



Level 10
307 Queen Street
PO Box 10832
Adelaide Street
Brisbane QLD 4000
P: (07) 3224 1200
F: (07) 3229 9880
Freecall: 1800 663 693
E: reception@qsnts.com.au
ABN: 88 114 581 556

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16 February 2016

Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

By Email: economics.sen@aph.gov.au

Dear Senators,

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

Please find attached a submission from Queensland South Native Title Services regarding your inquiry into the development of bauxite resources near Aurukun in Cape York.

If you require any further information or would like to discuss any aspect of this submission please do not hesitate to contact me.

Yours sincerely,

Kevin Smith
Chief Executive Officer

Submission to Senate Standing Committee on Economics

1. Queensland South Native Title Services ("QSNTS") is the service provider appointed pursuant to s203FE Native Title Act ("NTA") to provide native title services in the southern half of Queensland from the Mt Isa Region in the north-west to north of Rockhampton in the east, down to the New South Wales and South Australian border.
2. QSNTS has had no direct dealings with the development of the bauxite resources near Aurukun in Cape York but we do have concerns as a native title service provider operating in Queensland with the manner in which this matter has proceeded.
3. Under the NTA, native title representative bodies and service providers are statutorily required to provide services within defined geographical boundaries and as such QSNTS has not had any direct contact with the Wik and Wik Way Peoples or the agent prescribed body corporate, Ngan Aak-Kunch Aboriginal Corporation RNTBS ("NAK").
4. As such, QSNTS's source of information in preparing this submission is based on information available on the public record and communications with the Cape York Land Council ("CYLC").
5. The source of our information include:
 - Interview between Noel Pearson and Tony Jones on *Lateline* 20 August 2015 ("Lateline interview")¹;
 - Media Statement from Glencore in response to the *Lateline* interview;²
 - Media Statement from Minister Anthony Lynham in response to the Lateline interview;³
 - Media Statement from Nick Stump Chairman Aurukun Bauxite Development Pty Ltd ("ABD") in response to Glencore and Minister Lynham's response to the *Lateline* interview;⁴
 - Plaintiff's Writ of Summons B35 of 2015 filed in the High Court of Australia on 26 June 2015;
 - Plaintiff's outline of submissions filed in the High Court of Australia on 28 July 2015;
 - Defence by the State of Queensland filed in the High Court of Australia on 16 September 2016.

QSNTS also notes that an objection to the assertion of the expedited procedure concerning the relevant mineral development license ("MDL") has been lodged with the National Native Title Tribunal.

6. Because of the complex factual matrix associated with this matter, QSNTS has also ascertained the following time line from CYLC:

¹ Lateline, "Interview Part One: Noel Pearson, Indigenous Leader"; <http://www.abc.net.au/lateline/content/2015/s4297337.htm>; 20/08/2015

² Lateline, "Interview Part Two: Noel Pearson, Indigenous Leader"; <http://www.abc.net.au/lateline/content/2015/s4297344.htm>; 20/08/2015

³ Lateline, "Interview Part Two: Noel Pearson, Indigenous Leader"; <http://www.abc.net.au/lateline/content/2015/s4297344.htm>; 20/08/2015

⁴ Media Release: "Nick Stump Chairman Aurukun Bauxite Development Pty Ltd"; <http://abdmining.com.au/wp-content/uploads/2014/12/ABD-Media-Release-NS-24-Aug-2015.pdf>; 20/08/2015

- On **27 November 2012**, the then LNP Government opened a two-stage Competitive Bid Process to select a Preferred Proponent with which the Government would enter into an Aurukun agreement, giving the Proponent the exclusive right to apply for mining tenements in relation to bauxite at RA315.
- On **12 March 2014**, the then Deputy Premier of Queensland and Minister for State Development, Infrastructure and Planning, the Hon. Jeff Seeney, issued a media release announcing that the Queensland Government had closed the Competitive Bid Process as the Government was “*not satisfied that either bid...could deliver what the government had hoped for in a timely manner*” and that the “*benefits for local communities were deemed to be insufficient and timeframes for delivery of those benefits too long*”. The release stated that: “*We have decided to bring this process to a close and revisit this development opportunity at a later date, rather than take a chance that the objectives might one day be satisfied by one of the proponents*”.
- On **14 April 2014** a new company (Aurukun Bauxite Development P/L) was formed –part owned by the previous bidder Australian Indigenous Resources - to work with NAK to address the perceived shortcomings in its proposed and worked closely with NAK to further develop its proposal for the Aurukun project.
- On **31 July 2014**, NAK signed a term sheet with ABD which set out the terms under which ABD and AIR would work together to achieve the Aurukun project. Further meetings took place with government.
- By letter dated **28 August 2014** to NAK’s joint venture partner, an officer of Department of State Development, Infrastructure and Planning advised that the State was reinstating the Competitive Bid Process and had selected Glencore International AG as the Preferred Proponent for the Aurukun project
- Neither NAK nor AIR was advised prior to the announcement by the Deputy Premier that the Competitive Bid Process was being re-opened;
- On **9 September 2014** ABD wrote to the Department of State Development, Infrastructure and planning seeking clarification of the process by which Glencore International was selected;
- On **20 September 2014** State Development wrote back and refused to respond to the matters raised in the letter of 9 September 2014;
- On **24 October 2014**, Deputy Premier Seeney’s office informed AIR that they were refusing their request for a statement of reasons for the selection of Glencore International following the re-opening of the Competitive bid Process;
- It is assumed that **prior to 14 January 2015** the State of Queensland entered into an Aurukun agreement with Glencore Bauxite; and

