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A fair go for Aurukun

Submission by the Cape York Institute to the Senate Inquiry on the Development of Bauxite Resources near Aurukun in Cape York

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Key messages

1. The leaders of Aurukun understand perfectly the opportunity that the bauxite deposit on their land represents and its transformational potential.
2. The NAK – ABD joint venture is a world-class, Australian first equity deal for local people, that stands in stark contrast to the prevailing royalty paradigm.
3. It is a myth that Aurukun was always a troubled community. The collapse of social norms in Aurukun since the end of the Mission era directly coincides with Queensland Government actions to exert control over the land and bauxite resource, and dominate local governance and administration, including the creation of a wet canteen in 1985 to fund local government.
4. The Wik and Wik Way are a proud people who have a clear sense of their rights for self-determination and economic development.
5. The battle for land and control over its resources by Wik people has been long and hard.
6. Indigenous-led development of Aurukun bauxite represents an extraordinary opportunity for the Queensland Government to truly support the economic viability of this remote Indigenous community.
7. It is clear that value judgments by Wik people about what constitutes a 'high' level of wellbeing and an acceptable level of outside support are embedded in all aspects of their actions to date.
8. The Queensland Government has used its extraordinary and racially discriminatory executive powers under the 2006 Aurukun provisions ('special measures') to choose and do as they please with Aurukun bauxite, including the process to appoint the preferred proponent.
9. The Queensland Government has now introduced legislation to restore rights to the Wik taken away by those special measures but this legislation does nothing to reverse decisions already taken under the measures and their consequences, particularly the appointment of a preferred proponent and the damage done to the NAK-ABD bid.

1 Who we are and why we are making this Submission

The Cape York Partnership (CYP) is an Indigenous organisation pursuing a comprehensive reform and development model with Cape York Indigenous people

through Cape York Welfare Reform and Empowered Communities. We want to ensure that Indigenous rights and responsibility exist in proper balance, and Indigenous people are truly enabled to be the masters of their own destinies. This development model is a prism through which all objectives and expenditure are considered, and includes an unwavering focus on rebuilding social norms, investing in individuals and families to drive change, lifting education outcomes, engagement with the real economy, and productivity.

Our work continues to be underpinned by the Cape York Agenda developed by Noel Pearson in 2005. This Agenda was a radical blueprint for the transformation of Indigenous communities through acceptance of personal and community responsibility. Pearson drew on the philosophies of Nobel Laureate author Amartya Sen's concepts of freedom of choice, and was inspired by his work with elders and their aspirations for change. The vision of the Agenda is to ensure that the people of the Cape York Peninsula have the capabilities to choose a life they have reason to value.

At the heart of the Agenda is the belief that passive welfare destroys incentive, self-reliance and self-respect. It robs the individual of the right to take responsibility for his or her own life. On the passive welfare pedestal of skewed incentives, there's no reason to work, build capability or strive for a better future. Positive social norms in welfare-dependent communities disintegrate and this discourages people from seeking work and education. Welfare becomes a permanent state. We believe that if individuals and families take responsibility for their lives, opportunities open up and self-reliance flourishes.

CYP is made up of nine operating divisions listed below including;

- Cape York Institute which develops rigorous and practical policy solutions that have a decisive impact on Indigenous disadvantage;
- O-Hub which delivers Welfare Reform in four communities including Aurukun; and
- Cape York Enterprises, by operating as an Indigenous venture capital function and commercial advisor, seeks to build an effective interface between Indigenous economic opportunity and mainstream human and financial capital. Its portfolio businesses include Bama Services and Cape York Timber.

We have a strong and enduring relationship with Aurukun. It includes providing the Australian Government's Community Development Programme through Cape York Employment and commercial advisory services through Cape York Enterprises to Ngan Aak-Kunch Aboriginal Corporation (NAK), 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.

We are very aware of the history surrounding the failed attempts to develop the bauxite resources near Aurukun and have a close relationship with NAK's Board and an intimate understanding of what they seek to achieve in relation to the mining of bauxite.

