

31 July 2011

Senate Standing Committee on Legal and Constitutional Affairs

Email: legcon.sen@aph.gov.au

Re: Submission of (...) with respect to The Native Title Amendment (Reform) Bill 2011

As an Australian resident 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. Thus, I am 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 (see below), 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 below), the facts of the matter are evident.

FMG: Great Native Title Swindle, part 1
http://www.youtube.com/watch?v=6w_fb7e0WCY

FMG: Great Native Title Swindle, part 2
http://www.youtube.com/watch?v=3xa1eX_E0p8

Radio interview: Merri Fatin interviewing Barrister George Irving.
<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 were having on the community are on view here, as neighbor was pitted against neighbor in a deplorable bid for FMG to secure a deal which is neither fair, nor equitable to the Yindjibarndi people. The way the meeting was run was a shameful debacle; 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 executive officer for YAC. Thus, all outcomes that eventuated from that meeting should be declared null and void.

It is obvious that FMG has gone over the heads of YAC - the appointed representative organisation of the Yindjibarndi people, and done a backyard deal with other members of the community, the Wirulumurra 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. If the deal were to go ahead, this would see the FMG funded break away group being placed in charge over YAC and the Native Title claim. YAC would be left out in the cold, as WMYAC would be the recipients for benefits and compensation for the land which belongs to all the Yindjibarndi people. In this scenario, 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 mediate between the two groups. 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 marginalised people, Aboriginals 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. With the deal currently on the table, the community would see itself deprived of economic and cultural control as long as FMG's presence on Yindjibarndi land continues. This would impact on future generations as changing economic climates are not factored into the agreement.

Professor Ciaran O'Farichealaigh from Queensland's Griffith University points out, 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 moneys 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. (Quoted from Four Corners 18 June 2011).

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 of FMG against the Yindjibarndi; as has 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.

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

I support the proposed amendments in section 31, 31(1)(b), 31(1a), and 31(2). Again, the situation with the Yindjibarndi community and FMG show 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 support section 38 (2) which relates to entitlement in regards to profit sharing, including by way of royalties.

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 allow me to provide my submission in support of the Native Title Amendment (Reform) Bill.

Yours sincerely

Form Letter received from:

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