Parliamentary Committees

Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016

Report No. 20, 55th Parliament
Infrastructure, Planning and Natural Resources Committee
March 2016

Infrastructure, Planning and Natural Resources Committee

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Acknowledgements

The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of State Development, Department of Justice and Attorney-Generals, and Department of Natural Resources and Mines.

Contents

Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill.

I would also like to thank the departmental officials who briefed the committee; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

Jim Pearce MP
Chair

March 2016

Acronyms

ABD	Aurukun Bauxite Development Pty Ltd
AIR	Australian Indigenous Resources Pty Ltd
ALA	Aboriginal Land Act 1991 (Qld)
ASC	Aurukun Shire Council
CYLC	Cape York Land Council
DNRM	Department of Natural Resources and Mines
DSD	Department of State Development
EPA	*Environmental Protection Act 1994 (Qld)*
FLP	fundamental legislative principle
ICMM	International Council on Mining and Metals
ILUA	Indigenous Land Use Agreement
MDL	Mineral Development Licence
MRA	*Mineral Resources Act 1989 (Qld)*
NAK	Ngan Aak Kunch Aboriginal Corporation
NNTT	National Native Title Tribunal
NTA	*Native Title Act 1993 (Cth)*

Recommendation

Recommendation 1

The committee recommends that the Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016 be passed.

1 Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) was established by the Legislative Assembly on 27 March 2015 and consists of three government and three non-government members.

The committee's areas of portfolio responsibility are:

- Infrastructure, Local Government, Planning and Trade and Investment
- State Development, Natural Resources and Mines
- Housing and Public Works. [1]

1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill
- the application of the fundamental legislative principles to the Bill.

On 16 February 2016, the Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016 was referred to the committee for examination and report. In accordance with Standing Order 136(1), the committee is required to report by 10 March 2016.

1.3 The committee's inquiry process

On 17 February 2016, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 24 February 2016. The committee received 9 submissions (see Appendix A).

Copies of the submissions are available from the committee's webpage.[2]

The committee's ability to consider the bill in detail from the submissions received was limited. The committee appreciates that submitters had only one week to prepare submissions. Nevertheless, we were disappointed that the majority of submissions did not review the bill but focused upon issues which were outside the committee's inquiry. The committee found the departmental response to public submissions helpful in addressing issues raised within the scope of the bill. These are included at Appendix B.

In light of the submissions received, and as a result of the limited time available to the committee to undertake this inquiry, the committee took a public briefing from the Department of State Development but did not hold a public hearing.

1.4 Policy objectives of the Bill

The purpose of the bill is to amend the special provisions in the *Mineral Resources Act 1989* that apply to an Aurukun project (the Aurukun provisions) to give communities the opportunity to object to resource projects and have the Land Court consider those objections.

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1 Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 18 February 2016).

2 See www.parliament.qld.gov.au/ipnrc.

1.5 Departmental consultation on the Bill

Departmental consultation was undertaken with the primary stakeholders, the Ngan Aak-Kunch and Glencore Bauxite Resources Pty Ltd., prior to the introduction of the bill.

The Wik and Wik Way Peoples are the Native Title holders in the Aurukun Area. The Ngan Aak-Kunch Aboriginal Corporation (NAK) is the prescribed body corporate for the Wik and Wik Way Peoples and is the owner of the majority of Restricted Area 315 for the purposes of the *Mineral Resources Act 1989.* Approximately 730 000 hectares of land around Aurukun is held by NAK as Aboriginal freehold tenure, which includes the majority of the Restricted Area 315.

The State is a party to an Aurukun agreement with Glencore Bauxite Resources Pty Ltd. The amendments will apply to Glencore's existing application for a mineral development licence and to any future applications for a mining lease for an Aurukun project[3].

Professor Ackfun from the Department of State Development told the committee:

> The consultation we took with Glencore and also Ngan Aak-Kunch gave us a couple of positions that they had. Glencore itself said that it would provide more uncertainty for its project, given that the legislation would then throw open everyone to look at objection rights… the other thing with Ngan Aak-Kunch is that they were looking at two positions: one, an advice back to us saying that they would like us to look at the termination of the development agreement with Glencore and the other one was looking at the Aurukun agreement going back to the Land Court for consideration. They were the two pieces of consultation and feedback that we received.[4]

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. The committee recommends the Bill be passed.

