CENTRAL QUEENSLAND COAL ASSOCIATES AGREEMENT AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

This Bill may be cited as the *Central Queensland Coal Associates Agreement Amendment Bill 1997*.

Policy Objectives

The review of the Central Queensland Coal Associates (CQCA) Agreement was triggered by BHP seeking the removal of clauses they considered unfairly restrictive regarding the production and sale of coal from their CQCA mining leases at Goonyella, Riverside, Peak Downs, Saraji and Norwich Park.

In early negotiations with BHP it was agreed that the review be expanded to address all mining related aspects of the CQCA Agreement. This was done to ensure a balanced treatment of both the special benefits and restrictions that apply to the CQCA companies under this Agreement.

The intent of this process was to review all clauses perceived as inconsistent with the stated aims of National Competition policy both restricting or favouring the CQCA Companies. This review also provided an opportunity to rationalise the CQCA Agreement through the removal or modification of a large number of redundant and/or expired provisions.

The CQCA Agreement currently also contains “Henry VIII” provisions that allow that allow the Agreement to be modified through Regulation. These provisions are no longer considered compatible with currently acceptable fundamental legislative principles and are therefore proposed to be removed.

Changes to the ownership makeup of the CQCA joint venture

Agreement is also required, due to the AMP Society selling its interests to the other joint venture partners.

Achievement of Policy Objectives

To achieve the policy objectives outlined above this Bill now seeks to:

- delete clauses relating to the production and sale of coal considered to be unfairly restrictive according to National Competition Policy guidelines;
- remove the "Henry VIII" provisions thus preventing further amendment of the Agreement by regulation;
- terminate stamp duty and mining lease rental rate concessions;
- increase penalties for non-compliance with lease conditions in line with those prescribed by the *Mineral Resources Act*;
- remove provisions in the CQCA Agreement that have been made redundant by legislative changes elsewhere;
- remove expired provisions and clauses; and
- acknowledge changes to the ownership makeup of the CQCA joint venture companies.

The Bill will also make some minor editorial changes and corrections.

Native Title considerations have resulted in the deferral of a number of other proposed amendments to the CQCA Agreement. These will be presented for consideration in a later Bill following Commonwealth clarification and amendment of the *Native Title Act.*

Alternatives Considered

Previous changes to the CQCA Agreement have been undertaken by regulation under the "Henry VIII" provisions of Section 4(1) of the *CQCA Agreement Act*. Amendment by such means is now considered incompatible with fundamental legislative principles and any further changes to the CQCA Agreement will be achieved through legislative means.

Administrative cost of Government Implementation

There are no additional administrative costs to the State arising from this Bill.

Consistency with Fundamental Legislative Principles

The proposed amendments comprise the complete removal of 19 clauses, the insertion of sunset provisions into two others and the simplification and/or rationalisation of a further four clauses in the CQCA Agreement. This will simplify the legislative burden regarding the CQCA mining leases considerably.

These amendments will also remove the "Henry VIII" provisions from the *CQCA Agreement Act* which previously allowed amendment of the Agreement by regulation.

No adverse fundamental legislative principle issues are anticipated to arise from any of the proposed amendments.

Consultation

Provisions in the *CQCA Agreement Act* and the CQCA Agreement require that the agreement of both the Premier acting for the State and all the CQCA joint venture partners is obtained before any amendment of the Agreement can be made. All proposed changes to the Agreement have thus been made in close consultation with the joint venture partners through the majority holder and operator BHP. Full agreement to all the proposed changes to the Agreement have been received from all the CQCA joint venture partners.

Consultation with all the various Government Departments concerned with the administration of or impacted by those Parts of the CQCA Agreement subject to the current review have been consulted and advised of progress on an ongoing basis since the process was initiated in November 1996. This consultation has continued to the present. These agencies include Treasury, Premier and Cabinet and Economic Development and Trade.

AUSTA has been consulted regarding any proposed amendments potentially impacting on supply of coal to State power stations.

The advice of the Office of the Queensland Parliamentary Counsel was

sought regarding guidelines for drafting instructions.

The Office of Rural Communities has been advised of the likely minimal impact of this Bill on rural communities.

Legislative proposals were forwarded to the Ministerial Bills Committee on 2 October 1997.

Wider community consultation has not been considered warranted considering the restricted application of this special agreement legislation.

Results of consultation

All responding parties consulted have been in full agreement with the general aims and outcomes of the negotiations to date. No objections have been received regarding any of the specific amendments proposed.

NOTES ON PROVISIONS

Section 1 sets out the short title for the Bill (*Central Queensland Coal Associates Agreement Amendment Bill 1997*).

Section 2 gives the commencement date of the Bill (1 January 1998).

