Parliamentary Committees

Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014

Report No. 44
Agriculture, Resources and Environment Committee
August 2014

Parliamentary Committees

Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014

Report No. 44

Agriculture, Resources and Environment Committee

August 2014

Agriculture, Resources and Environment Committee

Chair	Mr Ian Rickuss MP, Member for Lockyer
Deputy Chair	Ms Jackie Trad MP, Member for South Brisbane
Members	Mr Jason Costigan MP, Member for Whitsunday
	Mr Sam Cox MP, Member for Thuringowa
	Mr Shane Knuth MP, Member for Dalrymple
	Mrs Anne Maddern MP, Member for Maryborough
	Mr Michael Trout MP, Member for Barron River
Staff	Mr Rob Hansen, Research Director
	Mrs Megan Johns, Principal Research Officer
	Ms Rhia Campillo, Executive Assistant
Technical Scrutiny Secretariat	Mr Peter Rogers, Acting Research Director
	Mr Michael Gorringe, Principal Research Officer
	Ms Kellie Moule, Principal Research Officer
	Ms Tamara Vitale, Executive Assistant
Contact details	Agriculture, Resources and Environment Committee Parliament House George Street Brisbane Qld 4000
Telephone	07 3406 7908
Fax	07 3406 7070
Email	arec@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/arec

Acknowledgements

The committee thanks submitters and the officers who briefed the committee on the Bill.

Contents

Abbreviations

BEL	Bamaga Enterprises Limited
CALD	Culturally and linguistically diverse
CYLCAC	Cape York Land Council Aboriginal Corporation
DBA	Declared beach area
DOGIT	Deed of grant in trust
DNRM	Department of Natural Resources and Mines
FLPs	Fundamental Legislative Principles
ILUA	Indigenous Land Use Agreement
ILGAs	Indigenous local government areas
KALT	Kaurareg Aboriginal Land Trust
LGAQ	Local Government Association of Queensland
LSA	*Legislative Standards Act 1992*
NPA	Northern Peninsula Area
NQLC	North Queensland Land Council
PBC	Prescribed bodies corporate
QLS	Queensland Law Society
QPC	Queensland Parliamentary Council
RNTBC	Registered Native Title Body Corporate
TOs	Traditional owners
TSIRC	Torres Strait Islands Regional Council
TSRA	Torres Strait Regional Authority

Chair's foreword

The Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014 is part of the LNP government's commitment to remove barriers to social and economic development in Aboriginal and Torres Strait Islander communities. This Bill implements the second tranche of reforms to land tenure arrangements to provide communities with the same access to freehold title as available throughout Queensland.

Surveying the urban areas and implementing town planning for the communities was the first tranche of the land reform in town areas of communities. With surveying and town planning programs well underway, communities are now in a position to provide the option of freehold if the community believes it will be of benefit to them.

Importantly the legislation ensures all of the decision making is left to the traditional owners and community members in partnership with the trustees and councils and provides the flexibility for communities to determine how and when to provide freehold. For those communities who may decide that at this point in time freehold is not an option for them, the Bill also implements the government's commitment to simplify and streamline leasing arrangement for Aboriginal and Torres Strait Islander land. As a complete package the Bill represents a significant opportunity for Aboriginal and Torres Strait Island people to achieve home ownership on their traditional lands and pursue economic development interests.

Accordingly I believe that this legislation will prove beneficial for communities well into the future and is a turning point in the way the state engages Indigenous communities in their own economic future.

The committee were fortunate to visit a number of Aboriginal and Torres Strait Island communities as part of its inquiry and heard from over 220 community members including elders, traditional and historic owners, and council representatives. The committee wishes to express its appreciation to the Mayors, Councillors, traditional owners and residents of these communities for the warm welcome received at the community forums. I would also like to note in relation to the proposed freehold 'pilot program' that a number of trustees expressed a keen interest in working with the Queensland government to explore the opportunities of freehold for their communities. It is my personal recommendation, if I may be so bold, that the government considers a pilot program in the Torres Strait Island Regional Council area, who through Mayor Fred Gela, expressed interest in the pilot program.

I commend the report to the house.

Ian Rickuss MP
Chair

August 2014

Recommendations

The committee recommends that the Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014 be passed with the amendments recommended in this report.

The committee recommends that, if the Bill is passed and prior to the commencement of the Act, the Department of Natural Resources and Mines devise and implement an education and engagement program across all 34 communities that the Bill applies to.
The purpose of this program is to increase knowledge and understanding about the objectives of freehold and the freehold model established in the Bill. This engagement and education program should involve face-to-face meetings in communities with elders, traditional owners, Native title bodies and councils.

The committee recommends that the Bill be amended to provide for a community arbitration process as part of the freehold model to hear disputes or appeals relevant to the making of the freehold instrument or the allocation of available land. This arbitration process should be independent of trustees, involve members and traditional owners, and should consider all disputes prior to referral to the Land Court or judicial review.

The committee recommends that the Bill be amended to allow community-based Indigenous-owned corporations registered under the Commonwealth *Corporations (Aboriginal and Torres Strait Islander) Act 2006* to be eligible for the grant of freehold under the allocation process for available land where there are no interest holders.

The committee recommends that the Bill be amended to include the option for a special Ministerial grant of freehold for community land outside of township 'urban' areas where there is agreement from all relevant parties and demonstration that the necessary preconditions for approval of the grant have been met.

