

Government may change native title laws to uphold 'at-risk' mining deals

Lawyer for Indigenous owners fighting Adani says Coalition's claims a landmark federal court ruling left projects in doubt were 'a beat-up' aimed at nobbling his clients



Adrian Burragubba, a spokesperson for the Wangan and Jagalingou traditional owners who are opposed to Adani's Carmichael coalmine.

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The Turnbull government is considering changing native title laws to uphold mining deals with traditional owners that have been thrown into doubt by a landmark federal court ruling.

But a lawyer for traditional owners fighting Adani's Queensland Carmichael coalmine said claims that hundreds of projects are at risk were "a beat-up" to justify a push for legal changes aimed at nobbling his clients.

The Native Title Tribunal is reviewing existing Indigenous land use agreements (ILUAs) to see if they are affected by last week's court ruling that struck down a deal involving the Noongar people of Western Australia.

The full bench of the federal court found the ILUA was not valid because not all of the Noongar's native title claim representatives had signed it.

A spokesman for the federal attorney general, George Brandis, has told the Australian the government is considering possible amendments to the Native Title Act in response.

The National Native Title Council, which represents 16 Aboriginal land councils, told the newspaper that "upwards of 200" ILUAs and their attached compensation packages could be in jeopardy.

But Colin Hardie, whose Brisbane law firm acts for Wangan and Jagalingou opponents to the Carmichael mine, said the Adani ILUA was one of a handful that would be affected by the federal court ruling.

His clients are using the Noongar ruling to demand the miner scrap its bid to register an ILUA supported by seven of 12 W&J native title claim representatives. They have threatened fresh federal court action unless Adani drop the bid by 14 February. The ILUA is seen as crucial for Adani's prospects of financing the mine.

Hardie said ILUAs already registered with the Native Title Tribunal – even those not signed with unanimous support from native title claim representatives – would be protected under the act.

He said that under section 199C (3) of the act, a registered ILUA could only be struck down by federal court order if it was shown "a party would not have entered into the agreement but for fraud, undue influence or duress by any person".

It was only future ILUAs or those applying for registration with the Native Title Tribunal, such as Adani's, that would now need unanimous support, he said.

ILUAs signed by successful native title holders could continue to be upheld in majority decisions by their prescribed body corporates, Hardie said.

"The attempt to portray the ruling in the Noongar case as the native title system in crisis is a beat-up designed to take the focus away from controversial ILUAs, such as Adani's, which seek to exchange cash and other incentives for the surrender of the rights of traditional owners of country," Hardie said.

"It is not the case that many ILUAs will be affected by the Noongar decision, or that there is now some type of systemic crisis that requires the urgent amendment of the Native Title Act."

Gavin Scott, a native title specialist at Ashurst law firm, said the "alternative argument" to Hardie's view was that the Native Title Tribunal may consider the WA precedent to mean ILUAs without unanimous support were never valid.

Scott said the fact the tribunal was reviewing existing ILUAs showed "they obviously think it's a concern".

“I think what is exercising the tribunal’s mind, and probably people with old ILUAs, is whether the tribunal considers that they shouldn’t have been put there on the register in the first place.

“It’s a nuanced legal point. That’s why the tribunal is obviously being concerned about it.

“I think most of the industry are thinking this could have reaching impacts.”

Hardie, whose Brisbane firm Just Us Lawyers also acts for resource project proponents, said he had spoken with a number of resource companies, including a major gas company, to “reassure them that there is no desire on behalf of our clients to resile from registered ILUAs”.

“We are concerned statements from the Queensland resources council and the national native title body are inflaming the situation and causing both proponents and native title holders to feel their existing arrangements are in jeopardy and that’s not the case,” he said.

“This preoccupation with arguing a whole stack of ILUAs are going to be affected by this decision is just an attempt to hide the truth.

“Any amendment to the legislation that goes through is there to protect the position of Adani or what’s happening in WA. The government should call it that and don’t disguise it by pretending that it’s going to affect anybody else.’