

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
INQUIRY INTO THE NATIVE TITLE AMENDMENT (INDIGENOUS LAND USE
AGREEMENTS) BILL 2017

ATTORNEY-GENERAL'S DEPARTMENT

Questions on notice from public hearing on 13 March 2017, Brisbane, Qld

Senator Siewert asked the following question at the hearing on 13 March 2017:

Senator SIEWERT: Regarding national parks, and we heard earlier today from the council that there is at least one national park that is subject to ILUA provisions. Is there only the one, or are there others?

Mr Anderson : It is not immediately apparent in the data we have been given by the tribunal how many involve national parks.

Senator SIEWERT: Would you be able to find out? Could you take it on notice, or are you just not going to know? I will understand if you say that you are just not going to know.

Mr Anderson : I am happy to take it on notice, but the answer might be that the tribunal cannot tell us. We will come back to you very shortly with an answer one way or another.

The answer to the honourable senator's question is as follows:

The department has consulted the National Native Title Tribunal, however it has not been possible to obtain this information in the time available to report back to the Committee.

The information sought by the Committee is not stored in a searchable format by the Tribunal, and the time needed to manually extract this type of information exceeds the available timeframe.

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Questions on notice from public hearing on 13 March 2017, Brisbane, Qld

Senator Dastyari asked the following question at the hearing on 13 March 2017:

Senator DASTYARI: Mr Anderson, I only have one question. I was wondering if you could give me an overview and perhaps take it more formally on notice for a bit more detail. I just want to get an understanding of what the consultation process was in the preparation of the bill. Obviously there have been discussions around this space for a long period of time, but can you just outline broadly what the consultation process was prior to the draft legislation being presented in the House of Representatives and what different groups were involved in that, and can you take on notice whether perhaps you have a list available of who was or was not consulted.

Mr Anderson : Certainly. The first entity consulted was the National Native Title Council, and they had raised it following the hearing in the *McGlade* case and made suggestions at that time. Following the decision itself being handed down, there were some discussions with the WA government. I am talking here about discussions that the department has been involved in.

Senator DASTYARI: Yes, of course.

Mr Anderson : We had discussions with the WA Department of the Premier and Cabinet. We had discussions with the Native Title Tribunal. We had further discussions with the National Native Title Council. We had discussions with the Queensland Department of Natural Resources and Mines. We had correspondence with the Minerals Council, with NFF and with AgForce Queensland. There was correspondence from the Queensland Premier. We had a teleconference with AgForce Queensland. The department briefed a number of opposition senators and members. We had a teleconference with departments from all states and territories except Tasmania and with the National Native Title Tribunal. We had a further meeting and teleconference with the National Native Title Council.

Senator DASTYARI: It sounds like you are reading from a list. Could you provide that, on notice?

Mr Anderson : I am happy to take that on notice.

The answer to the honourable senator's question is as follows:

The following consultation with the department occurred in the preparation of the bill:

DATE	EVENT/ISSUE/MEETING	REASON
2 February 2017	<i>McGlade</i> judgment handed down by Full Federal Court	
2 February	Correspondence received from National	To discuss the impact of

DATE	EVENT/ISSUE/MEETING	REASON
2017	Native Title Council	McGlade.
2 February 2017	Teleconference with the Western Australian Department of Premier and Cabinet	To discuss the impact of McGlade.
3 February 2017	Teleconference with the National Native Title Council	To discuss the impact of McGlade.
3 February 2017	Teleconference with the National Native Title Tribunal's Acting Native Title Registrar	To discuss the impact of McGlade.
3 February 2017	Teleconference with the Queensland Department of Natural Resources and Mines	To discuss the impact of McGlade.
3 February 2017	Department correspondence to the Minerals Council, National Farmers' Federation and AgForce Queensland	To notify of the McGlade decision and invite to discuss any concerns.
6 February 2017	Premier Palaszczuk writes to Prime Minister	Raised concerns about the impact of the McGlade decision for QLD.
6 February 2017	Teleconference with AgForce Queensland	To discuss the impact of McGlade.
9 February 2017	Department briefing for Senator Patrick Dodson, Hon Mark Dreyfus QC, MP, and the Hon Jason Clare MP	To discuss the impact of McGlade and potential government responses.
9 February 2017	<p>Teleconference with National Native Title Tribunal's Acting Native Title Registrar and relevant state and Territory government departments from:</p> <ul style="list-style-type: none"> • Vic • NSW • WA • SA • NT • Qld 	To discuss the impact of McGlade and potential government responses.

