

Dear Committee Secretary

Submission on Native Title Amendment Bill 2017

I am an 82 year old Nyoongar Elder and a member of the Swan River People native title claim group in Perth, Western Australia. I am the oldest male Spokesperson for my clan descended from my great great grandfather Midgegooroo of the Swan River. I have been involved in native title since the 1990s and am also one of the people who makes up the Applicant of the Swan River People claim.

Our native title application has passed s 190B (prima facie case) of the Native Title Act (NTA) and is currently before the Federal Court (WAD 24 of 2011). Our claim is not represented by the South West Aboriginal Land and Sea Council. The Swan River People claim Applicant has not signed the Indigenous Land Use Agreements (ILUAs) that make up the South West Native Title Settlement Deal.

Under the NTA ILUAs can be authorised by a claim group that has never had their evidence tested on the facts through a determination of the court. ILUAs are authorised by a s. 251A meeting. Voting rights at these meetings aren't limited to members of the claim group. The process is open to fraud and corruption unless there is a protective function. Aboriginal people could be paid and brought in on a bus just to stack meetings to get the result that a few people want. The risk with ILUAs is that potentially a fabricated native title group can come in and sell the native title rights and interests out from underneath a genuine claim group.

The unanimous Full Federal Court Judgement in *McGlade v Native Title Registrar* [2017] FCAFC 10 (2 February 2017) was an important decision for us and all Aboriginal people across Australia because it restored the protective function of s. 251B of NTA in relation to ILUAs that had been wrongly taken away in the *Bygrave* decision of 2010 (*QGC Pty Ltd v Bygrave* (No 2) [2010] FCA 1019).

s. 251B NTA provides that the people who are named as the "Applicant" on the claim are elected by the claim group. Only members of the claim group who can demonstrate their genealogy and connection can elect the Applicant. These people are trusted by the claim group to act in their interests and they are there as a safeguard against stacked meetings and other bad tactics.

The *McGlade* decision was the right decision because it fixed up some uncertainty about who can sign ILUAs. It said that all members comprising the Applicant of a claim needed to sign off on the ILUA and not the authorising group (which is composed of a wider group of people who may not even be members of the claim group).

We think the stories in the media and comments by mining company lawyers since the *McGlade* decision are exaggerating the urgency of the issue and trying to get Parliament to rush this Amendment Bill through at the expense of the rights of Aboriginal People. We understand that there could be problems with some of the ILUAs

signed since 2010, but the McGlade decision identified processes within the existing legislation (s 66B) to deal with these problems while keeping the protective function of the NTA intact.

This is an important matter because it is unfair and discriminatory for Aboriginal property rights protected under the NTA to be lost without the statutory safeguards to ensure that there has been genuine consent. That's the foundation of a fair and just society, that's international law.

This Bill, if passed, will undermine the decision made by the Full Federal Court and will allow outsiders - who have not demonstrated their connection and are not prepared to give evidence in court - to sign away our property rights. The provisions in the Bill will remove checks and leave the NTA open to corruption and standover tactics and it will result in uncertainty about whether consent has been given to any agreement. The effect of this is that for myself and other Aboriginal People it will be like we are having our land and our property stolen all over again.

Please do not support this Bill as it will result in a grave injustice to Aboriginal People and goes against the main object of the Native Title Act which is to "protect native title". (s 3(a) NTA)

I also ask you to consider expanding this Senate Inquiry as this Bill and the McGlade decision raises very important human rights issues for all Aboriginal People across Australia.

I don't believe in the permanent surrender of native title rights, it is an injustice to future generations. The judges in Mabo said native title rights are communal and passed from one generation to the next. These rights come from our Ancestral Dreamtime Spirits and were meant to continue forever. That is the Law my Mother taught me.

Yours sincerely

Albert Corunna