Recommendation 1

The committee recommends the Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016 be passed.

[3] Hansard transcript, 24 February 2016, p 2.

[4] Hansard transcript, 24 February 2016, p 4.

2 Examination of the Bill

2.1 Background to the Bill

The Aurukun bauxite resource is a significant resource situated in western Cape York, estimated to contain more than 480 Mt of dry beneficiated bauxite. It is one of a limited number of large bauxite deposits in the world currently available for development. The development of the bauxite resources at Aurukun has the potential to deliver significant economic development and employment opportunities for the communities of Aurukun and the wider Western Cape York area.

Successive governments have sought to mine the Aurukun bauxite deposit 'for the benefit of the local community and the state'.[5] However, attempts to develop the resource over a significant period have not been successful.[6]

In an attempt to support development of the bauxite resource at Aurukun, a special assessment regime was developed in the *Mineral Resources Act 1989* to modify the process for assessing and granting tenures for an Aurukun project. 'An Aurukun project is defined in the *Mineral Resources Act 1989* as being a project for the extraction, transportation and processing of bauxite on land that is within a gazetted area known as RA315. The Aurukun restricted area was declared in December 2002 and covers an area of approximately 1,905 square kilometres'.[7]

The Aurukun provisions of the *Mineral Resources Act 1989* modify the process for granting a mineral development licence or a mining lease for an Aurukun project in the following way:

- restrict who can apply for and hold a mineral development licence or mining lease to only parties who have a development agreement with the state
- exclude the right to seek judicial review on decisions of a mineral development licence or mining lease for an Aurukun project
- modify the type of conditions that can be included on the mineral development licence or mining lease for an Aurukun project
- exclude the usual process for the public notification of applications for a mining lease and the right to object to the application and have that objection heard by the Land Court.[8]

At the time the Aurukun provisions were enacted in 2006, the State was seeking to facilitate the commercial development of the Aurukun bauxite deposit by providing legislative assurance for a simplified process to achieve certainty of mining tenure for the preferred bidder.[9] The policy objectives of the Amendment Act were to:

> (a) facilitate the commercial development of the Aurukun bauxite deposit by providing legislative assurance for a simplified process to achieve certainty of mining tenure for the preferred bidder
>
> (b) enable the State to optimise economic, social and financial outcomes for the benefit of the State, the local region and Indigenous Parties.[10]

[5] Hansard transcript, 24 February 2016, p 1.
[6] Hansard transcript, 24 February 2016, p 1, submission 5.
[7] Hansard transcript, 24 February 2016, p 1.
[8] Hansard transcript, 16 February 2016, p 47.
[9] Hansard transcript, 16 February 2016, p 47.
[10] Ngan Aak-Kunch Aboriginal Corporation, submission 7.

The Department of State Development told the committee:

> The Aurukun provisions were included in the act in 2006 to streamline the approval pathway and to encourage development of the Aurukun bauxite resource, a resource with substantial physical constraints that had hindered its development in the past.[11]

The Cape York Land Council's (CYLC) submission supported the inclusion of a special regime for the assessment and granting of mining tenures for an Aurukun project, but argued that 'this special regime must not only benefit the people of Queensland, who are the owners of the mineral resource, but also maximise benefit to the socially and economically disadvantaged Wik and Wik Way Peoples, who are the registered owners of Aboriginal freehold land and native title holders of the land where the mineral resource exists, identified as Restricted Area 315'.[12]

However, the majority of submitters argued that the 'Aurukun provisions' were discriminatory and took away the rights of the Wik and Wik Way Peoples. Balkanu Cape York Development Corporation argued that:

> The "Aurukun Provisions" were unique in Queensland, targeted specifically at the area's Indigenous land holders. The Provisions removed rights normally enjoyed by other Queensland Indigenous and non-Indigenous landholders, delivering Chalco certainty at the expense of the Indigenous owners. After the withdrawal of Chalco from the Aurukun project, the Aurukun Provisions were never removed from the legislation.[13]