We believe that a massive injustice has been committed against the native title holders of the land where the bauxite is located and to the Aurukun community. We are making a submission to this inquiry in the hope that it will help solve this injustice.

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. Our submission is complementary and outlines five issues for the Senate inquiry to consider:

1. The right to development for the Wik and Wik Way people.
2. The history of the Aurukun bauxite deposit on Aurukun land and the coinciding collapse of social norms in Aurukun since the end of the Mission era.

3. The transformational power of the resource to set a transition path to economic viability.
4. Addressing the unjust and unfair process to award Glencore preferred proponent status; and
5. An outline of the NAK-led consortium to develop the bauxite and maximise the wellbeing for Aurukun.

2 Aurukun leaders want the right to development

The Indigenous peoples of Aurukun and Cape York are critical to the future of Australia through their presence and identity, and through their enterprise and use of their land.

The community of Aurukun is now one of the most disadvantaged and impoverished towns in Australia. It wasn't always so. It is a community with strong leaders with great courage and wisdom that want their community not just to survive but to flourish and prosper. The leaders of Aurukun understand perfectly the opportunity that the bauxite deposit on their land represents and its transformation potential. All actions they have taken to protect and assert their right to development reflect this.

The case of Aurukun bauxite should be the shining light for the progress of Aboriginal people as the masters of their own destinies. This battle for Aurukun bauxite is about Aurukun people having the future that they are dreaming of – a high level of wellbeing with a low level of outside support. Rarely is there a clearer example where so much could be gained from government doing so little to enable a transition path to viability by backing the NAK led consortium to develop the resource under their land.

3 The Queensland Government's battle for land and resources sinks the Wik Peoples' persistent drive for self-determination and an economic future

It is a myth that Aurukun was always a troubled community. Aurukun evolved from a Presbyterian Mission, established in 1904 with numbers increasing through the 1960s and 1970s. Children went to school, adults worked, elders were respected and the language and culture were strong. There were lots of small enterprises and people were highly mobile for work leaving the community for many weeks at a time to work

on surrounding cattle stations. Aurukun people have a long history of cultural maintenance and self-determination which was strongly supported by the mission superintendent Bill MacKenzie.

This all began to change when the struggle for control of land and mineral resources emerged in the late 1950s. Attempts by outsiders to access the bauxite resources around Aurukun have had a major impact on the traditional owners (TOs) of Aurukun. There has been a long history of the Queensland Government attempting to get access to this bauxite and exclude the TOs. This battle has affected the Aurukun people's access to land, their economic opportunities and even their governance structures. Aurukun people are just trying to get back to where they were 40 years ago.

The Wik people of Aurukun expressed their dissatisfaction with mission conditions with protests during the 1950s. They are a proud people who have a clear sense of their rights for self-determination and economic development.

The battle for land and resources by Wik people has been long and hard. In the late 1950s the Queensland Government took some of the Aurukun reserve for bauxite mining by Comalco. The mining activity in the west coast region of Cape York generated tensions between the church and the Queensland Government. The forced removal of Mapoon residents in 1964 generated distrust in Aurukun of the government's intentions.

In 1975 the Queensland Government encroached further onto the Aurukun Aboriginal Reserve with mining activity. The Wik people resisted. The Wik people used the Supreme Court and eventually the Privy Council in London on the basis of the action. When their case was lost in the Privy Council, the Queensland Government continued mining.

The Wik people were also raising concerns about the impact of alcohol, un-employment, cultural protection issues and environmental concerns. The Presbyterian Church supported the Wik in their campaigns which caused a serious deterioration in the relationship with the Queensland Government. Subsequently the mission operations lost funding support and the State took over administrative control.

In an attempt to secure self-management at Aurukun, the Wik people lobbied the Australian Government for assistance. The then Prime Minister, Malcolm Fraser, was supportive and used federal legislation to support self-management objectives. However, the Queensland Government made continual changes to outmaneuver any assistance attempts made by the Australian Government. Eventually the Federal and State Governments worked together to introduce self-management in 1978.

