory provisions of the Land Access Code.

The mandatory provisions are the mandatory conditions for resource authorities contained in Schedule 1A of the *Petroleum and Gas (Production and Safety) Regulation 2004*.

Clause 4(2) inserts a condition that the holder of the mineral development licence must also comply with the At Risk agreement.

The “At Risk Agreement” provides for land holders, who are deemed to be suffering hardship because of the existence of a mineral resource and the announcement of the intention to mine, but where development time frames are unknown, to be offered an option to purchase at fair market value by the holder of the overlying mineral development licence or mining lease.

5 Omission of s 231K (Review of decisions)

Clause 5 omits section 231K which provides that a decision under the *Mineral Resources Act 1989* in relation to a mineral development licence for an Aurukun project is final and conclusive, cannot be reviewed under the *Judicial Review Act 1991* or otherwise and is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal, an authority or a person on any ground.

6 Amendment of s 318AAA (Application of pts 1 and 2)

Clause 6 amends section 318AAA. The effect of this amendment is that sections 252, 252A, 252B, 252C, 252D, 253, 260, 265, 268, 269, 271 and 271A (with the exception of section 271A(1)(c)) and 278A now apply to an Aurukun project.

Section 252 provides when the Chief Executive must prepare a certificate of application, and when the applicant for the proposed mining lease must provide a copy of the certificate and application to each owner of land the subject of the proposed mining lease or any other land necessary for access to that land.

Sections 252A, 252B, 252C, 252D and 253 provide procedural steps for public notice of an application for a mining lease and setting an objection period for the application.

Section 260 provides when and how an entity may lodge an objection to an application for a mining lease.

Section 265 establishes the process of referring an application for a mining lease and all properly made objections to the Land Court for hearing.

Sections 268 and 269 provide for the conduct of the hearing by the Land Court and the making of recommendations to the Minister by the Land Court.

Section 271 sets out the matters the Minister must consider when deciding an application for the grant of a mining lease.

Section 271A provides that the Minister may decide to grant a mining lease for the whole or part of the land in the application or reject the application. Section 271A also provides that a mining lease may only be granted for land that is the surface of a reserve if the owner of the land has given written consent to the grant and the applicant has lodged the consent or if the Governor in Council has consented to the grant.

Section 278A gives the Land Court jurisdiction to hear and decide a proceeding about the following matters under a condition of a mineral development licence requiring compliance with the At Risk agreement—

- (a) whether hardship, as defined under the agreement, exists;
- (b) the fair market value of a property for the purposes of the agreement.

7 Amendment of s 318AAB (Only eligible person can apply for and hold mining lease (233))

Clause 7 amends section 318AAB to provide that an applicant for a mining lease for an Aurukun project must be an eligible person and must hold a mineral development licence for all of the land to be the subject of the mining lease. The amendment also provides that a mining lease for an Aurukun project can only be held by an eligible person.

8 Amendment of s 318AAD (Application for grant of mining lease 245)

Clause 8 amends section 318AAD to insert additional requirements for the application for a mining lease for an Aurukun project.

Section 318AAD states the information that must be included with an application for a mining lease for an Aurukun project as section 245 does not apply to an application for a mining lease for an Aurukun project.

The amendment will require the following additional information to be provided with a mining lease application for an Aurukun project:

Section 318AAD(b) requires the application to describe all parcels of land the whole or part of which are the subject of the application and state the following for each parcel—

- (i) the current use of the land;
- (ii) whether the land is subject to erosion control works;
- (iii) the names and addresses of the owners of the parcel and any other land to be used to access the parcel

Section 318AAD(ba) requires the application to identify, in the way prescribed by regulation, the boundaries of the land applied for

Section 318AAD(bb) requires the application to identify, in the way prescribed by regulation, the boundaries of any surface area of land within the boundaries identified in paragraph (c) to be included in the mining lease and specify the purpose for which that area is to be used

Section 318AAD(bc) requires the application to identify any improvements mentioned in section 238(1) on land identified under paragraph (d)

Section 318AAD(bd) requires the application to include reasons why the mining lease should be granted in respect of the area and shape of the land described in the application.

As a result of including subsections (ba) to (bd), a consequential amendment to section 318AAD(d) is also made to remove the cross-reference to subsection (c) and update the cross-reference to refer to subsections (d) and (g).

Clause 8(3) inserts a new subsection 318AAD(ea) that requires the application be lodged.

The remaining subsections in this section are renumbered.

9 Replacement of s 318AAE (Additional matters for application (252))

Clause 9 inserts a new provision section 318AAE that defines the extent to which an Aurukun agreement is relevant to a hearing by the Land Court under section 268. An Aurukun agreement is an agreement between the State and a person selected by the State to develop an Aurukun project. In the past, the developer has been selected by a competitive bid process and the Aurukun agreement has contained confidential information.

Clause 9 inserts a new provision section 318AAEA which provides that if the mining lease is rejected in whole or in part, the Minister must, as soon as practical, give the applicant written notice stating the rejection and the reasons for it.

10 Amendment of s 318AAH (General conditions of mining lease (276))

Clause 10 amends section 318AAH to insert a requirement that a mining lease for an Aurukun project includes a condition that the holder of the mining lease complies with the “At Risk Agreement”.

11 Insertion of new ch 15, pt 11

Clause 11 is a transitional provision which applies the Act, as in force after the commencement of the *Mineral Resources (Aurukun Bauxite Resource) Amendment Act 2016*, to an application for a mineral development licence made under Chapter 5, Part 2 whether the application was made before or after the commencement.

12 Amendment of sch 2 (Dictionary)

Clause 12 makes minor technical changes to the Dictionary.