NATIVE TITLE RESOLUTION BILL 2000

EXPLANATORY NOTES

Title of the Bill

Native Title Resolution Bill 2000.

Policy Objectives of the Bill

The policy objectives of the Bill are:

- To amend the Alternative State Provisions contained in the *Mineral Resources Act 1989* and the *Land and Resources Tribunal Act 1999* to extend the application of the determinations obtained under section 43 of the Commonwealth *Native Title Act 1993* to all land and waters in Queensland where the right to negotiate under the Commonwealth *Native Title Act 1993* would otherwise apply.
- To amend the Alternative State Provisions contained in the *Mineral Resources Act 1989* and the *Land and Resources Tribunal Act 1999* to apply to the low impact schemes under section 26A of the Commonwealth *Native Title Act 1993* substantive and procedural rights and acceptable definitions of the nature of low impact exploration that are no less favourable to indigenous interests than those proposed in New South Wales.
- To amend the Alternative State Provisions contained in the *Mineral Resources Act 1989* and the *Land and Resources Tribunal Act 1999* to remove provisions relating to alternative provision areas under section 43A of the Commonwealth *Native Title Act 1993*.
- To amend the Alternative State Provisions contained in the *Mineral Resources Act 1989* and the *Land and Resources Tribunal Act 1999* to remove provisions relating to surface

alluvium (gold or tin) mining claims and surface alluvium (gold or tin) mining leases under section 26B of the Commonwealth *Native Title Act 1993*.

- To amend the *Land and Resources Tribunal Act 1999* to confer jurisdiction with respect to certain matters relating to indigenous land use agreements on the Land and Resources Tribunal.
- To make consequential amendments, and some minor and technical amendments to the *Native Title (Queensland) Act 1993,* the *Mineral Resources Act 1989* and the *Land and Resources Tribunal Act 1999.*

Achieving the Policy Objectives of the Legislation

On 31 May 2000, Queensland obtained 13 determinations from the Commonwealth Attorney-General under the Commonwealth *Native Title Act 1993* ('NTA'), approving the Alternative State Provisions ('ASPs') contained in the *Mineral Resources Act 1989* ('MRA') and the *Land and Resources Tribunal Act 1999* ('LTRA'). The ASPs provide alternatives to the Commonwealth Right to Negotiate process ('RTN') under the NTA for the following mining tenements:

- Prospecting Permits, Low Impact Exploration Permits, and Low Impact Mineral Development Licences (approved under section 26A of the NTA);
- Surface Alluvium (Gold or Tin) Mining Claims and Surface Alluvium (Gold or Tin) Mining Leases (approved under section 26B of the NTA);
- Mining Claims, Exploration Permits, Mineral Development Licences and Mining Leases (approved under section 43 of the NTA); and
- Mining Claims, Exploration Permits, Mineral Development Licences and Mining Leases (approved under section 43A of the NTA).

In June 2000 the Commonwealth Attorney-General tabled his determinations in the House of Representatives and the Senate.

The Australian Democrats moved motions to disallow all of the determinations on 8 June 2000. Where the disallowance motion is successful those determinations that are disallowed cease to have affect and the RTN will instead continue to apply. The motions to disallow were considered by the Senate on 30 August 2000. The Senate disallowed 6 of the 13 determinations being those approved under sections 26B and 43A of the NTA, namely:

- two approved gold or tin mining acts under section 26B of the NTA; and
- four right to negotiate - alternative provision schemes under section 43A of the NTA.

Therefore coverage of the ASPs is currently defined by the Commonwealth Attorney-General's remaining 7 determinations, namely:

- three approved exploration etc. acts under section 26A of the NTA; and
- four right to negotiate - alternative provision schemes under section 43 of the NTA.

This means that the RTN applies to mining tenements and land and waters outside the scope of those 7 determinations.

As a result of the Senate disallowance it is necessary to amend the ASPs to extend the section 43 scheme to apply to land and waters in Queensland where the RTN would otherwise apply. The majority of the land and waters in Queensland subject to native title rights and interests would have been subject to the section 43A scheme but, following the Senate disallowance, the RTN will apply. This situation is problematic because it will give rise to the impractical circumstance where individual mining tenements may be subject to two separate and different native title processes (Commonwealth and State).

The Bill amends the MRA and LRTA so as to:

- extend the section 43 scheme to apply to land and waters in Queensland where the RTN would otherwise apply;
- repeal the sections 43A and 26B schemes; and
- address some minor technical and other matters which have been identified since the ASPs were passed.

In light of concerns raised about the procedural rights afforded under the determined Queensland section 26A scheme, the Bill also amends the scheme to make it no less favourable to indigenous interests than the scheme under the *Mining Act 1992 (NSW)*. The amendments address the following major points:

- A four month period before access is allowed under a low impact exploration tenement. This period allows sufficient time for the lodgement and registration of a native title claim under the NTA before any consultation about access begins.
- The meaning of low impact activities has been amended to reflect the definition under the New South Wales scheme.
- Entry to land under a low impact exploration tenement is conditional upon an access agreement being obtained between the holder of the tenement and each native title body corporate or each registered native title claimant for the area of entry.
- If an access agreement can not be obtained after 2 months, the parties may refer the matter to the Mining Registrar for a mediation conference about the access agreement. If, after one month, an access agreement is not obtained the parties may ask the Mining Registrar to refer the matter to the Land and Resources Tribunal for a decision.
- Any decision by the Land and Resources Tribunal about an access agreement must also include a decision about the compensation to be paid for the impact of the low impact exploration tenement on native title rights and interests.

The Bill also confers jurisdiction on the Land and Resources Tribunal to mediate, decide or make recommendations about matters arising under a registered indigenous land use agreement where the State is a party and the agreement provides for referral to the Tribunal.