That the Minister for Natural Resources and Mines reports biennially to the House on the grant of freehold tenure in Indigenous communities.
Minister for Natural Resources and Mines

That the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs reports biennially to the House on the Freehold Pilot Program and other government initiatives supporting home ownership in Indigenous communities.
Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs

Recommendation 8 **27**

The committee recommends that the Bill be amended under new section 431U and/or 431V to include that the Minister be required to ensure that all reasonable steps are taken to negotiate with and resolve beach access disputes directly with the affected property owners prior to the declaration of a beach access area.

Points for clarification

Point for clarification **14**

The committee invites the Minister for Natural Resources and Mines and the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs to detail for the information of honourable members the funding that will be provided for the freehold pilot program, how the program will be delivered, how pilot communities will be selected, and how the pilot program may inform the development of improvements to the freehold model in the future.

Point for clarification **17**

The committee requests the Minister for Natural Resources and Mines to outline for the information of honourable members what evidence relating to consultation and community consensus he will consider when approving freehold instruments to grant freehold tenure.

Point for clarification **21**

The committee invites the Minister for Natural Resources and Mines to explain to honourable members the basis for not including Native title holders in the definition of 'interest holders' for the purposes of the initial grant of freehold, and to outline how aspects of the freehold model could be applied to protect the interests of Native title holders and provide eligibility to Native title holders.

Point for clarification **29**

The committee requests that the Minister for Natural Resources and Mines reports to honourable members the outcomes of his department's consultation with the Office of Queensland Parliamentary Council and what, if any, amendments will be made to the Bill in relation to an owner's potential liability over a declared beach access area.

Point for clarification **30**

The committee invites that the Minister to clarify for the House that the concerns raised by LGAQ about maintenance responsibilities over declared beach areas have been resolved.

1. Introduction

Role of the committee

The Agriculture, Resources and Environment Committee is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.[1]

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles.[2]

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of that consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

Fundamental legislative principles (FLPs) are defined in Section 4 of the *Legislative Standards Act 1992* as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The referral

On 8 May 2014, Hon Andrew Cripps MP, Minister for Natural Resources and Mines, introduced the Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014. The Legislative Assembly referred the Bill to the Agriculture, Resources and Environment Committee for examination. The committee was given until 11 August 2014 to table its report to the House, in accordance with SO 136(1).

The committee's processes

In its examination of the Bill, the committee:

- identified and consulted with likely stakeholders on the Bill
- sought advice from the Department of Natural Resources and Mines (DNRM) on the policy drivers for each amendment proposed and the consultation undertaken
- invited public submissions on the Bill. The committee accepted 13 written submissions.
- held nine public hearings (in Cairns, Yarrabah, Woorabinda, Mornington Island, Napranum, Injinoo, Hammond Island, Cherbourg, and Brisbane) attended by more than 220 community residents
- sought expert advice on possible fundamental legislative principle issues with the Bill and advice from DNRM on the issues raised, and
- convened public briefings with departmental officers on 21 May and 6 August 2014.

A list of submitters is at **Appendix A**.

The briefing officers and hearing witnesses who assisted the committee are listed at **Appendix B**.

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.
[2] Section 93 of the *Parliament of Queensland Act 2001*.

2. Background information on key objectives of the Bill

Providing Freehold and Lease Simplification

Land tenure in Queensland's Indigenous communities is complex, characterised by a mix of current and legacy land tenure regimes.

In general Queensland's remote and regional Aboriginal and Torres Strait Islander communities are located on a type of land tenure called Aboriginal and Torres Strait Islander deed of grant in trust (DOGIT) which is land transferred under the *Land Act 1994* and held by the trustee for the benefit of the community. The exceptions to this are Mer (Murray) Island which is reserve land held in trust for the benefit of the community, and Aurukun where land is held by the trustee under a shire lease.[3]

Some communities have been granted a type of freehold known as Aboriginal or Torres Strait Islander Freehold. This type of land tenure, granted under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*, is transferred land held by designated Aboriginal corporations for the benefit of Aboriginal or Torres Strait Islander people particularly concerned with the land and their ancestors and descendants or the Native title holders of the land. The title to the transferred land is 'inalienable freehold', which means: the land has certain conditions placed over it including that it cannot be sold or mortgaged; there are restrictions regarding leasing on the land; and Native title interests are not extinguished by the grant. This type of tenure applies to Mornington Island, which is wholly located on Aboriginal freehold; and Hope Vale, Injinoo and Lockhart River, which have a mixture of DOGIT and Aboriginal freehold land.

In many cases Native title has been declared over indigenous community lands and is also a consideration in progressing private land rights and home ownership. Native title provides recognition of rights and interests of Indigenous peoples to their traditional and customary lands. As Native title is a collective community right, it is not generally consistent with the granting of individual private freehold or leasehold rights. Accordingly Indigenous Land Use Agreements (ILUAs) are used to resolve, and in some cases extinguish or surrender, Native title over particular land areas.

Such land tenure arrangements as outlined above mean that ordinary freehold title is not widely available to Aboriginal people and Torres Strait Islanders wishing to own their own homes and pursue commercial interests in their communities.[4] Currently these aspirations can only be addressed by leasing.

The *Aboriginal and Torres Strait Islanders (Land Holding) Act 1985* provided for the granting of perpetual leases for home ownership, and term leases for commercial purposes, to community residents.[5]. This act was superseded in 1991 by the *Aboriginal Land Act 1991* and the Torres Strait Islander Land Act 1991, which are now the principal legislation for leasing on Aboriginal and Torres

[3] The remaining small area of 'shire lease' land at Aurukun is anticipated to be transferred to Aboriginal Freehold under the *Aboriginal Land Act 1991* before the end of 2014.

