

Paul Marshall

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Senate Standing Committee on Legal and Constitutional Affairs

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Re: Submission supporting the Yindjibarndi Aboriginal Corporation with respect to The Native Title Amendment (Reform) Bill 2011

As an Australian citizen I am appalled by the abrogation of Australian state and federal laws in native title as it has been exposed in the Fortescue Metals Group (FMG)-Yindjibarndi Aboriginal Corporation (YAC) situation. Therefore I am wholeheartedly supporting the changes proposed in the Native Title Amendment (Reform) Bill 2011.

After viewing the two videos FMG, The Great Swindle parts 1 and 2, I feel compelled to express my outrage at the tactics used by FMG in their negotiations for a proposed mine on Yindjibarndi land. In the two videos and radio interview with YAC's Barrister, George Irving (see third link below), the facts of the matter are evident.

http://www.youtube.com/watch?v=6w_fB7e0WCY
http://www.youtube.com/watch?v=3xa1eX_E0p8
<http://www.rtrfm.com.au/download/2984>

I was horrified at the disrespect shown the people of the community in the Roebourne meeting, especially a highly respected elder such as Mr. Ned Cheedy. The detrimental affects negotiations are having on the community are on full view here, as neighbour was pitted against neighbour in a deplorable and despicable bid by FMG to secure a deal which is neither fair, nor equitable to the Yindjibarndi people. The way the meeting was run, with members of the FMG group controlling events, stifling debate, undermining community members by calling them liars; even grabbing the microphone away from Mr. Michael Woodley, the chief executive officer for YAC, should render any outcomes from this meeting invalid.

At one stage FMG claimed that this was an internal, Yindjibarndi meeting, but FMG were front and centre, initiating, funding the breakaway group and controlling the meeting. Even the independent chairperson walked out part way through the meeting!

It is obvious that FMG has gone over the heads of YAC - the representative organisation of the Yindjibarndi people, and done a backyard deal with other members of the community, the Wirlu-murra Yindjubarndi Aboriginal Corporation (WMYAC). This group was specifically set up, groomed and financed by FMG to support their position when YAC would not accept their inequitable agreement. The WMYAC stand to be the recipients of compensation and benefits for the land belonging to all members of the Yindjibarndi

people. The deal will see this FMG funded break-away group being placed in charge over YAC and the Native Title claim, which naturally sets the scene for an agreement to be signed and a deal made with the WMYAC, and the YAC being left out in the cold. If this were to go ahead, the cracks which have been created in the community by FMG will widen into irreparable chasms.

As things stand now, Traditional Owners are left to fend for themselves against powerful mining companies, and are not protected from this kind of unscrupulous behavior, particularly in WA where the state government does not support or provide support for mediation between the negotiating parties. The arbitration body, the National Native Title Tribunal (NNTT), is ineffective in protecting Indigenous interests, and the Traditional Owners are often forced to "give in" to an unsatisfactory deal.

As a marginalised people, they do not have the same resources as corporations, who can afford teams of lawyers to act on their behalf, and to influence members of communities to vote in their favor as has been done in the FMG-YAC case. It is clear the Native Title Act 1993 (NTA), does not afford Aboriginal people meaningful and equitable rights, which flies in the face of the principles set out in the United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP).

At the present time, negotiations are bogged down in the YAC and FMG case, as FMG refuses to move from its position of paying \$4 million a year and \$6.5 million in infrastructure, jobs and training. Mr. Neville Powers of FMG states his reason for this is that a cash deal would do harm to the community, implying the Yindjibarndi people are incapable of handling money, or their own affairs in general. How paternalistic is that! Should the deal go ahead, the community will see itself deprived of economic and cultural control as long as FMG's presence on Yindjibrandi land continues. This will have a severe, if not catastrophic, impact on future generations.

Professor Ciaran O'Farichealaigh from Queensland's Griffith University points out, (see link below) this kind of control is not exercised in land deals with other Australians. As he states, the Native Title act is a "property right", as is land belonging to all Australians. Mining companies do not have a right to control communities by dictating how the monies owed to them should be spent and how and when businesses and much needed facilities should be put in place. This is no less than the continuation of the colonialistic practices of the past and it is DISGUSTING in 2011!

<http://yindjibarndi.org.au/yindjibarndi/?p=2015>

Senator Rachel Siewart has stated in the 2nd reading speech in parliament on 21 March 2011, that Native Title has not resulted in delivering full economic and cultural rights owed to Traditional Owners, which are set out in human rights conventions. Nor has it afforded meaningful reparation for the many injustices done to them since the arrival of the European.

As mining in Australia is now gathering momentum, as can be seen in WA, (see link below). It is vital, now more than ever, to amend the native title bill; not only to redress the wrongs of the past, but to adequately protect the rights of the original inhabitants of this land.

<http://www.theaustralian.com.au/national-affairs/broome-fears-future-as-the-next-dubai/story-fn59niix-1226109404590>

It is in the light of the outrageous and unprincipled methods that FMG has been, and is using against the Yindjibarndi, which have been exposed so vividly in various forms of the media and as a concerned citizen of this country, I urge the committee to consider the obvious flaws of the current Native Title Act, and the lack of progress in developing meaningful rights in the native title process in general, and I hereby support the following:

I support the proposal in the Native Title Amendment (Reform) Bill 2011 to include the implementation of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) principals in native title act decisions.

I support the proposed amendment to give full protection to significant cultural and heritage sites as stated in section 24MB (1) (c). The Aboriginal Heritage Act 1972 (WA), has been proven to contain serious problems which impact negatively on Indigenous rights.

I support the proposed amendments in section 31, 31(1), 31(1a), and 31(2). Again, the situation with the Yindjibarndi community and FMG shows the necessity of strengthening and protecting the negotiating position of Traditional Owners. "Negotiating in good faith using all reasonable efforts" was notably absent from proceedings in the meeting shown on the video. Also, "making reasonable offers and counter-offers" is a point of issue that should be given strength to. Of particular significance to the Yindjibarndi case is the statement "refraining from capricious or unfair conduct that undermines the beneficial nature of the right to negotiate, and "in any proceeding in which the application (1) (b) is raised, the party asserting good faith has the onus of providing that it negotiated in good faith."

I submit that, given the amount of money at stake (read temptation) for miners, a specific code of conduct be imposed on them ... rather than an abstract "good faith" motherhood clause.

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

I support section 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 thank you for the opportunity to make a submission in support of the Native Title Amendment (Reform) Bill.

Yours sincerely

Paul Marshall.