



National  
Native Title  
Council

29 February 2016

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of  
Change*

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Senate Standing Committees on Economics  
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Dear Senators

### **Inquiry into the development of bauxite resources near Aurukun in Cape York**

The National Native Title Council (NNTC) writes in support of the submission provided by the Cape York Land Council (CYLC) in relation to the Inquiry by the Senate Standing Committees on Economics into the development of bauxite resources near Aurukun in Cape York.

The NNTC is the peak body of Native Title Representative Bodies and Native Title Service Providers (NTRB/SPs) from around Australia and was registered as a company limited by guarantee on 23 November 2006. The objects of the NNTC are, amongst other things, to provide a national voice for NTRBs/SPs on matters of national significance affecting the native title rights of Aboriginal and Torres Strait Islander people.

The NNTC fully supports the detailed submission provided by the CYLC, however we would like to take this opportunity to stress a number of fundamental principles for the benefit of the Committee, being the lack of consideration of the rights and interests of the traditional owners, the Wik and Wik Way People, and the loss of opportunities for economic development for the benefit of the Indigenous communities in the region.

#### ***Native Title Rights and Interests on the Land***

The Ngan Aak-Kunch Aboriginal Corporation (NAK) is the registered native title body corporate and therefore the agent and sole representative of the Native Title Holders, the Wik and Wik Way people, in relation to the Aurukun project. As stated in the submission by CYLC, the native title holders, through various native title determinations over the area have received the right to “*give or refuse, and determine the terms of any permission to enter, remain on, use or occupy the Determination Area by others*”<sup>1</sup>.

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<sup>1</sup> See, for example, *Wik Peoples v State of Queensland* [2000] FCA 1443, order 3(c) per Drummond J, 3 October 2000.

In addition, the Native Title Act provides native title holders with the 'right to negotiate' over their traditional lands, in this case providing the right of decision-making to the Wik and Wik Way people through NAK as their representative body. The NNTC therefore believes that the process undertaken by the Queensland Government in selecting Glencore International AG as the preferred proponent is fundamentally flawed as it denies the native title-holders their full and proper rights provided for under the Native Title Act.

Further, the NNTC would argue that the process of selecting Glencore International AG without the free, prior and informed consent of the native title holders undermines international conventions that have been subscribed to by the Australian Government, in particular, the UN Declaration on the Rights of Indigenous Peoples<sup>2</sup>. Article 19 of the Declaration refers to the principle of governments acting in good faith in their dealings with Indigenous peoples through their own representative institutions and Article 32 refers to the principle of Indigenous peoples having the right to determine and develop priorities and strategies for their traditional lands. Article 32 also provides for the principle that States shall consult and cooperate in good faith in order to obtain Indigenous peoples free, prior and informed consent before any activity that will affect their lands.

Earlier last year the Council of Australian Governments (COAG) ordered an Investigation into Indigenous Land Administration and Use. As noted in the Terms of Reference the clear aim of the investigation was, amongst other things, to:

- enable Indigenous land owners to derive economic benefits from their land; and
- enable jobs and economic advancement for Indigenous peoples<sup>3</sup>.

The COAG process established a Senior Officers Working Group, comprised of senior bureaucrats across the various jurisdictions, as well as an Expert Indigenous Working Group comprised of experts in the field of Indigenous land administration. Both working groups undertook a comprehensive consultation process in order to reach its conclusions and recommendations for COAG. In its report the Senior Officers Working Group noted the views of the Expert Indigenous Working Group that:

... development on Indigenous land and waters will only be successful and sustainable where Indigenous people are provided with the opportunity to be partners in development, to give their free, prior and informed consent and to benefit economically and socially from the development.<sup>4</sup>

It was also noted that the report "*sets out a cohesive policy direction for governments to support Indigenous peoples' use of their rights in land and waters for economic development*".<sup>5</sup> The NNTC would urge the Committee to consider the findings outlined in the report to COAG in forming any recommendations about the Inquiry that would be provided back to Government.

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<sup>2</sup> Australia formalised its support of the UN Declaration in 2007. A copy of the UN Declaration on the Rights of Indigenous Peoples can be found at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

<sup>3</sup> Commonwealth of Australia (2015), *Investigation into Indigenous Land Administration and Use: Report of the Senior Officers Working Group to the Council of Australian Governments*, Pg. 2.

<sup>4</sup> Commonwealth of Australia (2015), *Investigation into Indigenous Land Administration and Use: Report of the Senior Officers Working Group to the Council of Australian Governments*, Pg. 5.

<sup>5</sup> Commonwealth of Australia (2015), *Investigation into Indigenous Land Administration and Use: Report of the Senior Officers Working Group to the Council of Australian Governments*, Pg. 3.