[4] Aboriginal or Torres Strait Islander (inalienable) Freehold does not of itself prevent private home ownership, and was in fact the first attempt by the state government to help Indigenous people realise this aspiration. In most cases, private ownership on Aboriginal or Torres Strait Islander Freehold still requires land surveying and negotiation of an ILUA for extinguishment of native title which have largely been the preventative factors.

[5] Leases granted under the 1985 Land Holding Act are more commonly known as *'Land Holding Act' or 'Katter' leases.* However in 1991, the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* were introduced into the Queensland Parliament as the new principal pieces of legislation applying to Indigenous land and included provisions dealing with indigenous land leasing. The introduction of these Acts created issues for existing lease applications and also meant that no new applications could be made. The *Aboriginal and Torres Strait Islander Land Holding Act 2013* received assent in February 2013. The 2013 Land Holding Act seeks to address and resolve leasing matters outstanding under the 1985 Land Holding Act. To the extent possible, the 2013 legislation also aligns with the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*, which are now the principal legislation for leasing on Aboriginal and Torres Strait Islander lands.

Strait Islander lands. In 2008, the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* were amended to introduce lease terms up to 99 years for particular lease purposes (which had previously been generally limited to a 30 year term). Perpetual leases, like Aboriginal and Torres Strait Islander freehold, do not convey any individual property rights, but are considered sufficient tenure for the purposes of home ownership and home finance. This is noted on the DNRM website where it states that "The 99-year home ownership lease (sometimes called a private residential lease) provides an opportunity for Aboriginal and Torres Strait Islander people to purchase their own home on Indigenous communal lands".[6] Perpetual leasing has, to date, been the preferred approach as it allows for home ownership whilst balancing the interests of the Indigenous people to protect their customary lands for future generations, and has successfully facilitated private home ownership in Aboriginal communities in other Australian states and territories.

Leasing arrangements prescribed under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*, are also considered to be complex and overly prescriptive requiring, for example Ministerial approval and legislatively fixed terms.

Home ownership in Indigenous communities

Home ownership rates for Indigenous households remain low in Indigenous local government areas (ILGAs). The table below presents information on rates of home ownership and rental in Queensland's Aboriginal and Torres Strait Island shires in 2011. From the table:

- Five per cent of private dwellings across the 17 ILGAs of Queensland are privately owned (compared to a rate of nearly 64 per cent in non-indigenous local government areas)
- 91 per cent of private dwelling located in ILGAs are rented. Of these the majority are either state housing authority dwellings (52.3 per cent) or housing cooperative/community owned dwellings (30.48 per cent)
- There is no private ownership (as of 2011 census date) in the communities of Cherbourg, Kowanyama, Lockhart River, Napranum, Pormpuraaw and Wujal Wujal
- The ILGAs of Torres Shire (13.9 per cent), Doomadgee (9.9 per cent) and Yarrabah (8.3 per cent) have the highest rates of private home ownership.[7]

Rates of ownership and rental for dwellings, Queensland, by Indigenous Local Government Area, and Non-Indigenous areas, 2011

Local Government Area	Owned	Rented	Other
	%	%	%
Aurukun (S)	1.3	97.3	1.3
Cherbourg (S)	0.0	100.0	0.0
Doomadgee (S)	9.9	86.9	3.3
Hope Vale (S)	2.6	96.1	1.3
Kowanyama (S)	0.0	100.0	0.0
Lockhart River (S)	0.0	97.3	2.7
Mapoon (S)	4.1	87.8	8.1

[6] As is the case with Aboriginal or Torres Strait Islander (inalienable) Freehold, limited land surveying and negotiation of an ILUA for extinguishment of native title have largely been the preventative factors to realisation of home ownership under perpetual leasehold tenure. The cost of making applications for perpetual home ownership leases has also proven prohibitive for many.

[7] Hope Vale has recently finalised the first stage of its Hope Vale Valley Estate where, to date, five private freehold dwellings have been completed and an additional seven dwellings are currently under construction to be completed later this year).

Mornington (S)	1.2	94.0	4.8
Napranum (S)	0.0	100.0	0.0
Northern Peninsula Area (R)	2.7	94.1	3.2
Palm Island (S)	4.4	92.8	2.8
Pormpuraaw (S)	0.0	100.0	0.0
Torres (S)	13.9	77.5	8.6
Torres Strait Island (R)	5.3	90.8	3.9
Woorabinda (S)	1.3	95.6	3.1
Wujal Wujal (S)	0.0	100.0	0.0
Yarrabah (S)	8.3	87.9	3.8
All Indigenous Communities	**5.0**	**91.4**	**3.6**
All Non-Indigenous Communities	**63.7**	**33.0**	**3.3**

Source: Australian Bureau of Statistics 1380.0.55.010 - Perspectives on Regional Australia: Home Ownership in Local Government Areas, July 2013

Barriers to home ownership

In addition to land tenure, other challenges faced by individuals/communities with respect to home ownership in indigenous communities include:

- **Cost and affordability:** unemployment and social disadvantage are more prevalent in Indigenous communities, and this restricts the financial capacity of many residents to meet costs of purchasing a home, and the ongoing maintenance and servicing costs associated with home ownership.
- **Cost of maintenance:** the cost of maintaining housing is higher in Indigenous communities due to remoteness and the lack of availability of trade services. In addition, potential homeowners often lack the skills to do property maintenance themselves.
- **Culture and awareness of the responsibilities associated with home ownership:** residents in Indigenous communities may have lived in rental housing all their lives. Residents who are confronted with the opportunity to purchase and own property for the first time will likely require education and support in the initial stages.
- **Policy and planning provisions:** a range of policy and planning issues have also posed challenges to home ownership. They include: the lack of surveyed land/lots in DOGIT communities; land registry issues and delays, the absence of, or incomplete, town plans; planning provisions within communities; the lack of skills and resources within indigenous councils to progress land administration issues; and delays in the finalisation of ILUAs.