Ngan Aak-Kunch Aboriginal Corporation (NAK) argued that:

> What the provisions in fact did was strip away the rights of the Wik and Wik Way Peoples in relation to their land and provide for a different and lesser treatment of the Wik and Wik Way Peoples as owners of the land in comparison with other landholders in Queensland.[14]

2.2 A High Court Challenge

In June 2015, the NAK commenced legal proceedings in the High Court of Australia to challenge the 'Aurukun provisions' as being inconsistent with the Commonwealth's *Racial Discrimination Act 1975.*

> On 26 June 2015 NAK commenced an action in the original jurisdiction of the High Court of Australia arguing that certain of the Aurukun provisions are inconsistent with s10(1) of the RDA and are therefore invalid by reason of s109 of the Commonwealth Constitution. Those proceedings are listed for a Directions Hearing before the Court on or around 23 March 2016.[15]

Some submitters held that view that the introduction of the bill was in response to this challenge:

> 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 landowners, but still allows the unfair preferred proponent process and decision to stand.[16]

However, the committee heard that the Aurukun provisions were never intended to have a discriminatory effect and it remains the State's position that the provisions are valid. Consistent with the current government's public policy commitments to ensure that the community has the right to

[11] Hansard transcript, 24 February 2016, p 1.
[12] The Cape York Land Council, submission 6.
[13] Balkanu Cape York Development Corporation Pty Ltd, submission 8.
[14] Ngan Aak-Kunch Aboriginal Corporation, submission 7.
[15] Ngan Aak-Kunch Aboriginal Corporation, submission 7.
[16] Cape York Institute, submission 9.

object to resource projects, the bill will amend the *Mineral Resources Act 1989* to include notification and objection rights for the broader community for an Aurukun project.[17]

In doing so, if passed, the bill will nullify the High Court challenge and make the grounds of the High Court challenge fall away.[18]

2.3 Amendments to the notification and objection process

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. This will mean that:

- an applicant for a mining lease for an Aurukun project will be required to undertake public notification of the application and provide a copy to relevant owners of land which is subject to the application
- any person from the broader community will be able to make an objection to the granting of the mining lease and have that objection heard by the Land Court.[19]

The committee heard that:

> Probably the most significant provision of this bill is reinstating those rights that you and I and everyone else in Queensland take for granted in relation to these applications. We are reinstating that right in the case of Aurukun.[20]

Similarly, NAK Aboriginal Corporation argued:

> We welcome the amendments to the discriminatory "Aurukun" provisions of the Mineral Resources Act.[21]

2.4 The scope of the bill

A number of submissions argued that the bill did not go far enough in that it did not undo the process by which Glencore became solely eligible to apply for a mining tenement within the Aurukun Bauxite resource area.[22] The NAK argued that the Bill restores some of the rights of the Wik and Wik Way Peoples stripped away by the Amendment Act in 2006. However:

> the Amendment Bill fails to address the discrimination inherent in the fact that, unlike other landowners in Queensland who are eligible to apply for mining tenements over their land as of right, NAK can only apply for mining tenements over their land if they are selected by the Queensland Government to be a party to an Aurukun agreement;
>
> the Amendment Bill does not terminate the existing Aurukun agreement with Glencore, awarded in the disturbing circumstances outlined in Sections 6 to 8 of this Submission. This means that in practice NAK cannot apply for mining tenements over their land; and
>
> any Aurukun agreement entered into between the State of Queensland and the party selected to mine Wik and Wik Way land is not required to be disclosed to the Wik and Wik Way Peoples under the Amendment Bill.[23]

The Cape York Institute argued:

[17] Hansard transcript, 24 February 2016, p 2.
[18] Hansard transcript, 24 February 2016, p 3.
[19] Hansard transcript, 16 February 2016, p 47.
[20] Hansard transcript, 24 February 2016, p 3.
[21] Balkanu Cape York Development Corporation Pty Ltd, submission 8.
[22] Department of State Development, Responses to submissions, p 6.
[23] Ngan Aak-Kunch Aboriginal Corporation, submission 7, Attachment 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.[24]

The Department of State Development noted that while the competitive bid process was conducted to select the preferred developer for the Aurukun project with whom an Aurukun Agreement could be agreed, the competitive bid process was not conducted under the Aurukun provisions.[25] The previous government undertook a competitive process to identify a suitable developer for the bauxite resources of Aurukun.[26] The current government sought independent legal advice on the process and was satisfied that the competitive bid process for selecting Glencore was appropriate and conducted lawfully. The process was also overseen by a probity auditor.[27] The Department of State noted that '… on this basis, there is no intention to re-open the competitive bid process'.[28]

Committee comment

The committee is satisfied with the Department's response and with the scope and intent of the current bill.