- On **14 January 2015** ((during the caretaker period)) Glencore Bauxite lodged an application for a mineral development licence.
- 7. Based on the information provided to QSNTS, we would share CYLC's concerns about the process undertaken by the LNP Government. If the above timeline is an accurate summary of relevant events then poor communication, inconsistent messages, refusal to furnish reasons for the tender decision (which could be for legitimate commercial-in-confidence reasons) and timing of the decision during the 'caretaker' convention period, cumulatively raise sufficient concerns about the decision making process and warrants investigation by this committee of inquiry.
- 8. Whilst QSNTS understands that the incoming Labor Government did not make the subject decision, the successor government, after review of the decision, effectively endorsed the process undertaken by its predecessor and elected to assert the expedited procedure in the s29 notice that was issued on 24 April 2015. QSNTS notes that this aspect of the MDL is currently subject to an inquiry before the NNTT but is of the view that the Queensland Government ought to reassess the criteria upon which a decision is made to assert the expedited procedure in circumstances where the land is subject to exclusively held native title (see below).
- 9. QSNTS has had the opportunity to peruse the Inquiry submission by the CYLC and endorses the concerns raised and recommendations proffered by the CYLC. In summary, QSNTS would re-iterate CYLC's concerns and underscore the following matters:
 - i. This Inquiry should have regard to the timely comments of Prime Minister Turnbull in his introductory comments to the *Closing the Gap: Prime Minister's Report 2016*, where the Prime Minister states: "**Indigenous economic development** is at the heart of the national agenda, recognizing that economic participation, underpinned by cultural participation leads to vastly improved social outcomes. This requires **a cooperative effort with Indigenous leaders** and a greater emphasis on **place-based solutions**, while creating the right conditions for people to feel they can participate. We know from research that **Indigenous businesses are 100 times more likely** to hire Indigenous Australians than non-Indigenous businesses...employment challenges are more pronounced in **remote communities**"; (print in bold is our emphasis)⁵
 - ii. The joint venture proposed by NAK and ABD is precisely the type of project in remote communities that would address the *Closing the Gap* targets that the Prime Minister espouses in the preceding paragraph and, somewhat perversely, the rejection of the tender by the then LNP State Government in the manner outlined above, is the very behaviour that perpetuates and entrenches the unacceptable gap in all the indicators the COAG initiative intends to address;

⁵ Australian Government, Department of the Prime Minister and Cabinet, *Closing The Gap Prime Minister's Report 2016*, p. 3-4

- iii. QSNTS agrees with the recommendation of the CYLC⁶ that different criteria ought to apply where mineral development is proposed on land exclusively held by traditional owners under the NTA and/or the Aboriginal Land Act (Qld);
- iv. Critics of this recommendation may well characterise it as effectively amounting to a 'right of veto' over developments on exclusively held native title land but it could equally be characterised as fostering **a cooperative effort with Indigenous leaders** to develop **place-based solutions** and this is precisely the type of recasting of relationships that needs to take place if there is ever going to be inroads into closing the gap on Indigenous social disadvantage;
- v. In the absence of fostering positive relationships, Indigenous people, like the Wik and Wik Way People, will be forced to continue to protect their already recognised legal rights and interests through legal processes, such as NNTT inquiries and High Court challenges, that are important as avenues of last resort but do little to assist native title holders to meaningfully leverage their rights and contribute to their own local economy or indeed, the broader economies of Queensland and Australia;
- vi. Even if the rights are recognised and protected through legal avenues, courts and tribunals cannot give traditional owners and other stakeholders the on-the-ground, place-based, comprehensive solutions that are invariably covered by Indigenous Land Use Agreements (ILUAs) of the kind negotiated between NAK and ABD – the benefit of such agreements are that traditional owners give their free, prior and informed consent to the venture and have real ownership in the outcomes;
- vii. Finally, QSNTS shares CYLC concerns about the potentially racially discriminatory application of the so-called "Aurukun Provisions" in the Queensland *Mineral Resources Act* noting the legal validity of those provisions are currently subject to proceedings in the High Court of Australia.

⁶ Cape York Land Council Aboriginal Corporation; "Submission Inquiry into bauxite resources near Aurukun in Cape York"; 16/02/2016; paragraph 40 p. 9