

Senate Standing Committee on Legal and Constitutional Affairs

Re: Submission to The Native Title Amendment (Reform) Bill 2011

I am supporting the submission written by the Yindjibarndi Aboriginal Corporation.

I demand "The Native Title Amendment (Reform) Bill 2011" implement changes that provide Indigenous people with the impetus and powers they require under the "law". This means extending attentive focus authentically to the potential of their lawful capacity to identify, address, and legally negotiate their rights as Indigenous citizens. In the case of the North West regions of Australia, and with specific reference to the Yindjibarndi people in the Pilbara. They must be encouraged to strive for the opportunity, as they see best, to achieve economic, social and cultural-political self determination on paper, through agreements made, as well in in practice.

The problem presently is that without due recognition and appropriate lawful change, Indigenous people will forever be left open to half baked insult and "tokenism[s]" while their capacity is undermined through the law. Indigenous people must be allowed to lawfully negotiate in their own best interest, for the longer-term. The law needs to be robust permitting entitlement to argue fairly for advantage with the same might as large corporate magnates, without the fear of becoming intimidated, where their best interests are projected as divisive, pecked out, corroded, being watered down in parts, as is presently the case.

Significantly is the expectation that Indigenous people succeed as citizens in this nation we call Australia. To meet this expectation in their own right, beyond the barriers they face in present day, then it is imperative that we necessitate the instruments and legislative tools they require to negotiate the authentic interest of their own objectives. These instruments must be able to meet the pronouncement and decree of company laws among others on a level playing field and have the capacity to be enforced so that the equality of all dealings befit the precept of having something to negotiate, respectfully under Australian law. To date there has been a lack of respect and good faith throughout consultations, dialogue and deliberations with the larger Mining Companies throughout many regions of Australia. One compares the nonfulfillment and deficiency of practice from these Mining Companies to the negligence of what is occurring overseas when it comes to the proper distribution and share of resource equities in Cambodia, New Guinea or anywhere in Africa falling terse of what is happening in the Congo to the conciliation of business dealings between Mining Giants and the Congolese.

What is occurring in the Pilbara appears to be moving big business venture interests forward 'too fast'. The Yindjibarndi People, and Australians everywhere wonder 'where it is all going'? They are questioning our democracy. The process that has been so far delivered appears to be jumping hoops so as to leave those asking the most questions, out. After listening to politicians from Western Australia and at Federal levels I have become concerned that this scenario is a rush to the bank driven by Mr Andrew Forrest and associates before the calculation of revenue, profits and shares of all equity and potential equity has been thoroughly considered. This apart from the environmental concerns that have been aired at a National and State level by Australian citizens and are too at the forefront of all Yindjibarndi peoples concerns.

As a citizen, I strongly believe "we" as Australians have a responsibility to provide and ensure that the Yindjibarndi people have the legal set of powers they need to negotiate for their best interest.

As I understand, at present the Native Title Act is currently flawed because it detracts purpose and weight when it comes to the rights of Indigenous people to be recognised and economically respected in the same way that big business and government when negotiation on the ownership rights of resources. Lacking is the Indigenous legal scope to apply impetus to their claim of interest, legally. For example when one considers what the Fortescue Metals Group estimates as it's potential profit margin over the next 40 years, is worth \$280 billion, it is unfortunate that it has

- failed to cut a deal with the Yindjibarndi Aboriginal Corporation (YAC) since beginning talks in 2007 and
- offered the Aboriginal landowners a \$500,000 signing fee and a capped amount of \$4 million a year in cash, with some \$6.5 million [still unclear] a year in staff housing, jobs, training and business opportunities.

I propose that this is hardly an advancement for the Yindjibarndi people when the idea of having a Native Title means the possibility to design a "for-profit consortium" basis progressively, with a vision of cooperation and competition that relates to the development of having a Native Title in areas of core businesses. With respect the parameter of this deal is emblematic of 'salt money' only without the gratified rations sufficient to subsequently account for the a future value expressed through money.

Historical Issues of Development vs Underdevelopment

I contend that the future of the Yindjibarndi people is in the hands of Australia. Australia has both a duty and responsibility to ensure Indigenous people are treated fairly when it comes to their struggle to be fully recognised as citizens before all aspects of the law.