Section 3 identifies the Act that is being amended by this Bill (the *Central Queensland Coal Associates* (CQCA) *Agreement Act 1968*).

Section 4 deletes a alternative definition of "the Companies" in favour of a single definition listed under the definition of terms in Part I Clause 2 of the Agreement to reduce the chance of future confusion and error.

This section also identifies the new amended location of the Agreement in schedule 1.

Section 5 removes the "Henry VIII" option provision from Section 4 of the *CQCA Agreement Act 1968* which previously allowed amendment of the Agreement by regulation. The removal of these provisions will place the Act and Agreement more in keeping with fundamental legislative principles.

Section 6 removes those provisions from Section 5 of the *CQCA Agreement Act 1968* relating to amendment of the CQCA Agreement by regulation using the "Henry VIII" provision of Section 4 above. It also

redrafts parts of Section 5 to use current legislative terminology.

Section 7 authorises the Premier to act for the State in signing the amended Agreements as listed in Schedules 2 and 3 with the CQCA joint venture partners.

Section 8 assigns a schedule number to the originally un-numbered first Schedule.

Section 9 inserts two new schedule (Schedules 2 and 3) which form the agreed changes to the CQCA Agreement proposed by this Bill.

SCHEDULE 2

Amendment of Part I, Clause 1

This clause defines the various parts into which the agreement has been divided. A number of parts previously included in the CQCA Agreement have now been removed by this Bill and by previous regulation and this clause has been amended to reflect these changes.

Amendment of Part I, Clause 2

This clause has been amended to update the definition of special terms used in the Agreement to better reflect current legislation and usage and to reduce duplication by the amalgamation of special terms formerly defined in Part II and elsewhere of the Agreement. The removal of redundant or expired terms and those terms deleted from the Agreement by other amendments has also been undertaken.

Amendment of Part I, Clause 4

This amendment inserts a sunset provision that terminates the stamp duty exemptions currently enjoyed by the CQCA joint venture from 31 December 2002. These exemptions are currently of indefinite duration.

Exemptions of this kind are not enjoyed by other central Queensland coal producers and are considered not in keeping with National Competition policy. The 31 December termination date is the outcome of negotiation with the CQCA partners to gain their agreement to this change.

Amendment of Part I, Clause 5

This amendment will remove the "Henry VIII" option provisions that allows amendment of the Agreement by regulation. This amendment mirrors the removal of this same provision from Section 4 of the *CQCA Agreement Act 1968* listed previously above.

Omission of Part I, Clause 6

This clause set a number of performance requirements to help initiate mine development back in 1969. These requirements have now long since been met making this clause now redundant. This amendment will remove this redundant clause from the Agreement.

Omission of Part II, Clause 1

This clause lists and defines special terms used in Parts II and III of the Agreement. Many of these terms are now or soon will be made redundant and the remainder have now been incorporated into Part I Clause 2. This amendment proposes to remove Clause 1 as redundant.

Omission of Part II, Clause 2

Clause 2 bound the then Minister for Mines to grant an Authority to Prospect (ATP) for coal over a defined area of central Queensland to the CQCA Companies. Authority to Prospect 67C was duly granted to the Companies over this area on 29 May 1969. This tenure subsequently expired on 31 December 1973, after the full initial four Special Coal Mining Leases (SCMLs) allowed under the CQCA Agreement had been granted.

This amendment will remove this expired and redundant clause from the Agreement.

Omission of Part II, Clause 3

Clause 3 previously excluded certain provisions of the Coal Mining Acts from applying to the Authority to Prospect granted under Clause 2 above. As this Authority to Prospect (ATP 67C) has now expired, the provisions of Clause 3 have also effectively expired.

This amendment will effect the removal of this expired clause.

Omission of Part II, Clause 4

Clause 4 placed various special conditions on exploration activity undertaken on ATP 67C. With the expiry of ATP 67C these conditions also expired making this clause redundant.

This amendment will effect the removal of this redundant clause.

Part III, Clause 5

Clause 5 currently places restrictions on the total tonnage of coal that can be mined and further restrictions on the location and type of market where this coal may be sold. These conditions do not apply to most central Queensland coal mines and are considered unfairly restrictive and not in keeping with National Competition Policy.

Removal of the restriction relating to the total tonnage that can be mined is not however proposed at this time due to implications arising under the compensation provisions of the *Native Title Act*. Similar considerations have resulted in the deferral of a number of other proposed amendments to the CQCA Agreement. These will be presented for consideration in a later Bill following Commonwealth clarification and amendment of the *Native Title Act.*

The removal of the restrictions on market location and type do not have such native title implications and form the basis of the current proposed amendments to this clause.

