

Balkanu

Cape York Development Corporation P/L

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Infrastructure Planning and Natural Resources Committee
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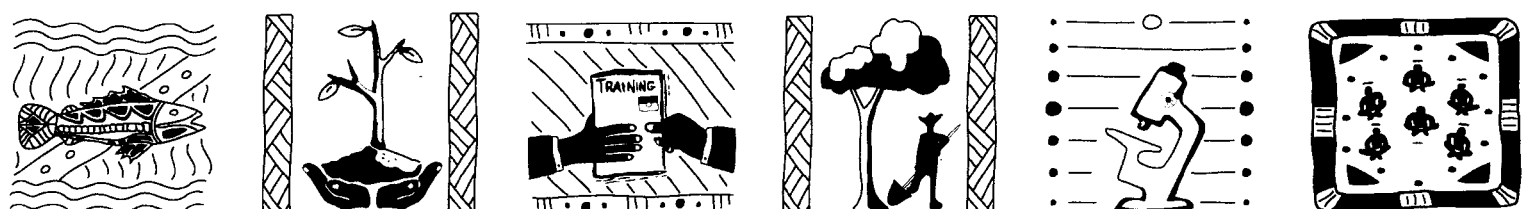
Re: Submission by Balkanu Cape York Development Corporation Pty Ltd (Balkanu) to the Committee's inquiry into the *Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016*

We welcome the amendments to the discriminatory "Aurukun" provisions of the Mineral Resources Act. But after scrutiny, including from independent experts, we have concluded these amendments do not go far enough. Balkanu thus advocates that the Bill also overturn the invalid development agreement between the State and Glencore.

Balkanu is a not-for-profit Indigenous corporation established in 1996, owned by the Cape York Aboriginal Charitable Trust on behalf of the Aboriginal people of Cape York. Balkanu has a 100% Indigenous board of directors. We have extensive economic development, land management, land tenure and planning and indigenous engagement experience, as well as a rich understanding of Indigenous issues, circumstances and culture. Balkanu is also a vigorous advocate of the rights of indigenous people.

Aurukun is one of the most disadvantaged communities in Australia. The only feasible opportunity for the Aurukun community to generate substantial employment and economic outcomes where they have some meaningful control is the bauxite resources of RA315.

Balkanu has a long history working with the people of Aurukun. Over the decades, we have observed the sorry history of strategic warehousing by multinationals of bauxite resources on Cape York. We noted the farce of the Alcan Ely Bauxite negotiations with traditional owners, which proved to be a ruse to drive down the purchase price of the bauxite from Comalco for the Queensland Alumina Refinery (QAL). We are aware of the current relationship between Glencore and Rusal, which owns 20% of QAL, and the



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public statements by Glencore executives that it does not intend to develop further greenfield mining projects in Australia.

A decade ago, the Queensland Government amended the *Mineral Resources Act 1989* (Qld) to remove the consent and appeal rights of the indigenous landholders of bauxite lease area RA315. The Government did not consult with, or seek the consent of, the landholders. The amendments were introduced on 9 May 2006 after a tender process through which the Chinese Government owned Aluminium Corporation of China (Chalco) was shortlisted as the only remaining bidder for the Aurukun Bauxite Project. The following month, Chalco lodged its final bid for the development rights.

The amendments were aimed at ensuring the development of the project remained attractive to Chalco. The "Aurukun Provisions" were unique in Queensland, targeted specifically at the area's Indigenous land holders. The Provisions removed rights normally enjoyed by other Queensland Indigenous and non-Indigenous landholders, delivering Chalco certainty at the expense of the Indigenous owners. After the withdrawal of Chalco from the Aurukun project, the Aurukun Provisions were never removed from the legislation.

Unlike the previous tender process, when the Queensland Government recommenced a tender process for the lease in 2012, it was on the fundamentally flawed and discriminatory basis that the Aurukun traditional owners had no consent or appeal rights. The Indigenous landholders were treated as minor stakeholders, rather than as partners with Government in progressing the development of the bauxite reserve.

Thus the bidding process was conducted in a context where the Indigenous landholders had been disempowered. There was little incentive for bidding companies such as Glencore to have regard to the interests of the Indigenous landholders, or give serious consideration to an equity and benefits package for the native title holders and people of Aurukun. The Aurukun provisions have since been challenged in the High Court, and there is little doubt that they are discriminatory and invalid when tested against the *Racial Discrimination Act 1975* (Cth).

