

3 March 2017

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Submission by SEED to the Senate Inquiry into the Native Title Amendment (Indigenous Land Use Agreements) Bill 2017

Thank you for the opportunity to make a submission on the above Bill.

Seed is Australia's first Indigenous youth-led climate network. We are building a movement of Aboriginal and Torres Strait Islander young people for climate justice. We do this by running campaigns to protect country from climate change and fossil fuel extraction, while also building the capacity of Indigenous young people to be a part of creating positive change by providing skills based training and platforms to take action.

Climate change is one of the greatest threats facing humanity and core to this crisis is the loss of country, cultures and livelihoods of Indigenous peoples in Australia and across the world. By building solutions that work towards justice for all people, the climate crisis presents an opportunity to create strong, resilient communities for a fair and sustainable future.

Seed is a national network led by Aboriginal and Torres Strait Islander young people, with a small team of staff, volunteer state coordinators and over 150 volunteers from every state and territory. We work in collaboration with communities and Traditional Owners around the country. Seed is a branch of the Australian Youth Climate Coalition.

Seed's primary concern is that Aboriginal and Torres Strait Islander people and our communities have a crucial role as Australia as a nation takes steps to mitigate and adapt to the impacts of a warming climate. We know we need to keep all new fossil fuels in the ground if we are to stay on track with limiting global warming to 1.5 degrees. Changes to this bill will impact our decision making power and undermine the role we have in protecting our communities from the worst impacts of climate change.

Our opposition to this Bill is based on key issues set out below. We also make the following six recommendations:

1. The Bill should be withdrawn and proper consultation conducted with Aboriginal and Torres Strait Islander communities, to allow real scrutiny of the adequacy of the current native title regime in supporting Indigenous land rights.

2. The Government be asked to disclose what lobbying occurred in the lead up to the Bill's preparation, including correspondence and meetings with mining industry bodies such as the Queensland Resources Council, mining companies like Adani and local and State government MPs.
3. If the Bill is to proceed, at the bare minimum it should require that all representatives elected by a claim group must sign the ILUA for it to be valid.
4. The Government be required to clearly identify, document and articulate the risks stemming from the McGlade decision to the community before moving forward with any changes.
5. Any amendments to native title laws must be consistent with Australia's international obligations under the *UN Declaration of the Rights of Indigenous People in 2009* which say mining cannot occur on Indigenous land without the free, prior and informed consent of Aboriginal people.
6. A provision be made through amendments to the Native Title Act that provides for the streamlined removal and replacement of a claimant in the situation where the claimant has died or lost capacity.

- **The Bill has not been subject to proper consultation**

There is no evidence that this Bill is urgent or that changes to native title laws need to be pushed through right now.

We have serious concerns about the way this Bill was rushed into Federal Parliament and is being pushed to a vote, without adequate consultation.

Even with the extra few weeks created by establishment of this Senate inquiry, we do not believe that all matters can be adequately considered and that the views of affected Aboriginal and Torres Strait Islander communities can be properly heard.

Many remote Aboriginal and Torres Strait Islander communities who have current native title claims will not be able to submit due to a range of issues not limited including, language barriers, internet connectivity and inability to travel to Brisbane for public hearings due to financial or logistical barriers.

Most communities and many registered bodies have reached out to us and have stated that they are not aware of the changes.

Communities who are affected by mining very often live in rural and remote locations. Ensuring communities are both aware of the consequences of the Bill and have an opportunity to present their concerns takes time, resources and commitment.

While the mining lobby has resources in spades, Indigenous communities do not. One public hearing in Brisbane and a week-long submission period is completely insufficient for Committee members to understand this complex situation.

Any reforms should follow full and proper consultation with Aboriginal and Torres Strait

Islanders. They should not be motivated by panic generated by the mining lobby.

Our decision making power is crucial in ensuring the we as one of the frontline communities currently facing the worst impacts in this country from climate change also have the power to determine the long standing viability of our communities and country.

Recommendation: The Bill should be withdrawn and proper consultation conducted with Aboriginal and Torres Strait Islander communities, to allow real scrutiny of the adequacy of the current native title regime in supporting Indigenous land rights.

- **The Bill serves the interests of the mining lobby, not Indigenous communities**

There is strong evidence that this Bill was introduced to boost the interests of mining companies in Australia, not to honour the original intention of the Native Title Act 1983 which was to protect and recognise native title.

In particular, it is clear from public statements that the Queensland government, the Queensland Resources Council and mining companies like Adani approached the Government to pursue these amendments because of anxiety that the McGlade decision would frustrate Adani's Carmichael mine. *Statements made in the media that confirm this are found in an Appendix to this submission.*

It is plain to see that mining companies wish to secure the extinguishment of native title rights as easily as possible and this Bill facilitates that.