Amendment of Part III, Clause 7

Clause 7 currently imposes a minimal rental rate of $1 per acre per annum for all SCMLs granted under the Agreement until 1 January, 2011. This rate is much lower than would apply had the SCMLs been granted under the normal provisions of the *Mining Act* and gave the CQCA Companies cost savings not available to their competitors.

The amendment proposed for this clause will serve to normalise these rental rates from 1 January 1998, to the levels that would have applied had the various SCMLs been granted under the *Mining Act.* This change will raise an additional $437,599 per annum in additional lease rental payments to the State.

Amendment of Part III, Clause 9

The amendment of Subclause (d) of Clause 9 is intended to standardise the penalties for non-compliance with lease conditions for the SCMLs granted under the CQCA Agreement with those that apply to all other coal mining operations in Queensland. Accordingly, the penalties for such non-compliance have been altered so that the penalties prescribed under the *Mineral Resources Act* will apply.

Omission of Part III, Clause 10

Clause 10 formerly imposed a royalty rate of five cents per tonne on coal mined from the SCMLs. This Clause has been superseded by Section 323 of the *Mineral Resources Act* which over-rides this clause and imposes new royalty rates as prescribed in the regulations to the Act.

This amendment will remove this redundant clause.

Omission of Part III, Clause 11

Clause 11 currently requires all surveys to carried out under certain provisions of the *Land Surveyors Acts.*

The *Land Surveyors Acts* were replaced by the *Surveyors Act* in 1997 which rendered parts of this clause redundant. The introduction of the *Mineral Resources Act* in 1989 rendered the rest of the clause redundant by the inclusion of numerous sections in that Act on the survey requirements for mining tenure.

This amendment will remove this redundant clause.

Omission of Part III, Clause 13

This clause required the CQCA Companies to meet certain production and expenditure requirements in the first few years of mining operation and was a form of incentive to encourage development. The required mine development did in fact take place and substantive compliance with the requirements of this clause were made at the time. This clause is now considered to have expired.

Labour and expenditure requirements of this type were previously imposed by the *Mining Act*. These provisions were repealed and not

replaced with the introduction of the *Mineral resources Act* in 1989 removing the legislative basis for clauses of this type.

This amendment will remove Clause 13 from the Agreement.

Omission of Part III, Clause 14

Clause 14 gave exemption from the labour and expenditure requirements of the *Mining Act* if the requirements of the preceding Clause 13 were met. The labour and expenditure requirements of the *Mining Act* were repealed and not replaced by the introduction of the *Mineral Resources Act* in 1989 making this clause effectively meaningless and redundant at that time.

This amendment will remove Clause 14 from the CQCA Agreement.

Omission of Part III, Clause 15

Clause 15 allows the mining of limited quantities of non-coking coal in conjunction with the coking coal. If this quantity is anticipated to exceed 10% of the total, the Minister may request the CQCA Companies to stockpile or deliver such coal for use in State power stations.

The restrictions imposed by Clause 15 are considered inconsistent with the aims of National Competition Policy. Further, the 1992 Leading State Policy committed the State to the removal of such export restrictions. Similar restrictions have already been removed from mining leases at Blair Athol, Newlands and Collinsville.

The main potential beneficiary from this clause, AUSTA, has raised no objection to its removal. In addition, current restructuring of the Queensland electricity industry may present buyers that do not readily fall under the definition of “State power station”.

Removal of this clause will allow the CQCA Companies to develop various non-coking coal exports with more certainty and may enable dedicated thermal coal mines (such as Daunia) to be developed, with consequent economic spin-off benefits to the State.

This amendment will remove this restrictive clause.

Omission of Part III, Clause 16

Requires the CQCA Companies to stockpile wash plant reject coal and make it available to the State at cost for use in State power stations if requested.

The provisions of Clause 16 are considered restrictive and inconsistent with the aims of National Competition Policy. Similar restrictions have already been removed from other mining operations such as Tarong.

As Crown Law advice indicates the reject material is the property of the CQCA Companies, it has no value to the State unless purchased for use in State power stations. If sold on the open market it would attract coal royalty income.

AUSTA has looked at utilising reject coal in power generation but has not considered it cost effective due to the material's low energy and high ash content. AUSTA has therefore raised no objection to the removal of this clause.

Long term stockpiling of this material, if not utilised, is an unnecessary financial burden on the CQCA Companies and presents a number of potential environmental risks associated with dust generation, runoff water quality and possible fires. This already low quality material is also likely to oxidise and degrade further in quality if kept in long term stockpiles, rendering it largely useless.

The State has gained no material benefit from this clause to date and appears unlikely to do so in the foreseeable future. Removal of this clause may enhance the possibility of the sale or use of this material by private operators.

This amendment will remove Clause 15 from the CQCA Agreement.

Omission of Part III, Clause 17

Clause 17 gives grounds for possible exemptions from the work and expenditure requirements of Clause 13. With the expiry and proposed removal of Clause 13 this clause is also redundant and will be removed by this amendment.