Land Valuations

Statutory land valuations are provided for under the *Land Valuation Act 2010*. Specifically, Section 72 of the Act requires that the Valuer-General provide annual valuations of all land in a local government area:

> ***S 72 General duty to make annual valuations***
>
> *(1) The valuer-general must—*
>
> *(a) make an annual valuation of all land in a local government area;*

Currently the State does not provide ratings valuations for the land that the Bill applies. This is because ILGAs are exempt under the Land Valuation Act 2010.

Schedule 1 – dictionary

local government area—

1 Local government area does not include the area of—

(a) a local government that was a community government under the repealed Local Government (Community Government Areas) Act 2004; or

(b) the Northern Peninsula Area Regional Council; or

(c) the Torres Strait Island Regional Council.

Additionally, Indigenous regional and shire councils are exempt under the Local Government Regulation 2012 and, therefore, cannot set rates. Councils may, however, recover costs through service charges and levies.

Beach Access

Generally beaches in Queensland are owned and managed by the State or local government. Beaches are accessed by members of the public for recreation purposes or to move from one place to another. Beach access can be essential to accessing national parks, beach camping areas and recreational fishing spots. In addition, beaches may be accessed or used as a vehicle thoroughfare by tourism operators and commercial beach fishers.[8]

The public tends to expect to have access to Queensland beaches and State policy reinforces this via the Coastal Management Plan for Queensland. The Plan states that 'public access and use of the coast is maintained or enhanced for current and future generations'. Nevertheless, the Coastal Management Plan does not underpin nor give the Queensland public a right of public access to our beaches.

Queensland Government policy, similarly to other Australian governments, has been to avoid allowing any private ownership of beaches and, usually, a private property is separated from the coastline by reserves or esplanades.

Once the sand area of a 'beach' has migrated onto private freehold or leasehold land, the owner can lawfully prevent public access across the beach area. In addition, these land owners (and their respective insurers) may incur a significant public liability risk if the public has access to their private property. This is the situation which the proposed laws in the above Bill seek to address where the circumstances require.

Consultation by Government

Providing freehold

The Explanatory Notes outline that the following consultation activities were undertaken in relation to provisions of the Bill related to the freehold option for lands in DOGIT communities: [9]

- The Premier wrote to the Mayors of Aboriginal and Torres Strait Islander communities and other relevant stakeholders on 16 November 2012 advising them of the Government's decision to provide them with the option of freehold title for their community. A discussion paper was enclosed with the letter from the Premier, and also released for public comment.

[8] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 3.

[9] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 15-16.

- Between December 2012 and April 2013, targeted, face-to-face consultation was undertaken by the Assistant Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs with the relevant Aboriginal and Torres Strait Islander Councils. Face-to-face consultation was also undertaken by the Assistant Minister with all the Native Title Representative Bodies; the Chief Executive Officers of the Aboriginal and Indigenous Regional Councils; and the Native title prescribed bodies corporate in the Torres Strait.
- DNRM placed advertisements in the relevant local newspapers during March 2013 seeking submissions in response to the discussion paper.
- A consultation draft of the Bill and accompanying explanatory material were released for public consultation in December 2013 with a closing date for comment of 28 February 2014. The department received 13 submissions in response to the release of the consultation draft of the Bill. The Explanatory Notes state that 'there was general in-principle support for making freehold available in Indigenous communities'.[10]
- DNRM consulted with the following stakeholders: Indigenous local councils through the Local Government Association of Queensland (LGAQ) and individual meetings with Torres Strait Native Title Prescribed Bodies Corporate(PBCs) and the Torres Strait Regional Authority's Native Title Office; Torres Strait Island Regional Council; the North Queensland Land Council and Yarrabah Aboriginal Shire Council; Cape York Regional Organisations; and the Queensland South, Torres Strait Island and Horn Island registered Native title bodies corporates.

Lease simplification

In February 2013, DNRM wrote to all Trustees of Aboriginal and Torres Strait Islander lands to explain the leasing simplification proposal, and to canvas the views of trustees.[11]

Valuation and rating

There has been no public consultation on introducing valuation and ratings into ILGAs. However, the committee notes that a number of Indigenous local governments have been requesting this change for a number of years.[12]

Repeal of the Aurukun and Mornington Shire Leases Act 1978

Aurukun and Mornington Island local governments have been advised of the proposed repeal of the *Aurukun and Mornington Shire Leases Act 1978.*[13]

Right of public access to the beach

The department consulted the Local Government Association of Queensland (LGAQ) and the Gladstone Regional Council on the beach access amendments in the Bill. The LGAQ, in turn, sought views from the other key local governments that have right line boundary blocks that extend to the high water mark.

