
**Submission to the Infrastructure, Planning and Natural
Resources Committee of the Queensland Parliament regarding
the *Mineral Resources (Aurukun Bauxite Resource) Bill 2016 (Qld)***

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1. Key Points of Submission

Two considerations should be critical in considering what amendments should be effected by the *Mineral Resources (Aurukun Bauxite Resource) Bill 2016 (Qld)* ('the *Bill*').

The first relates to the timely and efficient development of bauxite resources near Aurukun, for the benefit of Aboriginal people in the region and for all Queenslanders. Given that there is a long history of multinational mining companies using bauxite resources in Western Cape York for wider strategic, commercial advantage and failing to develop the resource, it is imperative that bauxite resources be allocated to corporate entities whose primary interest and motivation is to earn a profit directly and solely from immediate development of those resources. For reasons explained in detail in Section 2. of this Submission, the amendments proposed by the *Bill* will not achieve this objective. Further and retrospective amendments are required that would rescind the Queensland Government's decision to appoint Glencore International AG ('Glencore') as the Preferred Proponent, and instead provide for a process leading to the award of a Mineral Development Licence (MDL) and ultimately a Mining Lease to a corporate entity whose primary commercial motivation is to quickly develop bauxite resources near Aurukun.

The second consideration arises from the reality, confirmed by recent research in Australia and Canada, that Indigenous peoples only gain lasting benefits from mining when they are able to control access to resources on their traditional lands. If they lack such control, they inevitably end up being marginalized, suffering the costs of mineral development and receiving few of its benefits. To ensure that this does not occur, the *Bill* should provide that decisions in relation to development of bauxite resources near Aurukun are taken jointly by the Queensland Government and the agent of the Wik and Wik Way peoples, Ngan Aak-Kunch Aboriginal Corporation RNTBC.

The amendments proposed in the *Bill* are welcome in that they reverse earlier legislative amendments that stripped away the rights of the Wik and Wik Way Peoples in relation to their land and provided for a lesser treatment of the Wik and Wik Way Peoples in comparison with other landholders in Queensland. However for the reasons summarised above and discussed in detail below, the *Bill* must provide for further and substantial amendments to the *Mineral Resources Act 1989* if the interests of affected Aboriginal people and of Queensland are to be protected.

2. Efficient development of bauxite resources

It is essential to place the development of bauxite resources near Aurukun in a wider regional, corporate and economic context. For near 50 years, development of bauxite resources (or all too often their non-development) in this region has been dominated by the broader strategic and competitive concerns of multinational mining companies, and not by the stand-alone technical or economic viability of specific bauxite resources. For example both the Canadian multinational Alcan Ltd and the Swiss-based Pechiney, having located large bauxite resources in the 1960s and 1970s, failed to develop them because their major goals were to deny competitors access to them, and ‘warehouse’ them until such time as corporate strategies dictated their exploitation. In fact Pechiney never reached such a point, and the Queensland Government eventually lost patience with the company, declined to further renew their leases, and sought alternative developers. This resulted first in the involvement of Chalco and more recently of Glencore/Rusal.

The history of Alcan’s leases is more complex and provides an object lesson of the costs incurred by Aboriginal traditional owners, and the opportunities they forego, when bauxite resources become a pawn in corporate strategies rather than being exploited for their inherent economic potential. In 1995 Alcan announced plans to develop the Ely bauxite lease north of Weipa, which Alcan had been allocated in 1965 but had never developed. The terms of Alcan’s ‘take-or-pay’ bauxite contracts with Comalco Ltd, under which Alcan obtained bauxite to provide its share of the feedstock for the Queensland Alumina Refinery (QAL) in Gladstone, had become increasingly onerous on Alcan as time passed. The contracts were due to expire in January 2000. Alcan announced that it would commence development of Ely to allow it to provide its own bauxite to QAL. An extensive, community-controlled consultation exercise indicated that Aboriginal Traditional Owners and the communities of Mapoon and New Mapoon strongly supported the Alcan’s proposed project, and with the support of the CYLC they worked closely with Alcan to facilitate the development of Ely. In September 2007 the Traditional Owners, Mapoon and New Mapoon signing a comprehensive native title agreement with Alcan, and construction work on Ely commenced in 2008. However as it transpired Alcan’s development of the project was in reality a strategy to force Comalco into agreeing more favourable terms for Alcan’s bauxite purchases from Comalco. After Comalco offered Alcan such terms to renew its supply contracts, Alcan abandoned the Ely project.

