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A fair go for Aurukun

Submission by the Cape York Institute to the Infrastructure, Planning and Natural Resources Committee for its inquiry into the *Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016* (the Bill)

25 February 2016

Key messages

1. We urge the Queensland Government to take up the opportunity available through this Bill to make additional amendments that enable a fair and transparent assessment process for the preferred proponent to develop the bauxite deposits near Aurukun.
2. The native title and land holders, many of whom are leaders of Aurukun, understand perfectly the opportunity that the bauxite on their land represents and its transformational potential. All actions they have taken to protect and assert their right to lead the development of the bauxite reflects this.
3. The Wik and Wik Way marshaled their own joint venture so that they could lead the development of a new bauxite mine which includes a significant equity holding. They entered into an Indigenous Land Use Agreement with a highly credible local company, Aurukun Bauxite Development, to agree on the terms of their partnership.
4. The process for appointing a preferred proponent, irregular and unfair as it was, and resulting in the appointment of Glencore, has denied natural justice to the Wik and Wik Way and discriminated against the development bid by Ngan Aak-Kunch Aboriginal Corporation (NAK) and Aurukun Bauxite Development.
5. The Wik and Wik Way are defending themselves, including in the High Court. The Queensland Government has responded with the Bill now before the Committee that seeks to restore NAK's appeal and objection rights as land owners, but still allows the unfair preferred proponent process and decision to stand.

6. It is our view that the Bill will not, unless amended, resolve the dispute around the development of the Aurukun bauxite deposits.

1 Overview: the intent of the Bill is sound but more amendments are needed if the policy objectives are to be achieved

In 2015, Ngan Aak-Kunch Aboriginal Corporation (NAK)[1] reluctantly had to commence litigation in the High Court as a last resort to ask that it rule invalid key parts of the 2006 Aurukun Provisions as racially discriminatory. In response, the Queensland Government has now decided at a very late stage to introduce this Bill, the *Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016 that* seeks to restore basic procedural rights stripped away from Wik and Wik Way native title holders in 2006.

The Bill may address the racial discrimination. Unfortunately, however, the Bill provides no recourse for the Wik and Wik Way People to seek a review of the process and decision made by the Queensland Government in 2015 to award Glencore preferred proponent status for the development of the bauxite resource under their land.

The Cape York Institute urges the Queensland Government to take up the opportunity available through this Bill to make additional amendments to enable the selection process to be re-run but in a fair and transparent way. The process should be re-run with the two original bidders but within a statutory framework consistent with the objectives of this Bill.

We strongly support the submissions made by our partner organisations, the Cape York Land Council and Balkanu, and in particular their interrogation of the process and decision by the Queensland Government to afford Glencore preferred proponent status in 2015. That process and decision was demonstrably irregular and unfair and does not have the support of Wik or its joint venture partner, Aurukun Bauxite Development Pty Ltd.

[1] Ngan Aak-Kunch Aboriginal Corporation (NAK) is the representative agent for the Wik and Wik Way People and registered native title body corporate for land subject to a series of native title determinations which include the land around Aurukun. NAK is also the Land Trust holding Aboriginal Freehold title for RA315, subject to the *Aboriginal Land Act* (Qld) *1991*.

We strongly believe that the importance of this Bill for the public interest justifies public hearings by the Committee to hear from Wik and Wik Way rights holders themselves about their aspirations to develop the bauxite deposits and why further amendments are in the public interest. We are not aware of any urgent time constraints that would prevent public hearings from being held and for the Committee to publish a report on its findings.

2 The reopening of the bidding process for 24 hours was unjust and unfair

We strongly support the submission made by our partner organisations and in particular their comprehensive analysis of the unjust and unfair process that led to the awarding of preferred proponent status for development of the Aurukun resource to Glencore.

The Queensland Government in 2006 amended the *Mineral Resources Act 1989* ('MRA') through the *Mineral Resources and Other legislation Amendment Act 2006* and introduced a legislative framework only applicable to Aurukun bauxite and commonly referred to as the 'Aurukun provisions'. Critically these provisions suspend notification and objection processes available under both the MRA and the *Aboriginal Land Act 1991* ('ALA').

