

Kirsten Tona  
9 August

Senate Standing Committee on Legal and Constitutional Affairs

Submission to The Native Title Amendment (Reform) Bill 2011

I am writing in support of the submission by the Yindjibarndi Aboriginal Corporation, as a member of the group "Friends of Yindjibarndi". I joined this group as a way of doing something positive about my horror and shock at the treatment of the Yindjibarndi at the hands of Fortescue Mining Group; but I understand now that the Native Title Act which was designed to protect communities and redress historic injustices, simply is not working.

I would ask you in all your considerations to keep in mind that you are making legislation which will have the power of binding law over a people who already have their own Law, which is not recognised by the culture which took their lands and their lives by force during the process of colonisation. It is incumbent upon you, as legislators and as representatives of the Australia we long for--an Australia which can accommodate many cultures without racism, intolerance, prejudice, disadvantage or injustice--to make decisions which will reflect well on the nation as a whole and aid the efforts being made by disparate groups everywhere to preserve and recreate Culture, protect Country, and provide a future with dignity and hope for young people.

I support the proposal in the Native Title Amendment (Reform) Bill 2011 to include the implementation of all UNDRIP principals in Native Title Act decisions.

I support the proposal in the Native Title Amendment (Reform) Bill 2011 to include the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) principles in Native Title Act decisions. As an example of this Article 32 insists that : 'States shall consult and cooperate in good faith with the indigenous peoples concerned...in order to obtain free, prior and informed consent prior to that approval of any project affecting their land or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'.

I support the proposed amendment to give full protection to significant cultural and heritage sites.

I support the proposed amendments in section 31, 31(1), 31(1a), and 31(2).

I support 38 (2) which relates to entitlement in regards to profit sharing, including by way of royalties.

I support 223 (2) in relation to "rights and interests" - which include acknowledgement of traditional rights which are an integral part of indigenous culture, such as (a) "hunting, gathering, or fishing. and (b) "the right to trade and other rights and interests of a commercial nature"

I refer to the principle enshrined in the United Nations Declaration of the Rights of Indigenous Peoples: "...that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs."

The reality for many Aboriginal communities is that they DO NOT have the control over development on their lands that the UNDRIP claims as a basic right for them. Their only recourse after refusing an offer is to the Native Title Tribunal, which in almost every single case has found in favour of mining interests over Traditional Owners' rights. The legislation must be strengthened to correct this unacceptable imbalance.

I suggest an amendment is included which creates a baseline minimum for a percentage of royalties on profits made by mining or otherwise developing indigenous people's lands, and that the royalties may not be capped against future profit increases. In support of this, I suggest you look closely at the deal offered by Andrew Forrest and the Fortescue Metal Group (FMG) to the Yindjibarndi people of the Pilbara. The money offered by FMG is risible compared to both the potential profits FMG is banking on and the personal wealth of Mr Forrest, and is

capped so that regardless of any future booms or discoveries on their land, the Traditional Owners will have no right to royalties.

I urge you to view the videos of the meeting in Roeburne between FMG and the Yindjibarndi people. It is exactly this kind of situation which the Native Title legislation was created to prevent. However, as we can clearly see, nearly 2 decades after the legislation's introduction, Traditional Owners are still being bullied and cheated out of their land and their rights.

<http://australianpoliticstv.org/2011/04/13/fmg-great-native-title-swindle/>

This meeting is appalling. First FMG funded a breakaway group, and bussed in Wirlmurra people from Carnarvon (and it is suspected they were paid for their attendance). Although the local people questioned their right to be there, they were given the right to vote by FMG personnel who hijacked the meeting and set their own agenda. (...)

(...) later issued the following statement on behalf of FMG:

"What came out of today's meeting is that an overwhelming majority of the community want to move forward as genuine partners with Fortescue.

She later said in an interview with the ABC's David Weber:

"No more than 20 voted against the motions that they put to the meeting and around 100 actually voted for each motion. On the critical motion of supporting an agreement with Fortescue, 120 at the meeting voted in favour and not one person voted against."

<http://www.abc.net.au/am/content/2011/s3193355.htm>

Well, I've seen the video of that meeting. (...) And it is through lies, bullying, obfuscation and the welding of undue influence that FMG are managing to ride roughshod over almost every

The deal is one which no self-respecting landholder would ever agree to. As the Yindjibarndi's real lawyer, Mr George Irving, pointed out at length, to sign this deal would be to sign a blank agreement, giving FMG all rights to do whatever they wish on the land in question, including fencing out the people, preventing them from living in their country, walking through it, hunting, fishing, even performing ceremony, without any further compensation. And the compensation offered is already an amazingly paltry mount compared to the profits that FMG. It would also give FMG the right to make deals with any other mining companies to develop Yindjibarndi land without having to pay a cent to the people, only to FMG.

This is an appalling situation and clearly against the spirit of the original legislation, which was designed to protect indigenous people's rights. The legislation MUST be amended to prevent this kind of railroading of its spirit, and to close the loopholes which allow grave injustices against indigenous peoples.

The close ties between government and mining corporations is also of great concern, leading as it does to the perception that dealings between governments and mining companies may not always be above board; and only watertight national legislation can address this and protect the rights of indigenous people. (...) There are many such example of people moving between employment in senior positions in mining companies and offices of government. Such networks create tight links between policy-makers and business interests, and the indigenous Traditional Owners whose fates are being decided on have nowhere near this level of influence, and thus their interests must be protected by fair, just and equitable legislative measures.

It is obvious that mining companies like FMG have no intention of dealing in good faith, nor in a fair and equitable manner as directed by the UN and The National Native Title Tribunal. The National Native Title Tribunal must be amended so the rights of Traditional Owners are primary in negotiations and not just empty words.

We have another appalling example in the Kimberley, where the West Australian government told the Traditional Owners of the James Price Point site, where Woodside Petroleum want to build a gas processing plant, that if they did not accept their offered terms they would have the land taken from them by compulsory acquisition.

This makes a mockery of the negotiation process, and puts Native Title legislation at risk of being perceived as a tokenistic sham.

Self determination must allow Traditional Owners to protect their sacred sites, around which so much Law, Culture and Community revolve. Very few of the mining companies have negotiated "in good faith" with

Traditional owners, preferring instead to make ridiculous monetary offers for land, knowing very well if they wait 6 months, the Native Title Tribunal will give them what they want.

It is now in your hands to see that our legislation enshrines the rights of Australian Indigenous Peoples, as set out in the United Nations Declaration of the Rights of Indigenous Peoples, and that the process cannot be manipulated by business interests motivated primarily by greed, whose executive officers act in a way that displays no respect for Country or Culture, but merely highlights their contempt, paternalistic attitudes, venality and cupidity.

Thank you for the opportunity to make this submission.

Sincerely,  
Kirsten Tona