This was not enough to resolve the tensions between the Wik people and the Queensland Government. The State Government dissolved the Aurukun Council and continued to control governance in Aurukun via a new local government structure. The removal of the church administration had left a power vacuum and the aspirations of the Wik people to self-manage were easily undermined by the Queensland Government.

The Wik had struggled for land and minerals rights through the 1950's, 60's and 70's. These efforts had failed and constituted a major setback to their resolve. Worse was yet to come. Despite the Wik people repeatedly raising concerns about the impact of alcohol in the 1970s, the Queensland Government opened a wet canteen in Aurukun in 1985. That is when the real carnage began.

Peter Sutton provides a devastating account of his experiences of the descent into chaos in Aurukun in his work *The Politics of Suffering: Indigenous Australia and the End of the Liberal Consensus*. He relays stories from the early 1970s to 2000s. While he doesn't lay all the blame with the consumption of alcohol he clearly presents figures on homicide and suicide from before and after the opening of the canteen. There is no comparison. The grog era was diabolical. The impact on life and health in Aurukun, along with many other remote indigenous communities was tragic and continues to the present.

It has been a potent mix of dramatic economic change from the mission era to government control. This has led to a lack of opportunities for work, provision of welfare payments, ready access to alcohol and other substances and idleness in Aurukun. This has resulted in the dysfunction so readily evident. In recent months Aurukun has had very high levels of violence and now requires constant elevated policing levels. There is no sign of a pathway out of this situation.

An opportunity was drastically lost back in the 1960's and 70's when the Wik people were asserting their rights and aspirations to land and resources. Had access to and utilization of land and resources been available to the Wik people then, there may now be a functional and viable local economy and town at Aurukun. This opportunity must be taken now.

4 The opportunity for bauxite to underpin the economic independence and viability of Aurukun

Aurukun and Cape York Indigenous leaders well understand the development challenge their communities face. For example, the Cape York Agenda (Pearson, 2005) sets out the development challenge such that 'Cape York people have the capabilities to choose a life they have reason to value':

> *Until the Indigenous people of Cape York can largely generate their own incomes they will be dependent on income transfers, where someone else takes all of the rights and responsibilities to make decisions and take actions on behalf of a relatively powerless people. Economic development is, therefore, closely linked to self-determination. The reason for emphasising the importance of economic development is not that the economy is more important than cultural and social issues. It is that without economic advancement, Indigenous Australians are more likely to lose their heritage and identity.*

Indigenous-led development of Aurukun bauxite represents an extraordinary opportunity for the Queensland Government to truly support the economic viability of this remote Indigenous community. Aurukun leaders have long supported the development of the bauxite resource as a 'lighthouse' enterprise developed with and for the Wik people.

The Cape York Institute for Policy and Leadership developed a simple framework in 2005 to explain the goal of economic viability. It defined economic viability of a community as when 'its economy produces an acceptable level of wellbeing across a range of capabilities, with an acceptable level of outside support.' (Cape York Institute for Policy and Leadership, 2005).