2.5 Warehousing

Submitters were generally of the view that the development of the bauxite resources at Aurukun would provide substantial benefits for Aurukun and the communities of the broader Western Cape York.[29] Despite these benefits, the committee is aware of the difficulty in developing this resource. Professor Ciaran O'Faircheallaigh submitted that:

> For near 50 years, development of bauxite resources (or all too often their non-development) in this region has been dominated by the broader strategic and competitive concerns of multinational mining companies, and not by the stand-alone technical or economic viability of specific bauxite resources. For example both the Canadian multinational Alcan Ltd and the Swiss-based Pechiney, having located large bauxite resources in the 1960s and 1970s, failed to develop them because their major goals were to deny competitors access to them, and 'warehouse' them until such time as corporate strategies dictated their exploitation.[30]

Balkanu Cape York Development Corporation raised a similar concern:

> 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 public statements by Glencore executives that it does not intend to develop further greenfield mining projects in Australia.[31]

The committee canvased the idea that the bill may delay the development of the resource and lead to the warehousing of the asset. The Department of State Development told the committee:

> In short, with the development pipeline Glencore are proceeding with, it will be a number of years before they are ready to develop. Their work will be ongoing in relation to developing the mining lease. We do not expect this would have any impact in delaying it.

[24] Cape York Institute, submission 9.
[25] Department of State Development, Responses to submissions, p 6.
[26] Hansard transcript, 24 February 2016, p 2
[27] Hansard transcript, 24 February 2016, p 9.
[28] Department of State Development, Responses to submissions, p 8.
[29] Department of State Development, Response to public submissions, p 1.
[30] Professor O'Faircheallaigh, submission 5.
[31] Balkanu Cape York Development Corporation Pty Ltd, submission 8.

> Their first step will be to get the mineral development licence, which is usually for five years. They have to go through that exploration and feasibility stage before they are granted a mining lease. The Aurukun agreement does contain milestones around the development of the resource. The amendments today, though, do not impact on their obligations under the mining lease.
>
> The bill today imposes some additional conditions on the MDL, but not ones that would allow them to delay. Similarly for the mining lease, the bill imposes conditions on the mining lease, but not ones that would allow them to delay. You will get, from the tenor of the amendments that could cause delays to Glencore, because now they will have to go through the Land Court objection process. But as I said before, there is also a development agreement with Glencore that contains milestones.[32]

Committee comment

The committee appreciates that the details of the Development Agreement between Glencore and the State are confidential. The committee notes the Department of State Development's assurance that development milestones in the Development Agreement are binding and will ensure that Glencore is progressing the development of the resource, which will have positive benefits for the wider community and the State. The committee stresses that the Government and the Department of State Development need to be proactive in ensuring that these milestones are met and that the Aurukun bauxite resource is not warehoused.

2.6 The Land Court

The Land Court is constituted under the *Land Court Act 2000* and provides a mechanism for the resolution of disputes concerning land-related matters, such as matters relating to valuation and natural resource issues, including:

- the determination of claims for compensation for compulsory acquisition of land
- appeals against valuations for rating, rental and conversion to freehold purposes
- appeals against decisions concerning water licences
- recommendations for the grant of mining tenures and the determination of compensation
- cultural heritage including the grant of injunctions and approval of cultural heritage management plans
- appeals against a wide range of ministerial decisions concerning state land and interests.[33]

The Department of State Development told the committee:

> The main jurisdiction of the Land Court is when a miner makes application for a mining lease usually for mining projects that application is given to affected landowners. It is also publicly notified that any entity can lodge an objection to the grant of the mining lease. Those objections are then referred to the Land Court which conducts a hearing and considers the objections and considers evidence from the mining company as well. The Land Court's role then is to make recommendations to the minister for natural resources. The Land Court does not make a decision. It just makes recommendations to the minister on whether or not the mining lease should be granted, and if it should be granted what conditions should be put on the mining lease. Then it goes to the minister for consideration on whether to grant the mining lease or not.[34]

[32] Hansard transcript, 24 February 2016, p 3.
[33] http://www.courts.qld.gov.au/courts/land-court.
[34] Hansard transcript, 24 February 2016, p 8.