Locals and landholders who are immediately affected by implementation of the proposal at Rules Beach (two owners of three separate lots) were also consulted by DNRM. The Explanatory Notes

[10] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 17.
[11] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 17.
[12] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 17.
[13] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 17.

state that 'The Rules Beach landholders who may be directly affected by implementation of the proposal at Rules Beach (two owners of three separate lots) were reluctant to participate at this time'.[14]

It is not clear to the committee whether the department consulted with the 250 or more other landholders the department estimates may be affected by the introduction of the beach access provisions proposed in the Bill.

[14] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 18.

3. Objectives and Key provisions of the Bill

Policy objectives of the Bill

The primary objective of the Bill is to introduce changes to the land tenure system for Aboriginal and Torres Strait Islander communities to allow for the option of converting community 'trust' land into 'ordinary freehold title', thereby giving Aboriginal and Torres Strait Islander people the opportunity to own land and homes on their traditional lands. In addition, the Bill:

- simplifies the leasing framework that applies to Indigenous land to reduce the regulatory burden on trustees and lessees
- amends the *Land Valuation Act 2010* to enable Indigenous Local Government Areas to be subject to statutory valuations
- provides for the repeal of the *Aurukun and Mornington Shire Leases Act 1978* upon transfer under the *Aboriginal Land Act 1991* of the remaining shire lease land, and
- amends the *Land Act 1994* to provide the Minister with the power to declare, on a case by case basis, a conditional right of public access over private land where, due to erosion, the access along the area of beach has been compromised by the private ownership of the beach area.

Significant provisions of the Bill

Chapter 2, Parts 1 to 7 provide for the amendments to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to give effect to the introduction of ordinary freehold land tenure and the simplification of leasing framework which applies to indigenous land.

Clauses 5 and 35 of the Bill insert new Part 2A into the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

The new **Part 2A** provides that available land may be granted in freehold under the *Land Act 1994* and the steps and processes the trustee for the available land must carry out to allocate land for the granting of freehold.

Clauses 6-12, 14-22, 24 and 36-41, 43-49, 51 outline various omissions and amendments, including a new Part 10 which amends provisions dealing with the leasing of Aboriginal and Torres Strait Islander land, to give effect to the new categories of lease and the simplified processes for lease administration and approval.

Clauses 13 and 42 amends section 179(1) and s135(1) to provide that this section also applies to decisions by the trustee in relation to consultation about the making of a freehold instrument.

Clause 23 and 50 makes a number of minor and consequential amendments to section 288 to reflect new provisions in new Part 2A for providing freehold. In particular, this clause clarifies that if a trustee receives an amount for a social housing dwelling on available land, the trustee must use this amount for housing services for Aboriginal people concerned with the land held by the trustee.

The transitional provisions (**clauses 25 and 52** of the Bill) provide for existing leases and applications for leases under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* to be treated as if they are leases or applications for the same term under the Abo*riginal Land Act 1991* or *Torres Strait Islander Land Act 1991*, as amended by the Bill.

Clause 26 and 53 makes minor and consequential amendments to the dictionary terms to reflect new freehold provisions of Part 2A and amendments to Part 10 for the leasing of Aboriginal land.

Clauses 27-30 and 54-56 provide for amendment of the Aboriginal Land Regulation 2011 and the Torres Strait Islander Land Regulation 2011 to remove consultation provisions for a code of conduct

for mining leases; and to insert new sections to prescribe the type of land that may be included in a model freehold schedule (i.e. the type of land which can be freehold option land).

Clauses 31-32 amends the *Land Act 1994* to provide that the Governor-in-Council may also grant approved land in fee simple, and insert two new sections to provide that a grant can only be made to the applicant of that land consistent with new provisions relating to the grant of freehold under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991.*

Clause 57 provides for the repeal of the *Aurukun and Mornington Shire Leases Act 1978* on a date to be fixed by proclamation.

Chapter 3, **clauses 59-62** provides for the amendment of the *Land Act 1994* to provide the Minister with the power to declare, on a case by case basis, a conditional right of public access over private land where, due to erosion, the access along the area of beach has been compromised by the private ownership of the beach area.

Clause 61 of the Bill inserts a new Chapter 7, Part 3B in the *Land Act 1994* that would apply to land in a coastal area that includes within its boundaries land that has effectively become beach.

Chapter 4 amends the *Land Valuation Act 2010* to allow valuations to be carried out in Indigenous local government areas and for the Act to apply to those areas subject to new section 262.

Clause 64 inserts new section 262 into the Act. New section 262 provides that the Act will not apply to an Indigenous local government area until 30 June 2016. Despite this, on or before 30 June 2016, the Valuer-General may do all things necessary to be done for the purposes of applying the Act to an Indigenous local government on or after 30 June 2016 and complying with a requirement of the Act that takes effect on and after 30 June 2016. This may include carrying out statutory valuations and establishing Indigenous government areas on the valuation roll. New section 262 also provides a definition of an Indigenous local government area.

Clause 65 replaces the existing definition of local government area with a new definition. The new definition does not exclude an Indigenous local government area. This will allow valuations to be carried out in Indigenous local government areas and for the Act to apply to those areas subject to new section 262.

Should the Bill be Passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. After examining the form and policy intent of the Bill, the committee determined that the Bill should be passed with the amendments recommended in this report.

Recommendation 1

The committee recommends that the Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014 be passed with the amendments recommended in this report.

