

NEW LAW ON INDIGENOUS LAND USE AGREEMENTS

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Legal Briefings - By **Kat Perincek** and **Daniela Tonon**

The Federal Government has proposed legislation to:

- amend the *Native Title Act 1993* (Cth); and
- validate and make effective certain: Indigenous Land Use Agreements (**ILUAs**), registration of ILUAs and applications for registration of ILUAs.

The Federal Government has introduced the [Native Title Amendment \(Indigenous Land Use Agreements\) Bill 2017](#) in response to the recent decision of the Full Federal Court in *McGlade v Native Title Registrar* [2017] FCAFC 10.

In that decision, the Full Federal Court held that some ILUAs did not meet the requirements of the Native Title Act as they were not signed by each of the persons comprising the 'Registered Native Title Claimant'.

The Bill, if passed, will amend the Native Title Act to:

- allow the broader native title claim group to decide which persons comprising the Registered Native Title Claimant may sign the ILUA, either by nominating particular persons or by specifying a process for determining who is to sign (as part of the process for authorising the making of the ILUA under section 251A of the Native Title Act); and

- in absence of such nomination or determination, requires ILUAs to be signed by a majority of those persons comprising the Registered Native Title Claimant (where the Registered Native Title Claimant must be a party).

The Bill also:

1. validates as ILUAs those 'Area Agreement' ILUAs made (authorised and signed) on or before 2 February 2017 (the date of the *McGlade* decision) which are not signed by all persons comprising the relevant Registered Native Title Claimant, if the ILUA was otherwise valid;
2. makes valid and effective the registration of any such ILUA on the Register of ILUAs;
3. makes valid and effective any application for registration of any such ILUA where the application was made on or before 2 February 2017, if the application was otherwise valid; and
4. makes the specific South West ILUAs the subject of the *McGlade* decision registrable ILUAs.

The Bill was passed by the House of Representatives.

The Senate referred the Bill to a committee which tabled its report on 20 March 2017. The committee recommended that the Bill be passed, subject to removal of some provisions which deal with matters outside the *McGlade* decision. At the time we submitted this article for publication, debate on the Bill in the Senate was yet to resume.

Concerns about the potential implications of *McGlade* for right-to-negotiate agreements made under section 31 of the Native Title Act (which are more widely used than ILUAs) were also raised before the committee. The committee formed the view that the Commonwealth considers whether it is necessary to further amend the Native Title Act to address these concerns, namely to ensure that a 'right to negotiate' agreement under section 31 of the Native Title Act which is not signed by all individuals comprising a Registered Native Title Claimant cannot be invalidated in a similar process to the *McGlade* decision.

If you have any questions, or would like to know how your business might be affected, phone or email the key contacts below.

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