Unlike the richest woman in Australia being Ms Gina Rinehart, who gained a family inheritance from her father and the man who follows her Mining interests, Mr Andrew Forrest (another Western Australian Mining giant), the Yindjibarndi

people have both a historical past and a formidable future to overwhelm.

The genuine pressure on Indigenous people everywhere in Australia is a phenomenal plight when it comes to their own aspirations to "close the gap". Their aim is to preserve their own identity, culture, customs, language, health, education, and conserve their sacred sites and country. This task may only be achieved if they can create an economic way of life for themselves ongoing, that transcends the purpose to provide sustainable objectives onto next generations. All this with the expectation that as citizens Indigenous people perform as a productive part of the Australian community, with the dignity necessary that embodies their own Indigenous spirit.

Our National Knowledge and Reasons to support the Yindjibarndi people through Native Title in Reality

From past experience, I have been in the company of negotiations that rode 'shot-gun' over the clarity of Indigenous interests and demands. For example this is why Hopevale in Cape York lost its Guugu Yimithir Warra Corporation, where a conflict of interest over money, royalties and political goals mixed with a set of corrupted compartments allowing local government, national and federal political-economic and business capital interests overwhelmed the succession of micro-productivities supporting a variety of livability community sustainable development concerns. The "bad faith" left by the self interested players, splintered the continuity of some 36 large families, which the Corporation had been originally set up to serve. It was the Guugu Yimithir Wara people who had put their heart and soul into the organisation before the numbers became dubiously loaded and pivotal voting processes corrupted and stacked. It was as much 'whiteman's' corporate interests which milked the kitty, as it was internal divisions between the 'elite' that created the Corporations collapse. In hindsight, we have seen it all before, The issues the Yindjibarndi face today, in the Pilbara are not new in Australia. We are aware of the circumstances and we have said nationally for so many years that the empowerment of Indigenous people will come when they learn to stand-up and be counted. When they reject hand-out, "sit-down" moneys and take action in a manner directive of their obligations through self-governance. I believe from what I have read, heard and seen so far in the North West, that the struggle of the Yindjibarndi people at ground level, is one of potential and integrity. In many ways this struggle is symbolic and represents the desire of many Australians who express that the rights of Indigenous people be correctly arbitrated and legally addressed.

Publics Expectations of Indigenous Economic Self Governance

Australians in some ways may not fully understand the depth of what is at stake in the struggle of the Yindjibarndi community, some being confused by the gist of information mixed and available. Regardless the Yindjibarndi people are holding up at a front line with not much more then their voices. The Yindjibarndi people themselves are doing everything they can to be heard. This collaboration is a social and political capital, the type you can not buy and means the difference between the success of future communities or more of the same when it comes to the way Governments many, have bungled procedure relating to the legitimate equity through economic and social structural policies that are supposed to help protect key Indigenous rights which build capacity toward their own self-determination. This denigrative historical approach, if repeated, would leave once again the most vulnerable of our citizens in the lurch. The brawn of State and Federal interest must not repeat panda to the imbalanced one-sided view of the large Mining magnates.

As has been witnessed in many regions, it is the elderly and the young families who wear the brunt of all impacts. It is a generation of youth we lose each time a community is left out of an authentic engagement process. Especially when the guardians of their political and economic affairs implement, or sign-off on agreements based on a top down neoliberal half-hearted strategies that fail to consider a stream of demands that juxtapose dimensions we rhetorically reciprocate in our list of expectations from the Indigenous peoples themselves. If we mean "self determination" for the Yindjibarndi people with due respect then the Kimberley issue surrounding the present performance of the Fortescue Metals Group must be seen at least as one case study deserving closer legal inspection. Given the potential of all technicalities and greater importance of the regional location itself, it is both an accurate and treasurable national place of significance, in modern time, of which to start.

Sample of historical reason why many deals involving Indigenous Native Title rights fail at the table.

I have witnessed how manipulations, political maneuvers and exploitation becomes the controlling advantage creating degrees of the kind of confusion and emotional bribery that can divide the representation of Indigenous peoples to the point of creating "fear" if they do not jump in and take what is on offer regardless of a down scaling of their complexity of valid interests.