Alcan's arrangement with Comalco provided for a 'bauxite exchange' under which Comalco would initially mine the bauxite required by Alcan from Comalco's Weipa mine, and Comalco would later mine an equivalent tonnage from the Ely lease and so 'repay' itself for the bauxite it had delivered to Alcan from its Weipa leases. As a result the Traditional Owners of the Ely leases would still receive royalties payable to them under the Ely Agreement with Alcan. However the Traditional Owners and the Mapoon communities, and Queensland as a whole, lost out on other and critical economic opportunities as a result of Alcan's decision not to construct the Ely project.

According to the Environmental Impact Assessment for the Ely project, 200 jobs would have been created during construction and 100 – 160 permanent jobs during operations. Some \$4 million annually (1996 dollars) would have been spent on buying goods and services from local businesses (Dames and Moore 1996). In addition, Alcan had planned to build an all-weather road from Weipa to Mapoon, to replace an existing road which was frequently cut by floods for weeks at a time in the wet season, isolating Mapoon and creating serious problems in medical and other emergencies. Under the Ely Agreement, mine infrastructure such as the port, power station, accommodation and water would have been handed over to the Aboriginal community at nominal cost when they ceased being used by Alcan or at the end of project life. In sum, these wider economic benefits would have contributed substantially to the development of the Aboriginal community, and their loss as a result of Alcan's decision not to proceed was consequently serious. Ely would also of course also have contributed substantially to the Queensland and Australian economies by generating state and federal tax revenues and demand for goods and services, and by contributing significantly to the development of vital infrastructure in Australia's north.

This discussion and the history of Ely highlights a critical point about development of the bauxite resources near Aurukun. Allocating those resources to a company that plans a stand-alone mining operation, and whose primary interest and motivation is to earn a profit directly and solely from that operation, is much more likely to result in their development, and so to generate benefits for Aboriginal traditional owners and regional, state and national economies. History shows that allocating bauxite resources to companies that may be motivated by wider strategic and corporate interests is much less likely to result in their development. In this regard the involvement of Glencore and its related company Rusal in the Aurukun bauxite project provides grounds for serious concern. Rusal is, like Alcan in 1996, a shareholder in QAL and currently purchases its share of the bauxite feedstock for QAL from Comalco's successor, Rio Tinto Aluminium. Press reports indicate that Rusal has been

seeking a cheaper source of supply (Metals News 2010). There is a real risk that what will occur here is a re-run of the Ely project, with Glencore/Rusal using the threat of developing their own source of bauxite supply to obtain more favourable prices from existing suppliers, leaving the Aurukun bauxite resources undeveloped.

The appropriate legislative response to this situation is for the *Bill* to include amendments that rescind Glencore's nomination as Preferred Proponent and initiate a process that will result in the appointment of an alternative Preferred Proponent whose corporate interests will compel it towards the rapid and efficient development of the bauxite resources near Aurukun.

3. Opportunities for Traditional Owners to receive ongoing benefits

To state the obvious, if bauxite resources are not developed, Traditional Owners will not receive ongoing benefits. Thus it is critical that these resources be allocated to the companies that are most likely to develop them. In this regard, companies with a significant level of Traditional Owner and/or Aboriginal community equity are more likely to quickly exploit bauxite resources, as the Aboriginal shareholders have a driving interest in their development.