In 2015, the Queensland Government used a highly irregular and unfair process to reopen the RA315 tender for twenty-four hours to reconsider Glencore's bid and to accept it. This was in breach of the original tender document issued in April 2013 which outlined that the State would evaluate the tender bids to identify a preferred proponent to undertake the extraction, transportation and processing of bauxite on RA315. The intention of this action was clearly to allow Glencore to be awarded preferred proponent without any opportunity for the Wik joint venture's bid to be properly assessed again.

It is important to note that NAK, in developing its bid with ABD from 2012 onwards, was chaperoned at every stage by a government probity officer. This directly fettered the rights and ability of NAK to assemble its bid in a manner that would otherwise be taken for granted for any other Australian group developing a bid commercially in confidence for the development of a mineral resource.

Any unsuccessful bidder for a government tender would find the process used in this case to have been extraordinary and the Committee needs to interrogate what has occurred closely. The Bill, if left as it is, has the potential to compound the significant wrong committed by the Queensland Government in its selection of the preferred proponent using a process that has resulted in a loss of confidence in the Queensland Government by the Wik and Wik Way native title holders.

3 Additional amendments are needed to have fair and transparent process to appoint a preferred proponent

The Queensland Government has introduced the Bill in response to the High Court litigation which NAK has agreed to adjourn pending the outcome of this Bill. In relation to the intent of the *Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016,* the Hon. AJ Lynham (Minister for State Development and Minister for Natural Resources and Mines) stated to the Queensland Parliament that;

> *The key amendments in the Bill will largely reinstate, for an Aurukun project, the usual notification and objection processes that apply to other resources projects of this type….*
> *…The amendments in this Bill are another step forward in achieving this government's election commitment to restore community objection rights relating to mining developments as soon as possible not only to the local landholders and Indigenous groups but also to the broader Queensland community as a whole.*

When reading this intent it would seem logical that the Bill would include a review of the awarding of the preferred proponent to Glencore in 2015 and to initiate a new process to appoint the preferred proponent. While the Bill does reinstate many rights under the MRA and ALA, there is nothing to address the preferred proponent decision. If this Bill is to achieve its progressive intent, then additional amendments are required to address the preferred proponent process in line with the fairness and transparency objectives being sought.

In particular, we think those amendments ought to include cancelling the Aurukun

agreement between the Queensland Government and Glencore, signed in the lead up to the caretaker period before the last Queensland Election.

4 Conclusion

All that is needed and wanted by the Wik and Wik Way People is to be given a fair go. The Australian published an article by Professor Marcia Langton on 6 December 2014 which spoke to this issue and concluded:

> *In the scheme of things, the Aurukun field is nothing to Glencore's global interests. But for the Wik people who desperately require an economy and for their young people to get jobs, the Aurukun field is everything. It is a tenet of liberal economics that governments should never try to pick winners. Rather, enterprise should be left to the marketplace where parties with assets and entitlements can make deals with parties with capital and expertise.*

The previous Queensland Government was able to prioritise its own interests in selecting a preferred proponent for the Aurukun mine. It did not consider the interests or needs of the Wik and Wik Way People in "picking its winner". In the process of "picking its winner", the Queensland Government trampled on the rights of the Wik and Wik People.

The current situation is that there is no mine and the prospect of further serious conflict, including litigation. While decisions about how to respond to the Bill are ones for NAK to make, we consider it likely that NAK will not accept the Bill un-amended and will continue to agitate through whatever means possible to have the decision to appoint Glencore overturned.

That we are in this situation, in the year of the 20th anniversary of the Wik High Court decision, demonstrates that Queensland and Australia are still struggling to accommodate Indigenous people asserting property rights.

References

The Australian 2014, Queensland Aurukun development plan a flawed decision, Marcia Langton, 6th December