However, many people in Indigenous communities have fought, or are currently fighting, for their land and culture and are not interested in trading this for a handful of cash and empty job promises.

This Bill disrespects the rights of Indigenous people to object to land deals which will destroy their land, water and culture.

Poll after poll shows the public is very concerned about the undue influence of the mining lobby over government. It is important the public knows who has lobbied the Government to prepare this Bill which serves the interests of mining companies over Aboriginal and Torres Strait Islanders.

Recommendation: The Government be asked to disclose what lobbying occurred in the lead up to the Bill's preparation, including correspondence and meetings with mining industry bodies such as the Queensland Resources Council, mining companies like Adani and local and State government MPs.

- **The Bill fails to recognise that mining companies often act dishonestly to divide indigenous communities to ensure their projects go ahead**

SEED has begun discussions with a range of Indigenous leaders and community members about the Bill. It is clear that mining companies have a history, which continues today, of infiltrating and dividing Indigenous communities to ensure ILUAs

are registered and projects proceed.

Through our work in the Northern Territory and ensuing communities concerns were raised to the NT Government about fracking, we were consistently met with the complaint that the process of fracking was explained properly while land access agreements were being negotiated. In some cases no interpreters were even present.

Other common tactics include providing money and logistical support, crafting resolutions, paying members to attend meetings and arranging transport to bring non-members of a claim group who have no connection to the country to stack meetings in a mining company's favour.

Recommendation: If the Bill is to proceed, at the bare minimum it should require that all representatives elected by a claim group must sign the ILUA for it to be valid.

- **The Bill does not reflect the original aims of the Native Title Act**

The Government has not provided any compelling evidence that the McGlade decision presents a real risk to past, existing or future ILUAs.

In reality the McGlade decision is faithful to the original intention of the Native Title Act. This intention was that all members of a Native Title Claimant must sign an ILUA, unless authorised by the wider native title group.

This is a just and logical position. Extinguishment of native title rights is a radical step with significant implications. Native title rights are held not just by communities but also by individuals. It would be unjust if these important rights could be extinguished by agreement of some but not all members of an Indigenous community.

Recommendation: The Government be required to clearly identify, document and articulate the risks stemming from the McGlade decision to the community before moving forward with any changes.

- **The Bill does not honour Australia's International Law obligations to ensure free, prior and informed consent before mining on Indigenous lands**

Australia signed the UN Declaration of the Rights of Indigenous People in 2009. This binds the Commonwealth to ensuring the free, prior and informed consent of Indigenous people to mining on their land. These principles are not reflected in the Bill.

Recommendation: Any amendments to native title laws must be consistent with Australia's international obligations under the *UN Declaration of the Rights of Indigenous People in 2009* which say mining cannot occur on Indigenous land without the free, prior and informed consent of Aboriginal people.

- **The Bill should fix the real problem of someone dying or losing capacity,**

without weakening ILUA sign-on requirements

SEED would support a Bill being put forward to deal with the problem created where a person within a claim group has died or lost capacity. This is entirely different to a situation where members of a community object to a mining company working to extinguish their land rights against their will.

Recommendation: A provision be made through amendments to the Native Title Act that provides for the streamlined removal and replacement of a claimant in the situation where the claimant has died or lost capacity.

Thank you very much for considering this submission and its recommendations.

SEED would welcome/request the opportunity to present evidence at the Brisbane public hearing on 13 March 2017.

We look forward to hearing from the Committee and would be happy to provide any additional background or assistance to ensure the Bill is properly scrutinised.

Yours sincerely,

Larissa Baldwin, National Co Director of Seed Indigenous Youth Climate Network

Appendix - Examples of statements by Adani, the mining lobby and Queensland and Federal MPs in support of the Bill

- Adani said it was seeking an assurance from Premier Palaszczuk and the Queensland Government that McGlade wouldn't frustrate its Carmichael mine.¹
- Queensland Premier Palaszczuk said the Federal Government must resolve the issue for the sake of the Adani project.²
- Mr Ian MacFarlane, former Federal Resources Minister and now CEO of the Queensland Resources Council said he'd had extensive discussions with old Liberal colleagues George Brandis and Matt Canavan, as well as the Queensland Mines Minister Anthony Lynham and Federal Opposition leader Bill Shorten. Mr MacFarlane claimed widespread support for amendments.³
- After the Attorney General said the Prime Minister had agreed to introduce amendments to reverse the decision, the Queensland Resources Council welcomed the news, calling on all sides of politics to "raise up beyond politics and work to solve this problem."⁴

¹ *The Townsville Bulletin*, [Adani's Carmichael mine in doubt after shock court decision](#), 3 February

² *The Townsville Bulletin*, [A Plea to the Prime Minister on Adani danger](#), 6 February

³ ABC, [Changes to legislation being looked at as ruling on Indigenous agreements throws industry governments into turmoil](#), 9 February

⁴ Ibid.