To the Committee Secretary
Senate Standing Committee on Legal and
Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Re Native Title Amendment (Reform) Bill 2011

Dear Senators

There is a perceived bias of the decision making of the Native Title Tribunal, which commentators say is “pro mining” in it’s judgements.

Now I’m not sure if there is any ideological bias within such and august body, or whether they are simply following the letter of the law as written, however, the lack of the Consent Principle provided to indigenous Traditional Owners of Australia has been determined to have been an error, and if the Native Title legislation continues to allow The Consent principle to be ignored or over-ridden, the Native Title Act in it’s current form must be considered to be ill considered. The suggested amendments appear to be corrective, especially in light of Australia’s endorsement of The Declaration on the Rights of Indigenous Peoples, as it applies to Aboriginal and Torres Strait Islander people within Australia’s jurisdiction.

There are several reasons for the inclusion of the Declaration on the Rights of Indigenous Peoples within Native Title legislation. Even if argued against by miners, the Australian Government has international obligations in this regard, some of which I cite herewith.....

From the Committee for the Elimination of Racial Discrimination (CERD)periodic review 2010

“13. The Committee notes with concern the absence of a legal framework regulating the obligation of Australian corporations at home and overseas whose activities, notably in the extractive sector, when carried out on the traditional territories of Indigenous peoples, have had a negative impact on Indigenous peoples’ rights to land, health, living environment and livelihoods (arts. 2, 4, 5).

In light of the Committee’s general recommendation 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of Australian corporations which negatively impact on the enjoyment of rights of indigenous peoples domestically and overseas and to regulate the extra-territorial activities of Australian corporations abroad. The Committee also encourages the State party to fulfil its commitments under the different international initiatives it supports to advance responsible corporate citizenship.”

As well as these suggested changes to the Native Title Act, further legislation regarding Corporate Governance to fully embrace offshore compliance by Australian based miners may be required, but incorporating such provisions into domestic law will also apply to all foreign based miners negotiating/operating here. Indeed, it is quite telling, that organisations representing the interests of Australia's miners are resistant to the incorporation of the DRIP into Australian Law, whilst Australian based miners continue to smear Australia's international reputation.

Furthermore, and possibly outside of the scope of this Senate Inquiry, should Traditional Owners of Native Title (1993) lands be inhibited from sub-leasing of their lands, such obstacles need to be addressed, so that forms of sustainable development can also be established while the communally owned lands remain intact. Please refer to submissions 9 and 9a here http://www.aph.gov.au/senate/committee/legcon_ctte/nativetitle_two/report/e01.pdf for my earlier plea in this regard.

For the financial opportunities available from the ownership of Native Title lands to be realised, sub leasing needs to be allowed, as well as for a share of profits from activities resultant from the Futures Acts, as per this Amendment, needs to be made law. Otherwise, the perceived pro mining bias remains, if Traditional Owners are inhibited from economic development opportunities outside of royalty payments receivable from extractive industries exploiting their land.

I find it instructive to think that not so long ago, every part of Australia was belonging of and to, hundreds of differing sovereign First Nations. This was disrupted through the legal fiction that these lands were a "Terra Nullius". What's done is done, but in many situations since 1993, The Crown has appeared to make judgements as if some areas of Australia never had Traditional Ownership prior to the British Claim of Sovereignty. Thus a reversing of onus of proof, seems desirable. I appreciate that the property rights of many of the Traditional Owners have been usurped by acts of extinguishment, however, I assert that the cultural and spiritual rights remain. As some say, "Always was, always will be, aboriginal lands".

Even if it not be viable, practical or logistical to re-instate all those lost Property Rights of many of the first nations to their surviving descendants , the spiritual and cultural rights still exist and need to be recognised within legislation. Some effort has been made within the Native Title Act, but it can be interpreted in it's current form to be the equivalent of saying, settler Australians shouldn't be allowed to own televisions, because televisions weren't invented when Britain claimed sovereignty over these lands.

It is noteworthy and contextualising, to remember that it was the House of Lords, both Temporal and Spiritual, as well as the House of Commoners, that sanctioned this Australia we collectively inhabit, as much as it was, the British Sovereign. Thus, to my thinking, things spiritual, temporal and common are within the jurisdiction of Law, and the extinguishment of one aspect does not extinguish those other parts .

I believe it necessary to amend the Native Title Act, as per this Amendment Bill (2011), not just to create greater justice for Aboriginal and Torres Strait Islander people, but also, so

that Australia makes more sense as a nation, and is better able to take it's place in the community of nations with authenticity.

yours faithfully

Graeme Taylor