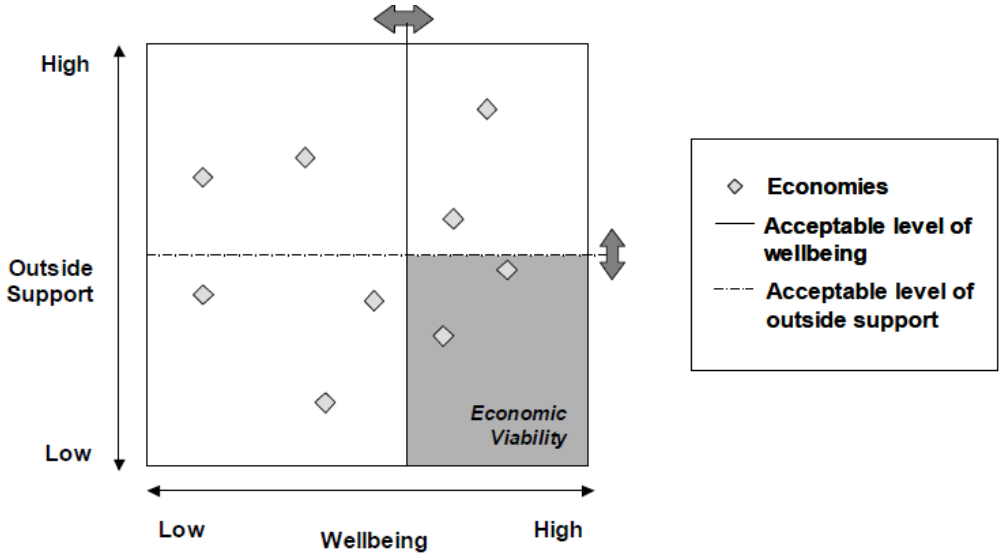

Figure 1 – Economic Viability

A critical insight from this work is that the level of wellbeing on the horizontal axis is determined by the members of the community considering their aspirations for themselves and for future generations. It is clear that value judgments by Wik people about what constitutes a 'high' level of wellbeing and an acceptable level of outside support are embedded in all aspects of their actions to date. This includes efforts to protect their land, as outlined in Section 3, and to develop an offering for the current development proposal for Aurukun bauxite, as outlined in Section 5.

It is very unlikely that the Queensland Government decision to afford Glencore preferred proponent status will achieve the level of wellbeing that is so reasonably being sought by the Wik people. The consequence is that Aurukun will remain stuck in the top left hand quadrant - wellbeing will remain low and a high level of outside support, including from government, will continue to be needed.

5 The Queensland Government wants to have its cake and eat it too by re-amending the Aurukun provisions but allowing the preferred proponent decision to stand

We strongly support the submission made by our partner organisations and in particular their comprehensive analysis of the unjust, unfair and racially discriminatory process that led to the gifting 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 number of special measures 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*. It is now well documented and understood that it is under these special measures that the previous Queensland Government was able to both unilaterally reopen the tender process for twenty-four hours to allow Glencore's bid and further to accept this bid without any of the standard processes or protections that would otherwise be afforded to landholders.

The bottom line is that these special measures give the Queensland Government an extraordinary level of executive power to choose and do as they please with Aurukun bauxite. The abuse of these executive powers since their ascension is grotesque in the level of bias and discrimination against the Wik and Wik Way and for the direct disregard and contempt held for the NAK-led development bid.

It is important to understand that the influence of the special measures go well beyond just the executive powers to choose, appoint and approve a developer. NAK, in developing their bid from 2012 onwards, were chaperoned at every stage by a government probity officer. This directly fettered the rights and ability of NAK to assemble their 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 public resource.

If the inquiry still has any doubt about the veracity of the claims made in the submissions against the Queensland Government then these will be laid to rest when reading the Queensland Hansard from Tuesday February 16 and the tabling of the *Mineral Resources (Aurukun Bauxite Resource) Amendment Bill* made to the Queensland Parliament by the Hon. AJ Lynham (Minister for State Development and Minister for Natural Resources and Mines). The Minister states:

> *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 it would seem logical that a decision made under the special measures, as occurred in gifting the preferred proponent status to Glencore, would now be reviewed and in all likelihood revoked. But the Queensland Government instead wants to have its cake and eat it too by seeking to reinstate almost all protections except those affecting the preferred proponent decision. This is contradictory to the stated intent of the bill and cynical in the extreme given that the damage to the NAK-ABD bid has already been done by the special measures. At the very least the NAK-ABD bid should be offered equal status as Glencore as a preferred proponent before issuing a mineral development licence or mining lease.