I trust that any negotiations being made in the interest of the Yindjibarndi peoples and the Native Title Amendment (Reform) Bill 2011 take seriously the expectations we have of the Yindjibarndi peoples plight encompassing their future challenges of self-determination, by providing them legally and appropriately with the necessary provisions, descriptors and access to economic policies required to meet their obligations.

On hearing of the contentions between all parties over Lands and Mining in the North West, and considering the issues in the wider context of Australia inclusive of what we have heard said by Farmers, I request that any decisions taken for the future considers over-riding concerns of the Farmers grievance with Mining Companies in their debate and apply special emphasis on the rights of Indigenous people, which are equidistant if only in its synchronous perceptiveness.

The point here is Australia is about to change. As the study on Foreign Ownership and related work on decentralising Populations [peri-urban areas, and to the development of regional hubs] and Nation Building between the challenge of its predicted context takes place, I see a changing face in the development regional networks giving Indigenous people the opportunity to become more closely connected to business and enterprise development in ways unforeseen before these policy investigations had taken place. Additionally, while mining is important to Australia's economy we, as Australians are short-sighted if we allow the Mining industry to dominate the opportunity of other sectors where potential alternative industry is just as important. I.E., Small business in Australia still provides the most jobs and, we only have to look how we neglected innovation when we look historically at the decline in manufacturing to see the downside of peoples stuck inside the periphery of a patchwork economy. This is why I believe that if we curtail to the domination of large Mining Companies when it comes to the regional interests of Yindjibarndi peoples, we must be careful not to short arm their future capacity to self determination.

"Closing the Gap"

"Closing the Gap" embeds a concept of capacity to emancipation where the future goal is to overcome the adversity of alienation, dispossession and dependency by having the capacity to enter the national economy in the same ways, with the same goals as is expected from mainstream.

I am alarmed to see and hear of the actions taken by Fortescue Metals Group (FMG). That they believe that an offer of lands to the Yindjibarndi peoples means; '... a fair price for their land would be "corporate welfare'. Equally I am shocked by the conflicts of interest when it comes to the operations going on at present. The "operation" that appears thus far as a structural systemic violence legally, on at least three angles when it comes to the hast of action being taken to build infrastructure and start work on land that has not yet been fully negotiated, where reports, papers and court proceedings are pending.

Given the intimidation, the exploitation and misappropriation of powers by a number of stakeholders, the tactics used to negotiate a dysfunctional process that has been recorded, the demonstrated rhetorical messages in the press and between all parties working against the expressed concerns and interests of the local Yindjibarndi Aboriginal Corporation where there has been a lack of regard for steadfast, diligent and dutiful representations it must be said that The Native Title Amendment (Reform) Bill2011 process in the Native Title Tribunal must be amended, so the rights of Traditional Owners are primary in negotiations that follow Yindjibarndi peoples concerns under State and Federal recognitions before the law.

Finally, in light of the United Nations Declaration on the Rights of Indigenous Peoples written and interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith. I fully acknowledge the importance of the UN Millennium Development Goals. The targets and indicators for monitoring progress and help verify that nations do not undercut in any way the rights of citizens. Combined these documents earmark critical goals that place weight rather than selective indifference on the emphasis of pathways that ensure "environmental sustainability".

When it comes to Indigenous Rights through Australia's Native Title, I value sections 38 (2) which relate to the entitlement and capacity of Indigenous people in profit sharing,[including royalties where relevant]. I support 223 (2) in relation to Indigenous "rights and interests" as this clause includes the acknowledgement of 'traditional rights' as an integral part of indigenous culture I.E., (a) "hunting, gathering, or fishing.

Of crucial importance and in the consequence of previous events relating to the economic right of "self detrmiation" I especially support section (b) "the right to trade and other rights and interests of a commercial nature". This is because it is this clause that has been the proviso most often neglected, soften if not unmistakably abused when it comes to interpretations with less focus in upholding the integrity in the recognition of Indigenous rights through Native Title in business dealings with powerful financially motivated interest groups during mediations, when brokering economic settlement transactions to date. While I support macro and micro levels of integrative development I place specific emphasis on sustainable outcomes when it comes to addressing the "quality of life" between land value and their use, due to the complexity of diverse and cultural needs that reflect the development aspirations of Australia's Indigenous peoples.

Yours Faithfully,

Form Letter received from:

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