The Aurukun provisions have allowed successive Governments to bow to the demands of multinational companies such as Chalco at the expense of indigenous land-owners.

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Threats were reportedly made by the Russian aluminium company Rusal to the former state government led by Anna Bligh. These were reported in Metal News.com in October 2010

(<http://www.metalsnews.com/Metals+News/BusinessInsider/The+Business+Insider+The+Money+Game/HEADLINE253670/Details+Emerge+About+An+AustralianRussian+Bauxite+Cartel.htm>)

“A year ago in Moscow, the Queensland state premier, an Australian Labor Party (ALP) politician named Anna Bligh, was threatened that if she didn’t give Oleg Deripaska what his United Company Rusal wanted from the state, he would punish the state treasury with the withdrawal of millions of dollars in bauxite mining royalties. Bligh has been doing her best to give him what he wants – and keep her deal secret.

The threat is recorded in a report to the state parliament which Bligh tabled after she returned from her trip to Moscow a year ago. The secret deal under current negotiation is the granting to Rusal of the Aurukun bauxite mining concession; this was admitted this morning by Bligh’s spokesman, Chris Taylor”.

We are also deeply concerned that the decision to appoint Glencore and sideline the Indigenous landowners may have been a result of commercial threats by Glencore/Rusal.

We believe the Queensland Government and Glencore have been morally and ethically objectionable through the conduct of the tender. In particular, the following behavior is of deep concern:

- The treatment of the NAK/ABD joint venture through the bidding process - particularly the ban on the joint venture engaging with native title holders;
- That the Queensland Government has focused its engagement on the Aurukun Shire Council rather than the native title holders and indigenous landholders’ representative body, Ngaan Aak Kunch.
- The fact that the tender process was closed, then some months later an exclusionary tender process re-opened and closed on the same day, with the sole aim of selecting Glencore;
- The execution by the Queensland Government of the Aurukun Agreement with Glencore on 5 January 2015, the day before the calling of the 2015 state election. Both the Government and Glencore kept this matter from the public, and

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- particularly from the Indigenous people of Aurukun, during the course of the election;
- Glencore lodging and the State accepting a Mineral Development Licence application during the caretaker period;

We strongly believe it is not in the public interest, in particular in the interests of the native title-holders and the people of Aurukun, for the State Government to proceed with the granting of a Mineral Development Licence to Glencore on the strength of a tender process that was fundamentally and fatally flawed and morally and ethically suspect.

We believe the only fair and equitable way forward is for the Queensland Government to terminate the Aurukun Agreement with Glencore, and enter into negotiations with the Ngaan Aak Kunch/Aurukun Bauxite Developments joint venture to develop a process for moving forward ahead with development of the bauxite resource.

The Ngaan Aak Kunch/Aurukun Bauxite Development joint venture has committed to a substantial benefits package for the Indigenous people of the Aurukun area, including a 15% equity holding in the project. This gives the native title-holders a real say in the development and management of the project.

Glencore has failed to present any credible benefits package for the Indigenous people of the Aurukun area. Such a move would respect the rights of the Indigenous landholders, and maximize the opportunities for the Indigenous people of the Aurukun area.

In our opinion, the Queensland Government would face little liability if it cancelled the Aurukun Agreement with Glencore, as the Government was previously prepared to remove the Aurukun bauxite lease from Alcan. Glencore has made little progress on development of the reserve; has no native title or landholder agreements in place; and no mining tenure.

Bauxite mining is an operation which can be undertaken by the Aurukun people in joint venture. Given the previous processes resulted in no mine and thus no benefit to the most impoverished peoples in Australia, it is critical the Queensland Government put the needs of the local community ahead of their desire to appease a multinational with

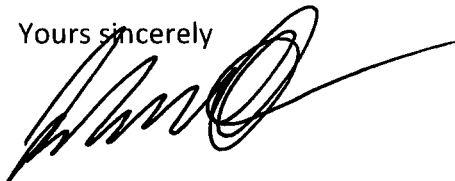
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dubious motives and an even more dubious record working with Indigenous peoples around the world.

We welcome the amendments being proposed by the Queensland Government to rectify the discriminatory "Aurukun provisions". However, we are of the opinion that the amendments do not go far enough and that the legislation must also include a provision which overturns the invalid development agreement with Glencore.

Yours sincerely



Gerhardt Pearson
Executive Director