4. Examination of the Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014

The committee considered a range of issues about the Bill that were raised in written submissions and in evidence at the committee's public hearings. A summary of issues raised in submissions, with additional advice provided by DNRM in response, is at **Appendix C** of this report.

The committee is satisfied that the department's advice has resolved the majority of issues raised.

The following sections discuss issues arising from the examination of the Bill that have not been resolved and which the committee wishes to draw to the attention of honourable members.

Providing Freehold

Consultation and Community Engagement

a) Consultation on the freehold model and Bill

Despite there being broad in-principle support for the freehold option, concern was raised in the majority of submissions and in evidence at the committee's public hearings that there has been very little direct consultation and engagement with traditional owners, residents and community representative groups within the Aboriginal and Torres Strait Islands communities by the Government prior to the introduction of the Bill.

As outlined in the Explanatory Notes, and confirmed by DNRM at the public briefing on 21 May 2014, consultation was undertaken with the CEOs of the Aboriginal and Torres Strait land councils, Native title representative bodies and Indigenous local councils through the LGAQ. The department also released a discussion paper and invited public submissions from interested members of the public.

Ms Judith Jensen, Executive Director, Aboriginal and Torres Strait Islander Land Services, DNRM outlined the results of consultation undertaken at the public briefing on 21 May 2014:

> *In total, there were 27 submissions received, of which 13 were received in response to the consultation draft bill that was released… In that round of consultation, of the 13 submissions: eight supported the bill in general, two did not support freehold being made available, and three provided no general comment on the bill.* [15]

In response to the committee's questions, Mr Ken Carse, Principal Policy Officer with DNRM, further explained about the extent of consultation:

> *I think we would say that we have consulted, apart from doing individual consultation, all the stakeholders are the ones who would have concerns; so all the Indigenous groups, Native title prescribed bodies, corporates in the Torres Strait, so they are the actually Native title holders. I think the main thing is, though, that this is optional, so if there is any concern about it they simply do not take it up. We have consulted quite broadly with those groups.*[16]

Submitters assessed the extent of consultation by the Government differently. The Cape York Land Council Aboriginal Corporation (CYLCAC) in their submission stated:

> *It is claimed that "extensive" consultation was undertaken by the State to inform the drafting of the Bill. However, as indicated in the Explanatory Notes, there has not been any direct consultation with Native title holders or individual Traditional Owners…. However, whilst there may be "in principle" support for freehold title that does not mean that community members, Native title holders and Traditional Owners are aware of or fully*

[15] Jensen, J. 2014, *Public briefing transcript*, 21 May, p.3.
[16] Carse, K. 2014, *Public briefing transcript*, 21 May, p.7.

> *understand the detail or implications of the freehold model proposed in the Bill. Far more extensive consultation must be taken with the people affected by the Bill. Aboriginal community, Native title and Traditional Owner stakeholders for this matter are far more extensive and relevant than Aboriginal Shire Councils.*[17]

The Kaurareg Aboriginal Land Trust (KALT) also raised concern about the extent and adequacy of consultation:

> *Despite being the traditional owners of this area, the Kaurareg people have not been adequately consulted about the Bill. Consultation with the residents of Hammond Island on the presumption that traditional owners will be consulted is unrealistic, as many of the traditional owners of the Island do not reside there.*[18]

The LGAQ highlighted in their submission the importance of thorough consultation and engagement:

> *Land administration matters in Aboriginal and Torres Strait Islander communities are complex. This complexity is considered to be a significant impediment to economic development… The LGAQ understands that the State Government is eager to move forward with improved land tenure arrangements in Aboriginal and Torres Strait Islander communities; yet cautions that this must proceed at a pace whereby all stakeholders are well-informed and at ease with the process.*[19]

It was evident to the committee from its public meetings held in Aboriginal and Torres Strait Islander communities that very few community members had prior knowledge of the freehold option proposal in the Bill, and that councils and Native title representative groups had not actively engaged with, or informed their communities, of the proposal. For example, at the hearings on Mornington Island on 23 July 2014, the committee noted:

> ***Mr KNUTH:*** *You mentioned the risk. I want to get a bit of a feel of where you are coming from. When this bill was announced, did you feel optimistic or did you feel it was going to be dangerous or did you feel that it just did not evolve?*
>
> ***Mr Wilson:*** *To be honest I just heard about this last week.*
>
> ***Ms Linden:*** *We had someone drop off this piece of paper and they said to come to this meeting on this day… The lady who gave me the flyer could not tell me much about it... I think there needs to be a lot more community consultation about it.* [20]

In response to submissions raising concerns about the extent of consultation, DNRM stated:

> *Freehold is not being imposed on any community by the Bill if enacted by the Queensland Parliament. Commencement of the Bill simply means that the framework is in place for communities to begin the freehold process if they wish to. It is up to the trustee and the communities themselves to decide if and when they commence.*
>
> *Community members and Native title holders should consider the implications of taking up freehold carefully. That decision is however a matter for the trustee in consultation with the community. Consultation by the trustee with the community and Native title holders is required under the Bill in particular new section 32I.*[21]

[17] Cape York Land Council Aboriginal Corporation, *Submission no. 3*, pp.3-4.
[18] Kaurareg Aboriginal Land Trust, *Submission no.10,* p. 2.
[19] Local Government Association of Queensland, *Submission no. 5*, p. 1.
[20] Knuth, S., Wilson, T. and Linden, F. 2014, *Draft Mornington Island public hearing transcript*, 23 July, p. 13
[21] DNRM, 2014, *Correspondence*, 14 July.

b) Trustee capacity and financial resources to undertake consultation

Concern was raised in submissions that trustees may not have the financial and other resources to undertake the consultation across communities required under the freehold model proposed in the Bill, particularly in the case of the larger regional and remote councils.