The bill proposes to restore the opportunity for communities to object to Aurukun bauxite resource projects and have the Land Court consider those objections[35].

Committee comment
The committee supports the reinstatement to the right of judicial review for Aurukun bauxite resource projects.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' (FLP) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of parliament.

The committee examined the application of FLPs to the Bill.

Clause 11 inserts new chapter 15 part 11 into the *Mineral Resources Act 1989* (transitional provision – section 838). New section 838 provides that the amended Act (the MRA as amended by this bill) applies to an application for a mineral development licence made under chapter 5, part 2, whether the application was made before or after the commencement.

3.2 Potential FLP issues

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively.

To the extent that section 838 will apply the amended Act to an existing application, clause 11 can be said to operate retrospectively.

In respect of section 838, the Explanatory Notes advise:

> A transitional provision is included so that the amended *Mineral Resources Act 1989* will apply to existing applications for a mineral development licence for an Aurukun project. The retrospective application of the proposed amendments to applications for mineral development licences raises a possible issue regarding consistency with the fundamental legislative principle that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively. The proposed amendments are considered to be justified as they reinstate rights of judicial review and provide other protections for landowners but do not adversely affect an existing right or obligation of the applicant retrospectively.[36]

Committee comment

As the proposed amendments reinstate rights of judicial review and provide other protections for landowners rather than adversely affecting an existing right or obligation of the applicant retrospectively, the committee is not concerned by the retrospective application of the new provisions to applications made before commencement.

[35] Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016, Explanatory Notes, p 1.
[36] Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016, Explanatory Notes, p. 2.

3.3 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to Explanatory Notes. It requires that an Explanatory Note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

Explanatory Notes were tabled with the introduction of the Bill. The Notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendices

3.4 Appendix A – List of submitters

Sub #	Name
1	Qld South Native Title Services
2	Aurukun Shire Council
3	Llyle Kawangka
4	Aurukun Bauxite Development Pty Ltd
5	Ciaran O'Faircheallaigh
6	Cape York Land Council Aboriginal Corporation
7	Ngan Aak-Kunch Aboriginal Corporation RNTBC
8	Balkanu Cape York Development Corporation P/L
9	Cape York Institute

3.5 Appendix B – Departmental response to submissions

Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016
Department of State Development – Response to public submissions

Background

The Infrastructure, Planning and Natural Resources Committee (the Committee) invited public submissions on the Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016 (the Bill).

The public submission process closed on 25 February 2016. Nine written submissions were received by the Committee and were made publically available on the Queensland Parliament website.

The Department of State Development (the department) has reviewed the submissions and provides the following response to assist the Committee with its inquiry. The following summary is divided into two parts: issues raised that are within the scope of the Bill and issues raised that are not within the scope of the Bill but are common to a number of submissions. There are also a small number of other issues raised by the submissions which are not within the scope of the Bill and this response has not attempted to address these issues.

A list of submitters is included for ease of reference at the end of this document. Of the nine submissions received:

- one was from local government
- three were from Native Title representative organisations
- two were from private individuals
- one was from a prescribed body corporate as the agent for the Wik and Wik Way People
- one was from a not-for-profit Indigenous Corporation
- one was from a private company.

Submitters noted generally that the development of the bauxite resources at Aurukun would provide substantial benefits for Aurukun and the communities of the broader Western Cape York.

