



National
Native Title
Tribunal

Authorisation of ILUAs under the new s 251A

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Overview of Presentation

- What were the amendments?
 - Section 24CD(2)
 - Section 251A
- Supporting material
 - Certified ILUAs
 - Non-certified ILUAs
- What matters must the required material address?
- Registration of an ILUA in light of the new provisions
- Is it an ILUA? Section 24CD
- Material in support of a nomination process or a specified process
- The new provisions in practice

What were the amendments?

- Substantial amendment to:
 - s 24CD
 - s 251A
- Minor amendment to:
 - s 24CG(3)(b)
 - s 251B
 - s 253
- Those agreements affected:
 - only area agreements
 - only those where there is a registered native title claim covering part of the ILUA area

The amendments to s 24CD

- The OLD:

The **native title group** consists of...

(a) *all registered native title claimants in relation to land or waters in the area*

- The NEW:

The **native title group** consists of...

(a) *for each registered native title claimant in relation to land or waters in the area:*

- (i) *if a person or persons have been nominated or determined under subsection 251A(2) by the native title claim group concerned to be a party to the agreement – that person or those persons; or*
- (ii) *if no persons have been nominated or determined under subsection 251A(2) by the native title claim group concerned to be a party to the agreement – a majority of the persons who comprise the registered native title claimant*

The amendments to s 251A

- Section 251A(2)

Without limiting subsection (1), when authorising the making of the agreement, a native title claim group may do either or both of the following:

- (a) nominate one or more of the persons who comprise the registered native title claimant for the group to be a party or parties to the agreement;*
- (b) specify a process for determining which of the persons who comprise the registered native title claimant for the group is to be a party, or are to be parties, to the agreement.*

Supporting material – s 24CG(3)

Also, the application must either:

- (a) have been certified by all representative Aboriginal/Torres Strait Islander bodies for the area in performing their functions under paragraph 203BE(1)(b) in relation to the area; or*
- (b) include a statement to the effect that the following requirements have been met:*
 - (i) all reasonable efforts have been made... to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified;*
 - (ii) all of the persons so identified have authorised the making of the agreement;*

together with a further statement briefly setting out the grounds on which the Registrar should be satisfied that the requirements are met.

Certified agreements

- Section 203BE(6)

A certification of an application for registration of an indigenous land use agreement by a representative body must:

- (a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (5)(a) and (b) have been met; and*
- (b) briefly set out the body's reasons for being of that opinion.*

Non-certified agreements

- The second condition of registration – s 24CL(3)

The second condition of registration is that the Registrar considers that the requirements in paragraph 24CG(3)(b) (in summary, relating to identifying native title holders and ensuring that they have authorised the making of the agreement) have been met.

What must the material address?

- Section 251A(1)

For the purposes of this Act, persons holding native title in relation to land or waters in the area covered by an indigenous land use agreement authorise the making of the agreement if:

- (a) where there is a process of decision-making that, under the traditional laws and customs of the persons who hold or may hold the common or group rights comprising the native title, must be complied with in relation to authorising things of that kind – the persons authorise the making of the agreement in accordance with that process; or*
- (b) where there is no such process – the persons authorise the making of the agreement in accordance with a process of decision-making agreed to and adopted, by the persons who hold or may hold the common or group rights comprising the native title, in relation to authorising the making of the agreement or things of that kind.*

Registration in light of the amendments

- Section 24CA

An agreement meeting the requirements of sections 24CB to 24CE is an indigenous land use agreement.

Is it an ILUA? Section 24CD

- A decision at the end of the notice period – *QGC v Bygrave (No 2)* [2010] FCA 1019 at [27] to [31]
- A majority of RNTC persons signing the agreement is the 'default position' to satisfy s 24CD

Information about a nomination or specified process

- The focus of s 24CD is mandatory parties
- Any reliance on a nomination process or a specified process must address:
 - who the particular persons nominated or determined were
 - how they were nominated OR
 - how they met the relevant criteria under the specified process
- Information linking the signatories with the process relied upon

What does the material look like?

- Additional to a certificate or authorisation statement
- Merely needs to accompany the application for registration
- Could include:
 - copies of the minutes of authorisation meetings;
 - copies of resolutions passed at a meeting;
 - affidavit material from the legal representative for the group.

Summary – the matters to be addressed

Without this information, s 24CD may not be met...

- What the nomination or specified process decided upon by the group involved
- Who the particular RNTC persons nominated or determined through a specified process were
- May require information about how the nominated/determined persons accepted the role as a party to the agreement

In practice – insufficient material

1. A certified area agreement where there are two native title group persons who have signed the ILUA and the certificate merely states: 'At the authorisation meeting, the group used their agreed to and adopted decision-making process to nominate two of the eight persons comprising the registered native title claimant to be a party to the agreement'...with no further information anywhere in the application for registration identifying who those persons were.
2. A non-certified area agreement where there is one native title group person who has signed the ILUA, and the only information about authorisation is a statement in an attachment to the application that: 'At the authorisation meeting, the group passed a resolution that the most senior female member of the RNTC was to be a party to the agreement'... with no further information about who the group considered that person to be, or information about the identity/age/seniority of the person who has signed the agreement.

Questions and more info..

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