Administrative Cost

The extension of the section 43 scheme to cover land and waters that would have previously been subject to the section 43A scheme will have financial implications for the State, particularly:

- costs for the Department of Mines and Energy and Native Title Services, Department of the Premier and Cabinet; and
- costs to the Department of Justice and Attorney-General arising from the greater involvement of the Land and Resources Tribunal.

The additional substantive and procedural rights to enhance the section 26A scheme will give rise to:

- additional costs for the Department of Mines and Energy arising from the requirement to administer access agreements and the role for the Mining Registrar in mediating disputes relating to access agreements; and
- additional costs to the Department of Justice and Attorney-General relating to the role of the Land and Resources Tribunal regarding access agreements.

The Department of Justice and Attorney-General will incur additional costs as a result of the new jurisdiction of the Land and Resources Tribunal for registered indigenous land use agreements where the State is a party.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles defined in section 4 of the *Legislative Standards Act 1992*. Section 4 requires that legislation has sufficient regard to:

(a) rights and liberties of individuals; and

(b) the institution of Parliament.

With respect to the rights and liberties of individuals, section 4(3)(a) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The Bill does not derogate from these principles.

With respect to the rights and liberties of individuals, section 4(3)(g) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

The Bill does not adversely affect the rights and liberties of individuals.

With respect to whether the legislation has sufficient regard to the institution of Parliament, the Bill is consistent with fundamental legislative principles as the Bill does not allow for the delegation of legislative power, does not authorise the amendment of the Act other than by an Act, and does not restrict, in any way, the scrutiny of any delegated legislative power by the Legislative Assembly.

Consultation

The Bill was developed in consultation with:

- the Office of the Queensland Parliamentary Counsel; and
- the Department of Mines and Energy.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 of the Bill sets out the short title of the proposed Act.

Clause 2 of the Bill provides for the commencement of the proposed Act on a date to be fixed by proclamation.

PART 2—AMENDMENT OF THE LAND AND RESOURCES TRIBUNAL ACT 1999

Clause 3 of the Bill provides that part 2 amends the *Land and Resources Tribunal Act 1999.*

Clauses 4 and 5 of the Bill make minor amendments to better describe the nature of proceedings under part 4 division 2 of the Act.

Clause 6 of the Bill inserts new section 51B to confer jurisdiction on the Land and Resources Tribunal to mediate, decide or make recommendations about matters arising under a registered indigenous land use agreement where the State is a party and the agreement provides for referral to the Tribunal.

Clause 7 of the Bill amends section 83(1)(a) of the Act to include a transitional provision for unfinished proceedings in the Wardens Court under the *Petroleum Act 1923*. This is consistent with the transitional provisions for unfinished proceedings under the *Mineral Resources Act 1989* and the *Fossicking Act 1994.*

PART 3—AMENDMENT OF THE MINERAL RESOURCES ACT 1989

Clause 8 of the Bill provides that part 3 amends the *Mineral Resources Act 1989.*

Clauses 9 and 10 of the Bill insert new subsections into sections 657 and 666 to address an anomaly and ensure that in all cases registered native title parties are given written notice of the grant of mining tenements.

Clause 11 of the Bill clarifies that the Land and Resources Tribunal in making a compensation decision or a compensation trust decision must apply all relevant principles for assessing compensation under the *Mineral Resources Act 1989.*

Clauses 12, 13 and 14 of the Bill amend section 725 to deal with the circumstance where there is a delay between the commencement of section 725(1)(b) and the gazettal of the determinations for the Alternative State Provisions by the Commonwealth Attorney-General. The Commonwealth Government requires the State to proclaim the Alternative State Provisions before gazettal of the relevant determinations. Therefore, there is theoretically a period where an application for a mining tenement could be lodged after the proclamation of this section, but the Alternative State Provisions will not be in force because the determinations by the Commonwealth Attorney-General are not yet gazetted. The new subsection (4) is necessary because the gazette notice may refer to an earlier date to give effect to this provision.

PART 4—AMENDMENT OF THE NATIVE TITLE (QUEENSLAND) ACT 1993

Clause 15 of the Bill provides that part 4 amends the *Native Title (Queensland) Act 1993*.

Clause 16 of the Bill amends section 144 to include a general empowering provision enabling the State to compulsorily acquire native title rights and interests only where the State can acquire non-native title rights and interests. This accords with the provisions of the Commonwealth *Native Title Act 1993.*

Clause 17 of the Bill deletes interim provisions, which are redundant.

PART 5—OTHER AMENDMENTS

Clause 18 of the Bill refers to Schedule 1 which contains amendments to the *Land and Resources Tribunal Act 1999*, the *Mineral Resources Act 1989* and the *Native Title (Queensland) Act 1993* to amend the Alternative State Provisions to:

- extend the section 43 scheme to cover all land and waters in Queensland where the right to negotiate under the Commonwealth *Native Title Act 1993* would otherwise apply;
- remove provisions relating to alternative provision areas under section 43A of the Commonwealth *Native Title Act 1993;*
- remove provisions relating to surface alluvium (gold or tin) mining claims and surface alluvium (gold or tin) mining leases under section 26B of the Commonwealth *Native Title Act 1993*; and
- make consequential amendments, and some minor and technical amendments to the Alternative State Provisions.

Clause 19 of the Bill refers to Schedule 2 which contains amendments to the *Land and Resources Tribunal Act 1999* and the *Mineral Resources Act 1989* to amend the Alternative State Provisions to:

- amend the low impact schemes under section 26A of the Commonwealth *Native Title Act 1993* to provide substantive and procedural rights and acceptable definitions of the nature of low impact exploration that are no less favourable to indigenous interests than those in New South Wales.

© State of Queensland 2000