Part 1: Summary of issues within the scope of the Bill

Matter: The amendments will limit the extent to which the Aurukun Agreement can be considered in a Land Court hearing		
Submission reference	**Issues raised**	**Department response**
Submission 007	One submission raised concerns that the Bill will unnecessarily and prejudicially limit the Land Court's consideration of the Aurukun Agreement. A number of reasons for this are raised. 1. As the Wik and Wik Way Peoples, through the Ngan Aak-Kunch (NAK), are the group most likely to object to the grant of a mining lease for an Aurukun project, the effect of the Bill will be to provide for a different and lesser treatment of the Wik and Wik Way Peoples in a hearing of objections to mining on their land in comparison with the hearing of objections to mining in the rest of Queensland. 2. Section 318AAE(3) as drafted	Clause 9 inserts a new provision Section 318AAE that defines the extent to which an Aurukun Agreement is relevant to a hearing by the Land Court under section 268 of the *Mineral Resources Act 1989* (MRA). The amendment provides that the Land Court may consider the Aurukun Agreement but only to the extent necessary to decide whether the applicant for a mining lease is an eligible person to make the application and to hold the mining lease. An Aurukun agreement is an agreement between the State and a person selected by the State to develop an Aurukun project. Only a party to an Aurukun Agreement can apply for a mineral development licence or mining lease within the gazetted Restricted Area 315 (RA315). In the past, the developer of an Aurukun project has been selected through a competitive bid process and the resulting Aurukun Agreement has contained confidential information. The State is currently a party to a development agreement with Glencore Bauxite Resources Pty Ltd, which is an Aurukun Agreement for the purposes of the MRA. This development agreement is a confidential document that was entered into as a result of a competitive bid process. The development agreement

	may create a situation where the Land Court orders disclosure of the Aurukun Agreement but the holder of the Aurukun Agreement declines to disclose the document. 3. The confidentiality of the Aurukun Agreement can be protected while still allowing the Land Court to consider all relevant evidence. The submission requested that clause 9 of the Bill is removed, so that proposed new section 318AAE is not inserted into the MRA.	contains confidentiality obligations on both Glencore and the State. In relation to reason 1, all objectors to an application for a mining lease in RA315 are affected by the proposed section 318AAE. In relation to reason 2, the department is prepared to consult with the Parliamentary drafter on removing any uncertainty about the operation of clause 9. In relation to reason 3, as noted in the submission, clause 9 of the Bill is intended to protect the confidentiality of the Aurukun Agreement. The MRA lists in section 269(4), the matters that the Land Court shall take into account when making a recommendation to the Minister that an application for a mining lease be granted in whole or in part. Section 269(4) does not include the Aurukun Agreement except to the extent that the Land Court needs to consider whether the provisions of the MRA have been complied with (section 269(4)(a)). The drafting of clause 9 reflects this.

Matter: Effect of Bill on current Aurukun project – transitional arrangements

Submission reference	Issues raised	Department response
Submissions 006, 007	Submissions raised concerns that the transitional arrangements in the Bill will not apply the amended Aurukun provisions to a mineral development licence or mining lease granted before commencement of the amendments, or to an application for a mining lease made before the commencement of the amendments. Submissions requested that further transitional provisions are included in the Bill to ensure that the amended Aurukun provisions are applied to an application for a mining licence made before the commencement of the new provisions and to mineral development licences and mining leases granted before the commencement of the new provisions.	Clause 11 in the Bill applies the amended Aurukun provisions to an application for a mineral development licence made under chapter 5, part 2 of the MRA whether the application was made before or after the commencement of the proposed amending Act. There is currently one application for a mineral development licence which was made on 14 January 2015. The application has not yet been decided. The effect of clause 11 in the Bill is that the amended Aurukun provisions will apply to this application. There are currently no applications for a mining lease for an Aurukun project. To be eligible to apply for a mining lease for an Aurukun project, the applicant must hold a mineral development licence. As there has not been a mineral development licence granted, there are no persons who are currently eligible to apply for an Aurukun project mining lease. The Bill was drafted with regard to the Fundamental Legislative Principles. There is a Fundamental Legislative Principal that legislation does not adversely affect rights and liberties or impact obligations retrospectively. The Bill potentially impacts this principle in that the amendments will apply to an existing application for a mineral development licence for an Aurukun project. This was considered justifiable as the amendments do not adversely affect an existing right or obligation of the applicant retrospectively. However, applying the amendments retrospectively to the grant of