6 The NAK led consortium to develop the resource on their land and maximise opportunity and wellbeing

In March 2015, NAK signed a joint venture with Aurukun Bauxite Development (ABD) with the sole purpose of exploring, developing and rehabilitating the RA315 deposit. This is wholly supported by an Indigenous Land Use Agreement (ILUA) which was signed and lodged with the National Native Title Tribunal in September 2014. This is the result of 4 years of genuine negotiations between NAK and ABD and represents a framework for empowerment and development to break ground on this land as soon as government process can possibly allow. Other proponents do not have the support of the Traditional Owners and are likely to face significant hurdles in order to meet their legal requirements under Native Title.

The NAK – ABD joint venture is a world-class, Australian first equity deal for local people. The joint venture agreement comprises the following innovations:

- NAK will hold a 15% stake in the mine (assets, operations and revenue);
- This stake is guaranteed throughout the life of the project and is not exposed to financial liabilities, losses or capital calls;
- NAK are entitled to all product from the mine on a pro-rata basis
- Profits owing to NAK can be paid in advance and offset against future profit share;

- The Management Committee consists of three ABD appointed members and two NAK appointed members; and
- The mine manager is required to undertake activities with specific reference to training, employment and business development obligations of the ILUA.

This represents a highly innovative model where the indigenous landowners have clear equity and meaningful decision making mechanisms in partnership with the mining entity. This provides an opportunity to finally utilise the wealth inherent in their land for the social advancement of their people. Indigenous people are demonstrably better employers of indigenous people, and incubators of indigenous enterprises. This unique structure optimizes both outcomes.

ABD is a specific purpose Australian company. Its board is chaired by the Australian mining leader, Nick Stump. Nick is the former CEO of Comalco and Mount Isa Mines. Other members of the board include investment partners, bauxite mining experts and Aurukun people. ABD is shovel ready and has the capability to undertake a viable project on the RA315 area. The drivers underpinning the establishment of the joint venture are described by Gina Castelain, a Wik and Wik Way woman and director of ABD:

> *For the first time in many decades we have a real prospect of independence, of full participation in the mainstream economy and culture. We don't want just royalties and sit-down money anymore – we want ownership.*

The history of mining companies obtaining leases to RA315 but failing to develop the resource is extensive. This failure has been largely for business reasons associated with operations of the multi-national corporations that hold the leases and nothing to do with the viability of the deposit itself. Since its discovery 40 years ago, and numerous lease processes, the RA315 deposit has returned no royalties to the state government. ABD estimate that over the 50 years of the project it is scoped to deliver some 500 regional jobs, $400 million in stakeholder profit share to local indigenous people, and $3 billion in resource royalties and tax revenue (ABD, 2014). The chance of the ABD – NAK joint venture actually breaking soil (should it successfully secure the lease) and therefore returning royalties to the state is significantly higher than other proponents due to their inherent motivation to realise the flow-on social benefits to the Wik people.

7 Conclusion

This submission is provided to highlight to this inquiry the long history, the enormous potential and the critical role of current decision-making by the Queensland Government in relation to the development of Aurukun bauxite. Beyond finding a solution to reverse the current decision by the Queensland Government, the NAK-led development proposal represents a model that is in Australia's national interest to support and replicate. All that is needed and wanted by the Wik people is to be given a fair go. The Australian published an article by Professor Marcia Langton 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 Queensland Government has only considered its interests in selecting a preferred proponent for the Aurukun mine. It did not consider the interests or needs of the Wik in "picking its winner". In the process of "picking its winner", the Queensland Government trampled on the rights of the Wik. Now we have no mine and a serious conflict including litigation in the High Court of Australia to have the Aurukun provisions found to be racially discriminatory. It is the prospect of losing the High Court case that has led the Queensland Government to introduce legislation, to coincide with the Senate Inquiry, and the Committee should not in any way consider it to solve the injustice to the Wik. That we are in this situation, in the year of the 20th anniversary of the Wik High Court decision, is a sign Australia is still struggling to accommodate Indigenous people asserting any normal property rights.

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