

Additional comments by Opposition Senators

1.1 The *Native Title Act 1993*, passed by the Keating Government in 1993, is one of the most important suites of laws passed by this Parliament. That Act gave legislative form to the fundamental change to Australian law created by the High Court's decision in *Mabo*. In doing so, the Native Title Act has been instrumental in redefining the relationship between Aboriginal and Torres Strait Islander peoples and the wider Australian nation.

1.2 The law and practice of native title, including in relation to Indigenous Land Use Agreements (ILUAs), has necessarily developed over time. There have been a number of significant court cases, and at times amendments have been made to the Native Title Act to ensure that it better fulfils the important purposes for which it was established.

1.3 Labor members of this Committee acknowledge that the decision of the Full Federal Court in *McGlade v Native Title Registrar & Ors* has far reaching implications for a significant number of existing ILUAs made under the framework of the Native Title Act.

1.4 Having heard evidence from a range of affected Indigenous groups and other stakeholders, Labor accepts that legislative intervention is required to provide certainty by ensuring that existing ILUAs, that were made in accordance with the law as it was until the Court's decision in *McGlade*, are not rendered invalid. In addition, Labor members of this Committee accept that changes to the Native Title Act in this Bill are required to ensure that ILUAs currently under negotiation, as well as future ILUAs, are able to be effectively negotiated.

1.5 However, there are parts of this Bill that are not necessary to remedy the uncertainty created by the *McGlade* decision, specifically the changes to section 251A and 251B of the Native Title Act, and the provisions for validating applications for registration made on or before 2 February 2017 in cases other than in relation to a lack of signatures as required by the *McGlade* ruling. Accordingly, these provisions are not urgent, and Labor has argued for and supports their removal from this Bill.

Lack of consultation

1.6 Labor members of this Committee also wish to express their concern about the process associated with this Bill, which has been rushed as a consequence of the failure of the Government to prepare for the possibility of an adverse ruling in the *McGlade* litigation, despite being warned about the need to prepare for that possibility last year. This has resulted in an extremely rushed consultation process, which, given the importance of native title law to so many Indigenous Australians, is at odds with the Prime Minister's own declaration in his Closing the Gap speech that the Australian Government would be doing things with the Indigenous community rather than to the Indigenous community.

1.7 When Labor was last in Government we recognised that aspects of the Native Title Act should be closely examined to ensure that the Act continued to operate to effectively to serve its key purposes. Those purposes include:

to provide for the recognition and protection of native title; and
to establish ways in which future dealings affecting native title may proceed
and to set standards for those dealings; and
to establish a mechanism for determining claims to native title.

1.8 Labor tasked the Australian Law Reform Commission to look at making improvements to the Native Title Act, including a request to examine and make recommendations in relation to a range of matters, including connection requirements relating to the recognition and scope of native title rights and interests.

1.9 In June 2015 the ALRC tabled its report, which included some 30 recommendations for changes to the Native Title Act.

1.10 It is of concern to Labor that in over 18 months the Government has still not responded to the ALRC's Report, and Labor calls for the Government to respond to that report as soon as practicable. That Government response should then be subject to a period of extensive consultation with affected individual and communities, before any changes are made to the law itself.

Senator Louise Pratt
Deputy Chair