		a mineral development licence or mining lease made before the amendments commenced would offend the Fundamental Legislative Principles as the amendments would adversely impact the rights and obligations of the proponent under a mineral development licence or mining lease that has already been granted.
Matter: Inconsistency with the *Mineral and Energy Resources (Common Provisions) Act 2014*		
Submission reference	**Issues raised**	**Department response**
Submission 007	There was concern that the amended Aurukun provisions will not mirror the general provisions for mining lease applications if the amendments in the *Mineral and Energy Resources (Common Provisions) Act 2014* proposed by the Mineral and Other Legislation Amendment Bill 2016 are made. The Mineral and Other Legislation Amendment Bill 2016 will amend the *Minerals and Energy Resources (Common Provisions) Act 2014* so that on commencement, mining lease applications will need to 'define' the boundaries of the lease area in accordance with the new section	The concern raised by submitters is that, subject to commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*, the general provisions for a mining lease will require applicants to define the boundaries of the proposed lease in accordance with the new section 386R of the MRA. As the *Mineral and Energy Resources (Common Provisions) Act 2014* will not amend the Aurukun provisions, this requirement will not be applied to a mining lease application for an Aurukun project. It is the department's understanding that Section 460 of MERCP Act amends section 386R MRA so that an application for a mining lease must define the boundary in a way that is unambiguous; and accurately shows where the boundary is located or allows the boundary's location to be accurately worked out, for example, through GPS coordinates. The Bill amends the Aurukun provisions to include additional

	386R of the MRA. This requirement will not be applicable to an Aurukun project.	requirements for an application for a mining lease for an Aurukun project. These amendments will ensure that information about the land which is the subject of the mining lease application is available, and are necessary to support the procedural steps involved in public notification and objections to the mining lease. The amendments will insert a new section 318AAD (ba) and (bb) which require the applicant to identify the boundaries of the land within the mining lease application. It should be noted that the amendments to the MRA in regards to the method of defining the boundaries of land, referred to in this submission, are currently un-commenced provisions of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Matter: The proposed amendments in the Bill don't go far enough		
Submission reference	**Issues raised**	**Department response**
Submissions 004, 005, 006, 007, 008	One submission requested the Bill be amended so that it repeals all of the Aurukun provisions (chapter 5, part 2 and chapter 6, part 2 of the MRA and their ancillary provisions). A number of submissions requested the Bill be amended to terminate the	The protection of the bauxite resource at Aurukun is considered necessary to prevent ad-hoc tenure applications over the resource, and allow the State to conduct a competitive process to identify a suitable developer. The Aurukun provisions were inserted in the MRA in 2006, to facilitate the commercial development of the Aurukun bauxite deposit.

	current Aurukun Agreement. A key concern of submitters is that the Bill will not undo the process by which Glencore became solely eligible to apply for mining tenements within the Aurukun bauxite resource area (RA315). Two submitters expressed concerns that the competitive bid process was invalid as it relied on the Aurukun provisions. The Native Title representative bodies and Indigenous groups submitted that the amendments would not put Ngan Aak-Kunch Aboriginal Corporation in the same position as other landholders in Queensland and so did not address the alleged discriminatory effect of the Aurukun provisions. Concerns were also raised by the Native Title representative bodies that the Bill does not give the Native Title groups the ability to participate in decision-making regarding the resource. For	While the competitive bid process was conducted to select the preferred developer for the Aurukun project with whom an Aurukun Agreement could be agreed, the competitive bid process was not conducted under the Aurukun provisions. The Bill was drafted with regard to the Fundamental Legislative Principles. There is a fundamental legislative principal that legislation does not adversely affect rights and liberties or impact obligations retrospectively. The Bill potentially impacts this Fundamental Legislative Principle in that the proposed amendments will apply to an existing application for a mineral development licence for an Aurukun project. This was considered justifiable as the amendments do not adversely affect an existing right or obligation of the applicant retrospectively. However, further amendments of the nature requested in these submissions would have significant adverse effects on the rights of a party to an existing Aurukun Agreement retrospectively, and would offend the Fundamental Legislative Principles. Further amendments to terminate an existing valid Aurukun Agreement would present an overwhelming Sovereign Risk to future investment in the resources industry in Queensland. Ngan Aak-Kunch Aboriginal Corporation will, as a result of the proposed amendments, enjoy the same rights as other landowners to object to an application for a mining lease over their land and to negotiate access and compensation terms with mining companies. In addition, Ngan Aak-Kunch Aboriginal Corporation always had and still has the rights afforded to them under the *Native Title Act 1993 (Cth).*