DATE	EVENT/ISSUE/MEETING	REASON
10 February 2017	Department teleconference with the National Native Title Council	To discuss the impact of McGlade, potential government responses and possible teleconference with NNTC members.
15 February 2017	Government introduces Native Title Amendment (Indigenous Land Use Agreements) Bill 2017	

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Questions on notice from public hearing on 13 March 2017, Brisbane, Qld

Senator MacDonald asked the following question at the hearing on 13 March 2017:

CHAIR: Is the letter from the Queensland Premier in any way confidential?

Mr Anderson : I will take that on notice as well.

CHAIR: What did the Queensland Premier say?

Mr Anderson : I do not have a clear recollection of what she said in that letter.

CHAIR: It is reported in the media that the Queensland government is very supportive of this bill, and I would assume that that is what the letter from the premier said.

Mr Anderson : My concern is that I do not have a copy of that letter with me and cannot recall all of the contents in it, so there might have been something else, but in general terms it was supportive of acting quickly to validate all these past ILUAs that might be affected by the McGlade decision.

CHAIR: Can you say whether that was generally the view of the Western Australian government as well?

Mr Anderson : I believe that was the view of the Western Australian government as well.

CHAIR: You mentioned you spoke to all of the departments in various states.

Mr Anderson : We spoke at officials level. I think it is fair to say that Queensland was the government most concerned about it, because the vast majority of the 126 we have identified are concentrated in particular areas of Queensland. My recollection is no government or their officials have opposed this or made comments to us that this should not go ahead, but we will take that on notice.

The answer to the honourable senator's question is as follows:

The letter from the Queensland Premier is not confidential and is reproduced at **Attachment A**. No government or their officials opposed the bill or made comments to the department that it should not go ahead.



Premier of Queensland
Minister for the Arts

For reply please quote: *ENV/CM – TF/17/1539 – DOC/17/26806*

06 FEB 2017

The Honourable Malcolm Turnbull MP
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Dear Prime Minister

On 2 February 2017, the Full Court of the Federal Court handed down a decision in the matter of *McGlade v Native Title Registrar* [2017] FCAFC 10 (the *McGlade* decision). This decision has significant implications for decisions made in good faith under the Commonwealth's *Native Title Act 1993* (the Act) in general and for the future of major Queensland development projects in particular.

One of these is Adani Mining Pty Ltd's Carmichael Coal Mine and Rail project. To satisfy its important native title obligations, Adani has been relying on an Indigenous Land Use Agreement (ILUA) signed with seven of the 12 people who comprise the registered native title claimant. This ILUA is currently lodged for registration with the National Native Title Tribunal.

The *McGlade* decision means that this ILUA, as currently lodged, is unlikely to be registered. This has serious ramifications as infrastructure essential to the viability of the project is now in jeopardy.

In Queensland, the Adani ILUA situation is far from an isolated example. There are many other ILUA's that have been negotiated, authorised and registered since the decision in *QGC Pty Ltd v Bygrave (No 2)* (2010) 189 FCR 412 (the *Bygrave* decision), provided a basis for ILUAs signed by majority of claimants. The *McGlade* decision now casts doubt on the validity of the native title consents for the future acts those ILUAs sought to authorise.

Given this emerging situation, I request that, as a matter of great urgency, your Government moves to amend the Act to confirm that:

1. ILUAs which have been registered in reliance on the *Bygrave* decision are valid and that any future acts done or yet to be done in accordance with any such ILUAs are valid.
2. Any ILUA which has been lodged for registration and which, but for the *McGlade* decision, would meet the requirements for an ILUA under s 24CD(1) and (2a) of the Act, is deemed to meet the requirements for an ILUA for an appropriate transitional period.

In addition, the McGlade decision raises a number of practical issues going forward, including the increased transaction costs for negotiating ILUAs. In this context, amendments that provide for improved practicality in addressing native title should also be considered as part of any legislative response. My Government would be happy to work with yours to identify how best this could be achieved.

I would be grateful if you could clarify your Government's position on this issue at your earliest convenience. I am keen for our Governments to move forward in a sensible and pragmatic manner on this pressing matter.

Yours sincerely

**ANNASTACIA PALASZCZUK MP
PREMIER OF QUEENSLAND
MINISTER FOR THE ARTS**