



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

NATIVE TITLE AMENDMENT BILL 2009

Second Reading

SPEECH

Monday, 14 September 2009

BY AUTHORITY OF THE SENATE

SPEECH

Date Monday, 14 September 2009
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Questioner
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Source Senate
Proof No
Responder
Question No.

Senator EGGLESTON (Western Australia) (1.40 pm)—Native title is quite a big issue in Western Australia, where I come from, and it has caused an enormous number of problems over the years, largely because of the vagaries—if I might put it that way—in the way native title claims are determined. I think there are something like 100 native title claims current in Western Australia. Over the history of determinations in Western Australia, I think there have been 19 consent determinations and six litigated determinations. The story of native title in Western Australia has not been a happy history and I think the Native Title Amendment Bill 2009 does help bring a little bit of clarity and take it a little step forward, but there are still problems.

This legislation, as has been said, provides a central role to the Federal Court in managing native title claims—that is, instead of the Native Title Tribunal doing so. There is a very long backlog of native title claims. It has been said that a time span of some 30 years would be needed to clear all those claims. But this proposal provides for the Federal Court to actively manage these claims and provides for alternative dispute resolution methodology, which I think is a good thing. There is no doubt that, if left to themselves, lawyers can prolong court proceedings for a very long time. That runs up huge bills in legal fees. Sometimes the participants see it as an advantage to not come to a conclusion.

Native title was introduced in 1964—I think the legislation was passed in 1963. I do not have a problem with the concept of Indigenous people, genuine traditional owners, gaining benefit from the use to which their land is put. Of course, the problem has always been that it is not always possible to prove who the genuine traditional owners are. Sadly, very often other groups who are not the genuine traditional owners seek to become involved in native title negotiations and to gain financial reward by so doing. That points to the fact that one of the central problems that remains with native title legislation is that parties have the right to negotiate without having a proven genuine native title claim. In other words, there may be genuine claimants who put in a claim, but other groups—usually family groups at the periphery—then put in counterclaims as co-traditional owners. That is where there have been enormous rorts in this system. Not only is a lot of time lost but also there is a lot of money paid to lawyers who put up these

spurious claims by groups which claim the right to negotiate. More importantly, a practice has developed over the last decade or so of paying off the spurious claimants as the quickest way of getting them out of the field. This occurs with mining developments, tourist developments and farming developments.

A very famous case in quite recent times in Western Australia related to the Yindjibarndi-Wong-goo-tt-oo claim to the northern end of the Burrup Peninsula, which is where the North West Shelf gas projects are located. The Wong-goo-tt-oo-Yindjibarndi people were the traditional people of Roebourne, which is nearby, and they claimed the northern beaches of the Burrup Peninsula, which were used for recreational purposes by the people of Karratha. The claim was disputed of course, but the then Carpenter government in Western Australia paid the Yindjibarndi-Wong-goo-tt-oo \$15 million or thereabouts to withdraw their claim. They withdrew their claim and it was subsequently proved that they had no legitimate claim whatsoever. They were not in any way traditional owners of the northern end of the Burrup Peninsula. But nobody asked them to repay the money. That group walked off with their \$15 million and that was the end of the story. I am not criticising the Carpenter government in particular, although I think as a government they should have perhaps done some more due-diligence work and been a little bit more cautious. But I suppose, like many other groups in the same situation, they decided they just wanted to end this nuisance claim. This kind of thing has occurred all over Western Australia, particularly where claims over mining areas have been involved. It has occurred where tourist developments have been proposed to go ahead. It has caused enormous problems.

Western Australia being Western Australia, and the north of Western Australia in particular being an area where Aboriginal communities still live and have legitimate claims—one would have to say—to traditional ownership of parcels of land, there is a very great need to expedite the legitimate claims to native title so that developments can go ahead. I think everybody has heard about the enormous problems with housing in some of those boom towns in the Pilbara, like Karratha, Port Hedland, Broome, Newman and so on. The problem with housing in those towns essentially is that, although they are surrounded by endless millions of hectares of empty land, none of

it can be used for housing because it is subject to native title claim. So you have the ridiculous situation that in Karratha, where there is abundant land—just as there is around Port Hedland—there has not been any land free of native title available for housing. The native title owners or claimants, many and various, have not been able to come to an agreement about settling claims. So, in Karratha, which is bursting at the seams with industrial development, you find people sleeping on palliasses next to their four-wheel drives in the car parks of the town because there is no accommodation.

I have a friend who is the CEO of Chubb in the north-west. To accommodate his workers he has to book them into hotels in Exmouth and fly them in and out of Karratha every day because there is simply no accommodation. It is ridiculous that that sort of situation occurs. It is very important that we find a way of expediting native title claims. But, as I said, while this measure, alternative dispute resolution and active management by the Federal Court will certainly speed up claims, we still have not addressed the central issue: the issue of anybody who wishes to negotiate for a native title claim having first to prove that they are the legitimate traditional owners who should be dealt with. The right to negotiate is a very, very important issue, and it always has been in dealing with native title claims.

I was disappointed that, during the years the Howard government had a majority in the Senate, this issue of the right to negotiate was not addressed in the amendments which the Howard government made to the native title legislation, because, as I have said, it is an absolutely key issue and it is at the core of the rorts which have occurred in the native title debate and in the whole saga of native title. Were the issue of the right to negotiate dealt with, then a lot of claims would disappear because, if people were not traditional owners, they would not have the right to negotiate, to get some sort of payment and be seen off by a company or a government paying them off to withdraw their claim so that the legitimate traditional owners could be dealt with. As I have said, that is the most important issue.

I would suggest there is an equally important issue in terms of native title, though, and that is what is done with the money that comes into the communities or traditional owner groups from native title claims when they are settled. Frequently the Indigenous people concerned have very little to show for the millions of dollars that are paid into the communities or to a group who claim to be the traditional owners. I remember, as I have said in this place before, going to an Indigenous bush meeting in the Pilbara, when I first went up there. It was held on the banks of the Coongan River at Marble Bar, with about 300 or

400 Aboriginals talking about the issues that faced them. Their problems were health services, housing and education. Their problems still are those three things: housing, health and education.

Sadly, in many of the communities which have had large native title payouts, very little money has gone through to the ordinary Aboriginal groups, the whole community, in terms of providing better housing, better health services and better education for their people. Many Aboriginal groups are beset with the sorts of problems which beset ATSIC, in which a family group gets control of the community—it is very political; they have the numbers, as it were—and so all the benefits flow to that family group and they all get new Toyotas and better houses and travel first class on Qantas, and the rest of the community very often miss out.

In resolving the problems associated with native title what is needed is some way for the funding from the claims to be paid into an account administered by trustees to ensure that the benefits flow through to the communities in terms of better housing, better health services and better education. Our aim in native title negotiations should be a win for both the Indigenous traditional owners and for the community as a whole so that we do not have situations like the ones that exist in those Pilbara towns at the moment, where there is no land available for housing in spite of the incredible demand. That has meant that rentals in a town like Port Hedland for an ordinary two-bedroom house are in excess of \$2,000 a week. Individual persons cannot afford to pay those rents; only companies can.

As I said, I regard this measure as a step forward. It means that the Federal Court can manage these cases and that alternative dispute resolution will be put in place. But the fact remains that we still have to deal with the issue of the right to negotiate only being given to native title claimants who actually have a proven claim. We also have to think about how the money is dispensed when it is awarded to Indigenous groups.