

Balkanu

Cape York Development Corporation P/L

ABN 67 075 711 198

15 February 2016

Senate Standing Committees on Economics
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To: Committee Secretariat

On 24 November 2015, the Senate referred an inquiry into bauxite resources near Aurukun in Cape York to the Senate Economics References Committee for inquiry and report. The terms of reference are as follows:

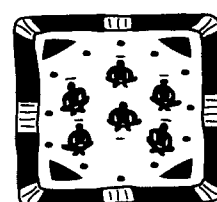
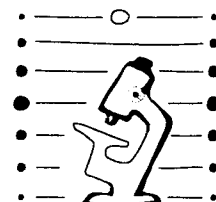
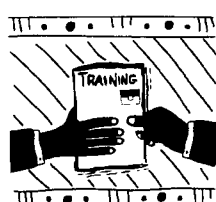
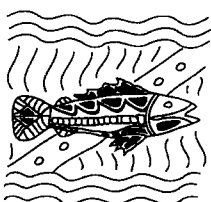
The development of the bauxite resources near Aurukun in Cape York, with particular reference to:

- a) The economic development of the bauxite resources near Aurukun in Cape York.
- b) Any issues relating to native title rights and interests in the land on which these resources are located;
- c) The process for the finalization of an exclusive Mineral Development Licence Application on this land;
- d) Any opportunities for traditional owners to receive ongoing benefit from the resources located on this land: and
- e) Any other related matter.

I provide the submission below on behalf of Balkanu Cape York Development Corporation.

To summarize our submission, 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.

The tender process conducted by the Newman Government, through which Glencore was selected as preferred developer of the Aurukun resource, was fundamentally flawed, and was based on the racially discriminatory "Aurukun provisions" of the Mineral Resources Act. In our view, the "Aurukun provisions" marginalized the Indigenous landholders, rendering the selection process invalid.



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It is only the Ngaan Aak Kunch/Aurukun Bauxite Development proposal that gives the Indigenous landholders a substantial stake in the project, and stands to deliver strong benefits for the Aurukun community.

By way of background and to establish our credentials, Balkanu Cape York Development Corporation Pty Ltd is a not-for-profit Indigenous corporation established in 1996, and 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.

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

Multinational companies have much greater commercial strength of persuasion over the Queensland government than the Indigenous people of Aurukun, as demonstrated by the "Aurukun provisions" of the Mineral Resources Act which removed the appeal and consent rights of Aurukun Indigenous landholders at the behest of the Aluminium Corporation of China (Chalco). We are aware of media about threats made by Rusal to the Bligh Government in relation to the Aurukun bauxite deposit:

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

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

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 the 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

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holders. The Provisions removed rights normally enjoyed by other Queensland Indigenous and non-Indigenous landholders, delivering Chalco certainty at the expense of the Indigenous people. The Aurukun Provisions were never removed from the legislation. 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 land holders were treated as minor stakeholders rather than as partners with Government in progressing the development of the bauxite reserve. The bidding process was conducted in a context where the Indigenous landholders had been disempowered and there was little incentive for bidding companies such as Glencore to have regard to the interests of the Indigenous landholders, nor 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 in accordance to the *Racial Discrimination Act 1975* (Cth).

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 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;
- The State and Glencore separately funding a Wik traditional owner to lobby NAK members with the aim of conducting a coup within NAK. The aim of the aborted coup was to then facilitate the removal of the Cape York Land Council as NAK's adviser and subsequently terminate the High Court challenge and overturn the ILUA signed by NAK with ABD.

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



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management of the project. Glencore has failed to present any credible benefits package for the Indigenous people of the Aurukun area.

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

We expect a full, open and honest consideration of this matter by the Committee, and eagerly look forward to the opportunity to present to the Committee at the public hearings.

Yours sincerely

/s/ Gerhardt Pearson
Executive Director