For example, the LGAQ submitted:

> *The LGAQ suggests that trustees, whether also a local government, or a Registered Native Title Body Corporate (RNTBC), are not adequately resourced to perform a comprehensive engagement process. Where a local government is the trustee, it is likely any needed resourcing will be met by the local government at a time when they are experiencing a reduction in their general purpose funds and when eleven (11) of the sixteen (16) Aboriginal and Torres Strait Islander local governments have been identified by the Queensland Audit Office as being high risk with respect to financial sustainability.*[22]

The Torres Strait Island Regional Council (TSIRC) submitted:

> *As expressed previously by Council to the State, Council does not wish to see 'the baby thrown out with the bath water', that is a scenario where Trustees are unable to successfully 'sell' good public policy, due to under-resourcing.* [23]

At the public hearing, the TSIRC, through Mayor Gela, reiterated their position:

> *[TSIRC request] that the state prepares a fair and reasonable budget for consultation by trustees on freehold schedule and funding probity officers… To give you a snapshot of what the council bears in terms of cost, just to hold an ordinary meeting in one of our communities out in the islands it costs us $60,000 to commute the councillors and the staff to engage in that level of discussion. On the one hand, the birth of an option that was never there for my people is something to rejoice and acknowledge, but I think we have to make sure that the mechanisms are in place to ensure that it is a great success and not just something that we could file and catalogue and give a tick to for voting purposes.*[24]

Mr Oliver Gilkerson of the Torres Strait Regional Authority (TSRA) at the committee's Hammond Island meeting stated:

> *The second comment is just to underline what the mayor has said about resourcing. Resourcing for trustees: at the moment TSIRC is the trustee of all of the DOGITs that we currently have in the region. There are two islands which have been subject to transfer where the trustee has been changed to be the PBC on behalf of Native title holders Badu Island and Mer Island. It is highly likely that all of the DOGITs in the Torres Strait will be transferred in the years to come.*
>
> *When it comes to PBCs, the resourcing issue is even more vital. Most PBCs in this region do not have a single dollar in the bank. They have no source of income. They have no source of resourcing at all. They receive a very modest grant from time to time by the TSRA and that is it. It is absolutely essential that some funding, some resourcing arrangements, be put in place particularly for PBCs in terms of their prospects of becoming trustees and administering the process but also in their capacity as the entity that will need to assist in all of the ILUAs which are going to be a threshold requirement for every freehold grant. It is absolutely essential that some arrangement for their resourcing be put in place.*[25]

[22] Local Government Association of Queensland, *Submission no. 5*, p. 3.
[23] Torres Strait Island Regional Council, *Submission no. 1*, pp. 3-4.
[24] Gela, F. 2014, *Draft Hammond Island public hearing transcript*, 25 July, p. 7.
[25] Gilkerson, O. 2014, *Draft Hammond Island public hearing transcript*, 25 July, p. 8

The LGAQ recommended that a communication and engagement strategy be developed:

> *The LGAQ recommends that a communication and engagement strategy be developed that includes information and/or guidance targeted at each of the various stakeholder groups, such as local government, trustees and lessees, community reference panels, and individual residents. It will be appropriate to include information suitable for culturally and linguistically diverse (CALD) individuals. Such a strategy should enable all stakeholders affected by this Bill and other Aboriginal and Torres Strait Islander land reforms demonstrably understand the process and participate accordingly in making informed decisions.*[26]

In its advice to the committee on the LGAQ's proposal, DNRM stated:

> *DNRM notes LGAQ's recommendation about a communication and engagement strategy and will assist through providing support and explanatory information on the department's website. In addition the pilot project will be used to determine what, if any, additional information or engagement is required.*[27]

Committee Comment

The committee notes that there is some evidence of general in-principle support within the State's Aboriginal and Torres Strait Islander communities for the freehold option proposed in the Bill. The committee also acknowledges that the Bill, if passed, will not have any immediate effect on land tenure arrangements in Aboriginal and Torres Strait Islander communities, though it would give traditional owners and residents the freedom to consider moving to freehold in the future. This is an option they currently do not have.

The committee is disappointed by DNRM's approaches to consultation for this Bill. The committee notes in particular the department's apparent failure to consult and engage with communities and their representatives during the development of the freehold proposal and drafting of the Bill in ways that would be considered culturally and regionally appropriate.

The committee shares the concerns raised by residents at its public meetings about the failure of some trustees to pass on information about the Bill to residents who will be directly affected, and the capacity of these same trustees to consult with their communities as part of the freeholding model.

The provision of a freeholding option for Aboriginal and Torres Strait Islander communities is an important reform, one which delivers the first real opportunity for many Indigenous Queenslanders to own homes and businesses on traditional lands and to enjoy the same level of secure land tenure as other Queenslanders. This will be a watershed for those communities in respect to land tenure and the way the State engages these communities in decision making and self-reliance.

To ensure these communities can capitalise on the benefits that freehold title, home ownership and business development requires that residents in the communities are educated, informed and at ease with the concepts, processes and responsibilities associated with the freehold option.