Omission of Part III, Clause 18

Clause 18 ensures State right of entry onto the SCMLs granted under the Agreement for various defined purposes. This clause was made redundant by the introduction of Section 342(1)(e) of the *Mineral Resources Act* which grants State right of entry on all mining tenure for all the purposes listed in this clause.

This amendment removes this redundant clause from the CQCA Agreement.

Omission of Part III, Clause 20

This amendment will remove Clause 20 from the CQCA Agreement.

Clause 20 currently requires the CQCA Companies to submit a potentially refundable levy of only $50 for each acre of land disturbed by mining operations on each of the SCMLs. This sum would be totally inadequate to meet rehabilitation cost if the land were left disturbed.

With the introduction of the *Mineral Resources Act* improved environmental management and security arrangements have been put in place that make this clause redundant. All of the CQCA SCMLs have a current Environmental Management Overview Strategy and Plan of Operations to address all environmental and rehabilitation matters in more detail than is covered by this clause. Significantly increased security in the form of cash or bank guarantee will be lodged for all the CQCA leases before 31 December 1997. Cash already paid under Clause 20 will be retained as part of this new security.

Omission of Part III, Clause 21

Clause 21 directs in general terms that roads, stock routes, streams and other water courses are not to be interfered with without prior Ministerial approval. This clause has now been made redundant by the introduction of the *Mineral Resources Act* includes sections regarding rights of way [Section 276(1)(f)] and water management (the Environmental Management Overview Strategy or EMOS provisions) which deal with these issues in much more detail.

This amendment will remove Clause 21 from the CQCA Agreement as redundant.

Omission of Part III, Clause 22

This amendment will remove this clause from the CQCA Agreement.

Clause 22 currently requires that the CQCA Companies conduct all operations in accordance with good mining practice and in a manner that protects the State's resources.

All of the provisions of this clause are covered in more detail in other existing legislation. Good mining practice is covered by the *Coal Mining Act* and protection of the State's resources is covered by the *Coal Industry Control Act*, Environmental Protection Act and the EMOS and Plan of Operations provisions of the *Mineral Resources Act.* This clause is therefore redundant.

Omission of Part III, Clause 23

Clause 23 currently requires the CQCA Companies to supply coal to specific Queensland consumers if so requested by the Governor in council, or to surrender sufficient resources from their SCMS to meet these requirements.

Historically, clauses of this type were included in mining lease conditions and agreements because there was some concern at that time (pre-1969) that insufficient coal resources, particularly of coking coal, had been identified in the State to meet potential future demand. The subsequent discovery of immense coal resources in the State have since changed this view, rendering clauses of this type redundant.

This clause is also considered unfairly restrictive and inconsistent with the aims of National Competition Policy.

This amendment will remove this clause.

Omission of Part III, Clause 24

Clause 24 requires the CQCA Companies to comply with reasonable directions from the Minister for Mines and Energy regarding the supply of coal for use in State power stations.

This clause is considered potentially highly interventionist and not in keeping with the aims of National Competition Policy. It also has the potential to create unnecessary uncertainty with regard to mine planning issues.

This clause will also be made largely redundant with the removal of Clauses 15, 16 and 23 which will remove the requirements to supply coal for use in State power stations.

SCHEDULE 3

Schedule 3 is solely concerned with changes to the ownership makeup of the CQCA joint venture arising from the sale of the AMP Society's interests to the other joint venture partners and the transfer of interest from QCT Resources Limited to QCT Management Limited, which will need to be reflected in the CQCA Agreement.

Originally, it was intended to include these changes of ownership with the other amendments listed in Schedule 2 of the Bill. However it now appears that the sale of AMP's interest is unlikely to be finalised before the end of the year. Separating this minor amendment out into its own schedule allows signed agreement of this change to take place at a later date without adversely impacting on the timing of the remaining amendments proposed and allows signing of the Schedule 2 agreement by the current partners.

This course of action also removes the need for a separate Bill to make what is effectively a trivial modification of the Agreement at a later date. In the unlikely event that the sale of AMP's interests does not progress as is anticipated, the agreement to the changes outlined in the new Schedule 3 will not be signed and will not come into effect.

Agreement amended

Schedule 3 will amend the Central Queensland Coal Associates Agreement under the *Central Queensland Coal Associates Agreement Act 1968*.

Amendment of Part I Clause 2

Amends the definition of "Companies" to reflect the new makeup of the CQCA joint venture anticipated after the sale of AMP Society's interest to the other partners.

Amendment of Part IX, Clauses 11 and 12

Amends the definition of "Companies" to reflect the new makeup of the CQCA joint venture anticipated after the sale of AMP Society's interest to the other partners.