More broadly, Australian and international experience shows unequivocally that Aboriginal and other Indigenous peoples only achieve substantial and ongoing benefits from mining of resources on their traditional lands if they are able to control access to those resources. Their ability to do so may be based in law, as in the Northern Territory where Traditional Owner consent is required for mining on Aboriginal freehold land, or as in parts of Canada and the United States where Indigenous landowners own the minerals under their land. Alternatively, the ability to control access to resources may arise because the organisational and political power of Indigenous people means that, in practice, it is not feasible for companies to proceed with mining in the absence of Indigenous consent. This latter possibility explains why in recent years for Aboriginal people represented by organisations such as the Kimberley Land Council and the CYLC have obtained benefits in mining agreements comparable to those negotiated in the Northern Territory, despite the fact that the legal rights available to them under the *Native Title Act* are very weak.

The conclusion that only the ability to control of access to mineral resources can ensure substantial and ongoing benefits for Traditional Owners is strongly supported by the only systematic comparison of a large number of negotiated mining agreements in Australia (O'Faircheallaigh 2016). This found that of 45 agreements across Australia's major mining

regions, every agreement offering Traditional Owners substantial benefits in terms of revenue sharing, employment and business development, robust cultural heritage protection and substantial participation of environmental management, had one thing in common. They were negotiated either in the Northern Territory, or by Aboriginal groups whose political and organisational resources allowed them to pose a realistic threat to prevent a project being developed if the mining company failed to negotiate their consent. In other cases, even for projects involving huge investments and lucrative returns, Aboriginal benefits were meagre, and the costs of cultural and environmental impacts were high. On the basis of the available evidence, exactly the same findings would be replicated if a comparable study was conducted for Canada (O’Faircheallaigh 2016).

The meagre benefits that can be gained by Aboriginal people when they cannot control access to resources is also illustrated by Glencore’s response to the Queensland Government’s Request for Detailed Proposal in respect of the Aurukun Bauxite Project (Glencore 2013). This response was provided in a situation where the Queensland Government was not proposing to allow Aboriginal Traditional Owners any control over access to the resources concerned, but intended to determine their disposition unilaterally (and of course has since done so). This lack of Aboriginal control is reflected in very limited benefits that Glencore proposes to offer. Indeed during the initial Mineral Development Lease phase of the project, no benefits whatsoever are guaranteed. Glencore would ‘identify opportunities for local employment as part of EIS [Environmental Impact Statement] studies’ and ‘commence recruitment and a training plan’, but offers no certainty that any minimum or specific numbers of Aboriginal people will be employed. Tellingly, Glencore commits only ‘To require, as part of the selection of consultants for the EIS, that such consultants *consider* employment (including training) of local residents’ (emphasis added). Again, there is no guarantee of any jobs for local people. In relation to the mining phase, Glencore commits to negotiate a royalty but does not envisage negotiating Aboriginal equity in the project. Neither does it envisage Aboriginal involvement in decision making on environmental issues, but only ‘consultation’.

The approach indicated by Glencore’s response is far removed from might be regarded as ‘best practice’ for mining agreements in North Australia. In recent years this has included substantial Traditional Owner equity in projects, with corresponding Board representation; guaranteed minimum benefits in terms of employment and training and contracting opportunities; and a major role in decision making on matters that affect the impact of mining operations on country.

The reason for Glencore's position, which is likely to be shared by other multinational mining companies faced with the same situation, is clear. It is the absence of what Noel Pearson refers to as a 'two keys' approach under which the approval of both relevant regulatory authorities *and* of Aboriginal Traditional Owners is required before a mining project can proceed. There is now a heavy weight of independent, scholarly evidence to support Pearson's position in this regard.

In this case the appropriate legislative response is for the *Bill* to include amendments providing that decisions in relation to development of bauxite resources near Aurukun will be taken jointly by the Queensland Government and the agent of the Wik and Wik Waya peoples, the Ngan Aak-Kunch Aboriginal Corporation RNTBC.

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