As outlined in the submission of the CYLC, the native title holders have undertaken a rigorous negotiation process with Aurukun Bauxite Development P/L (ABD), an Indigenous organisation fully committed to improving the economic standing of Indigenous communities. As the Senior Officers Working Group to COAG noted, *“More efficient and accountable decision-making processes can facilitate greater investment and economic development opportunities”*.<sup>6</sup> The negotiations between NAK and ABD is a prime example of accountable decision-making by a native title group in order to receive significant economic benefits for their communities in the use of their Indigenous land.

Given that the Wik and Wik Way People have not been provided with the opportunity to participate in the decision-making process to select Glencore International AG, the NNTC would argue that the Queensland Government has denied the rights of the native title holders both under the Native Title Act as well as international conventions such as the UN Declaration on the Rights of Indigenous Peoples.

### ***Economic Development – Ongoing Benefits from the Resources***

As far as the NNTC understands it, Glencore International AG has not provided any indication that Indigenous communities will be provided with any significant economic benefits throughout the duration of the project. If this is in fact the case, the loss of any economic benefit to the traditional owners of the area would not only undermine the Government’s commitment to ‘Closing the Gap’ but also ensure that the Indigenous groups be denied an opportunity to participate in the mainstream economy.

Economic development for Indigenous communities has become the mantra of Governments, the private sector and native title groups alike. Notwithstanding the fact that NTRB/SPs have been leading the field in negotiating economic development opportunities through agreements with mining companies across the country, economic independence remains a key goal in the ‘Closing the Gap’ agenda.

The Prime Minister, in his introductory comments for the latest ‘Closing the Gap’ report reaffirmed the Government’s commitment to improving the social outcomes for Indigenous communities through greater economic participation. The Prime Minister stated that his key aspiration was for Indigenous Australians to be *“afforded the same opportunities and prosperity that everyone else enjoys in this great country”*.<sup>7</sup>

The Wik and Wik Way People entered a joint venture partnership with ABD that would provide economic opportunity and other financial benefits for their communities, precisely the kind of activity that would satisfy the Prime Minister’s goal in ‘Closing the Gap’. Even the Prime Minister acknowledges *“that Indigenous businesses are 100 times more likely to hire Indigenous Australians than non-Indigenous businesses, which is why [the Government wants to create] an environment where Indigenous business and innovation can grow and prosper.”*<sup>8</sup>

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<sup>6</sup> Commonwealth of Australia (2015), *Investigation into Indigenous Land Administration and Use: Report of the Senior Officers Working Group to the Council of Australian Governments*, Pg. 3.

<sup>7</sup> Australian Government, Department of Prime Minister and Cabinet, *Closing the Gap Prime Minister’s Report 2016*, <http://closingthegap.dpmc.gov.au/introduction.html> (accessed 23 February 2016).

<sup>8</sup> Australian Government, Department of Prime Minister and Cabinet, *Closing the Gap Prime Minister’s Report 2016*, <http://closingthegap.dpmc.gov.au/introduction.html> (accessed 23 February 2016).

Further, in his Ministerial Statement to the House of Representatives, the Prime Minister acknowledged the key to successful outcomes by arguing that *“it is time for governments to 'do things with Aboriginal people, not do things to them'”*<sup>9</sup>. Again the negotiation between NAK and ABD is an example of where the Government could be doing things with an Aboriginal organisation by fully supporting its efforts to provide economic benefits to a community that is one of the most disadvantaged in Australia.

The NNTC has consistently argued that there is an imperative to enhance the institutional and economic capacity for Indigenous peoples to be long term contributors to and drivers of economic development in local and regional communities. To reduce the gap between Indigenous and non-Indigenous Australians there is a critical need for respectful engagement based on the recognition of Indigenous Australians’ rights, interests, and special connection to land and waters. As the Prime Minister noted, the *“glue that holds us together is mutual respect—a deep recognition that each of us is entitled to the same respect, the same dignity, the same opportunities.”*<sup>10</sup> As a nation, it is time that we worked at translating these kinds of sentiment into action.

The NNTC asks the Committee to take note of these comments in forming its recommendations to Government.

I would like to thank you for the opportunity to comment on this important issue trust the information provided in this submission is useful for your purposes. In the meantime, however if you require any further information or have any queries, please do not hesitate to contact me on

Yours sincerely

  
Glen Kelly  
Chief Executive Officer

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<sup>9</sup> Malcolm Turnbull, Prime Minister (February 10, 2016). “Ministerial Statements: Closing the Gap”. *Parliamentary Debates (Hansard)*. Commonwealth of Australia: House of Representatives. Pg 21.

<sup>10</sup> Malcolm Turnbull, Prime Minister (February 10, 2016). “Ministerial Statements: Closing the Gap”. *Parliamentary Debates (Hansard)*. Commonwealth of Australia: House of Representatives. Pg 22.