

Australian Caucus

Agenda Item 9:

NATIVE TITLE ACT - AUSTRALIA

JOINT STATEMENT ON BEHALF OF

**Foundation for Aboriginal and Islander Research Action (FAIRA)
National Native Title Council
Murray Lower Darling River Indigenous Nations (MLDRIN)
Indigenous Peoples Organisation Network Youth Delegation
Marninwarntikura Women's Resource Centre
North Australian Indigenous Land and Sea Management Alliance (NAILSMA)
Menzies School of Health Research
National Aboriginal Community Controlled Health Organisations (NACCHO)
New South Wales Aboriginal Land Council (NSWALC)
University of New South Wales, Indigenous Law Centre
Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner
National Indigenous Higher Education Network**

Thank you Madam Chair.

This intervention is made following a disappointing decision made just last week in the Federal Court of Australia under the Native Title Act.

The Native Title Act was proclaimed in 1993 following the Mabo decision in the High Court of Australia. The Act was a good piece of legislation that allowed for the recognition of native title whilst validating other forms of land tenure. It was a good piece of legislation that walked a fine line in negotiating competing interests with the Common Law of Australia.

Since then the Act has been amended to the detriment of the rights of Indigenous people and to the detriment of the Australian community. Seeking the recognition of Traditional Owners' native title rights is a tortuous struggle that drags on through years of appeals and counter-appeals in the Courts.

In the meantime our old people die and our young people lose a sense of purpose.

The original spirit of the Native Title Act is clearly stated in its preamble:

"It is particularly important to ensure that native title holders are now able to enjoy fully their rights and interests. Their rights and interests under the common law of

Australia need to be significantly supplemented ... A special procedure needs to be available for the just and proper ascertainment of native title rights and interests which will ensure that, if possible, this is done by conciliation, and if not, in a manner that has due regard to their unique character."

The preamble goes on to say that Governments should facilitate negotiations that satisfy claimants' aspirations to their land, including proposals for economic use of the land.

The Native Title Act was proclaimed with full and proper recognition that it was a special measure under both the United Nations Convention on the Elimination of All Forms of Racial Discrimination and Australia's *Racial Discrimination Act 1975*.

The amendments to the Native Title Act in 1998 has received the criticisms of the Committee on the Elimination of Racial Discrimination on a number of occasions and the recent Court ruling for the Noongar people in Western Australia demonstrates the urgent need for the Australian Government to finally address those concerns.

Native title was supposed to be an opportunity for the Indigenous peoples of Australia to benefit from the wealth of the nation. To this end the Native Title Act has failed.

Madam Chair, under the principles of the UN Declaration on the Rights of Indigenous People, the Native Title Act has failed.

The UN Declaration provides for the free, prior and informed consent of Indigenous Peoples for use and access to traditional lands yet under the Native Title Act Australian Governments only pay lip service to these principles so that land can be opened up for mining.

The UN Declaration provides for redress or just, fair and equitable compensation for use of traditionally owned or otherwise occupied lands, yet under the Native Title Act no Traditional Owners have ever been granted compensation or redress.

It is with a sense of optimism that we welcome the new Government of Australia. The Federal Attorney General has signalled a new attitude and new ways of thinking towards native title.

Native Title Representative Bodies are urging the Australian Government to develop a new and changed policy position in relation to litigation in native title. There is no reason, other than the denial of Indigenous rights, that the Government should be opposing claims in Court. It is time for the just settlement of native title across Australia.

The Australian Government is also being urged to consider a national native title policy approach to settling claims by negotiation. The Government should develop a national framework for settling native title claims through agreement. Such a framework should involve issues of compensation and social and economic development.

We have an opportunity now to commence a meaningful national dialogue with the Australian Government to develop a framework for nation building that has real benefits for Indigenous families and their communities. A national framework should include the just settlement of native title with the full recognition of the rights of Traditional Owners and Indigenous people.

For Australia's Indigenous people, native title is a fundamental element of cultural obligation and identity. Native title goes to the core of Aboriginal identity, and it has the potential to be one of the key instruments of nation building. Understood rightly, native title recognises the distinctiveness of cultural rights and provides Indigenous people with opportunities to participate in the mainstream national culture and economy. For the Australian Government, expediting the resolution of native title is both the right thing to do and the effective thing to do.

A core component of any national framework would be the recognition of key principles for agreement making such as free prior and informed consent. Empowering Indigenous people in significant decision-making processes through these key principles will significantly improve the outcomes for Indigenous people in agreement making between mining companies, governments and communities.

RECOMMENDATIONS

1. We request that the PFII seek a response from the State of Australia to the matters raised in this intervention, and the concerns raised by the Committee on the Elimination of Racial Discrimination on the 1998 Amendments to the Native Title Act.
2. The Permanent Forum on Indigenous Issues encourage the State of Australia to ratify the UN Declaration on the Rights of Indigenous Peoples.