	example, the Ngan Aak-Kunch Aboriginal Corporation seeks an additional provision that gives them power, in conjunction with the State of Queensland, to determine who mines on the lands of the Wik and Wik Way Peoples.	

Part 2: Summary of issues not in the scope of the Bill

Matter: Competitive bid process and selection of Glencore as preferred developer		
Submission reference	**Issues raised**	**Department response**
001, 004, 005, 007, 008, and 009	Submissions raised concerns about the selection of Glencore as the preferred proponent and the competitive bid process.	In 2015, the Government sought independent legal advice on the competitive bid process. The Government is satisfied that the competitive bid process for selecting Glencore was appropriate and was conducted lawfully. On this basis, there is no intention to re-open the competitive bid process.
Matter: The Wik and Wik Way People have been denied their Native Title rights		
Submission reference	**Issues raised**	**Department response**
003 and 004	Submissions state that the Wik and Wik Way People have been denied their Native Title rights under the *Native Title Act 1993 (Cth)*	Glencore has made an application for a mineral development licence under the MRA. When applying for a mineral development licence or mining lease over land where Native Title rights and interests exist, a proponent must address Native Title in accordance with the *Native Title Act 1993 (Cth).* This can be done by negotiating an Indigenous Land Use Agreement or if applicable, by following the right to negotiate process. The right to negotiate process is currently underway in relation to Glencore's application for a mineral development licence. The purpose of the Bill is restricted to the Aurukun provisions in the MRA. The Bill does not affect the *Native Title Act 1993 (Cth)* or procedures being undertaken pursuant to that Act.

List of submitters

Submission No	Name	Title	Organisation
001	Kevin Smith	Chief Executive Officer	Queensland South Native Title Services
002	Bernie McCarthy	Chief Executive Officer	Aurukun Shire Council
003	Llyle Kawangka		
004	Nick Stump	Chairman	Aurukun Bauxite Development Pty Ltd
005	Ciaran O'Faircheallaigh	Professor of Politics and Public Policy	Griffith University
006	Richie Ah Mat	Chairperson	Cape York Land Council Aboriginal Corporation
007			Ngan Aak-Kunch Aboriginal Corporation RNTBC (via Gilbert + Tobin)
008	Gerhardt Pearson	Executive Director	Balkanu Cape York Development Corporation P/L
009			Cape York Institute (Cape York Partnership)

ServingDalrymple

SHANE KNUTH MP

09 March 2016

RE Statement of Reservation on Report No 20.
Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016

I write to lodge a Statement of Reservation to the Infrastructure, Planning and Natural Resources Committee on Report No. 20 to be tabled March 2016.

While I acknowledge the intent of the bill is to restore the rights of objection to traditional owners and allow the Aurukun people a judicial review of future decisions, I hold limited support for the proposed amendments to the Mineral Resources Act.

In its current form Native Title holders are given limited ability to participate in decision-making regarding the resource. As the bill does not terminate existing Aurukun agreements for preferred proponents which are solely eligible to apply for a mining tenement within the Aurukun Bauxite resource area.

The failure of the Queensland Government to comprehensively address the issues created by revisiting decisions made in collaboration with the Aurukun Provisions, and the decision to appoint a Preferred Proponent, does not truly reinstate the rights of traditional land owners to develop resources on the land where they hold native title.

Though I accept the department has stated that these issues were beyond the scope of the bill, I am not convinced that the department or the government are truly limited in their ability to address issues in regards to awarding Preferred Proponents.

Without further measures to address what is a clear issue for the members of the community I am inclined to give reserved support for this bill.

Yours sincerely

S Knuth

Shane Knuth MP
Member for Dalrymple

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