The committee recommends a program of community engagement and education about the freehold model should precede the formal consultation process required of trustees and outlined in the proposed freehold model. It should be undertaken in ways that are culturally and regionally appropriate (i.e. on the ground in communities and in collaboration with elders, traditional owners, Native title bodies and councils). If this work is not done, community members will not understand

[26] DNRM, 2014, *Correspondence*, 14 July
[27] DNRM, 2014, *Correspondence*, 14 July

the freeholding process, or the implications and benefits of freehold, and may choose not to take up the freehold option.

The committee notes that a freehold 'pilot program' is intended to be announced and will provide funding to assist trustees implement the freehold model. The pilot program is strongly supported by the committee. The recommended community engagement and education program is not intended to duplicate the objectives of the pilot program but rather ensure that communities demonstrably understand the process and participate in making informed decisions about the freehold option.

Recommendation 2

The committee recommends that, if the Bill is passed and prior to the commencement of the Act, the Department of Natural Resources and Mines devise and implement an education and engagement program across all 34 communities that the Bill applies to.

The purpose of this program is to increase knowledge and understanding about the objectives of freehold and the freehold model established in the Bill. This engagement and education program should involve face-to-face meetings in communities with elders, traditional owners, Native title bodies and councils.

Point for clarification

The committee invites the Minister for Natural Resources and Mines and the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs to detail for the information of honourable members the funding that will be provided for the freehold pilot program, how the program will be delivered, how pilot communities will be selected, and how the pilot program may inform the development of improvements to the freehold model in the future.

Freehold Model

a) Consultation and consent

Concerns were raised with the committee about the lack of detail in the Bill as to how trustees are to consult with communities, and that the Bill does not require demonstration of consensus from community members other than Native title parties. This concern was especially relevant in communities with non-traditional owners who hold a historical, communal connection to the land and/or potentially hold an 'interest' in particular homes and blocks within those communities.

CYLCAC submitted:

> *The Bill does not require communal land owners and Native title parties to support tenure conversion to freehold. The Bill must be amended to provide a much more prescribed process for community consultation when deciding whether to freehold land.*[28]

The Bill outlines the process for implementing the freehold model including consultation requirements. According to the Explanatory Notes:

> *The Bill provides that the trustee must consult their community and Native title holders about the proposed freehold instrument, including the land that could be made available for freehold, the terms and conditions on which available land would be allocated, and the details of how and to whom the land can be allocated. These terms and conditions form the basis of a freehold instrument that the trustee is required to prepare in consultation with their community.* [29]

[28] Cape York Land Council Aboriginal Corporation, *Submission no. 3*, p. 4.

[29] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 4.

The Bill at clause 321 prescribes the minimum level of consultation that must be undertaken by the trustee:

> ***32I Trustee to consult***
>
> *(1) Before the trustee of freehold option land starts the process for making a freehold instrument in relation to freehold option land, the trustee must decide on the way (the decided way) in which the trustee will consult about the making of the freehold instrument.*
>
> *Note—*
>
> *See section 179.*
>
> *(2) The purpose of the consultation is to enable the trustee to be reasonably satisfied it is appropriate for the freehold option land to be granted in freehold.*
>
> *(3) The decided way must—*
>
> *(a) require the trustee to consult with the Native title holders for the freehold option land proposed to be included in the freehold schedule; and*
>
> *(b) include how the trustee will notify the community about the freehold instrument; and*
>
> *(c) allow a suitable and sufficient opportunity for each person the trustee consults to express their views about the freehold instrument.*
>
> *(4) The trustee must—*
>
> *(a) consult on the freehold instrument in the decided way; and*
>
> *(b) keep records about the consultation showing the consultation was consistent with the decided way.*

b) Probity, independent oversight and arbitration

A number of stakeholders submitted that the freehold model should be implemented independently of trustees and councils.

Submitters including the CYLCAC[30] and KALT[31] expressed concern that in some cases regional and shire councils are not representative or trusted by community residents, and there may be a conflict of interest in the role of councils acting as both the local government authority and the land trustee.

It was also submitted that the complexity of land tenure arrangements and extent of recognised land owners/claimants warranted the need for independent oversight and arbitration. For example, at the public hearing at Injinoo, Mr Blanco commented:

> *I think it should be a separate body to push this thing. I do not think the council should be involved—or the TOs [traditional owners]. It should be a [non-associated] body to come in and push this thing along because the conflict of interest is very high here. So for the next process to go ahead, I think we need to bring in an independent body to make sure all the protocols are being adhered to.*[32]

Similarly Councillor Sabatino told the committee at the public hearing on Hammond Island:

> *I think it really does highlight the need for an independent arbitration system. The probity officer is fine, but I think the probity officer looking at the bill will be on the payroll of the trustee. If you have the trustee wearing two hats, the PBC and trustee, it becomes a real*

[30] Cape York Land Council Aboriginal Corporation, *Submission no. 3*, p. 2.
[31] Kaurareg Aboriginal Land Trust, *Submission no.10,* pp. 2-3.
[32] Blanco, R. 2014, *Draft Injinoo public hearing transcript*, 24 July, p. 14.

> *conflict of interest. I think an independent arbitration, the Lands Court or something like that, separate to the whole process to do the arbitration would be great.*[33]

Whilst the freehold model requires that a probity officer be appointed to oversee the freehold allocation where there are no existing interest holders, there is no a similar requirement for freehold allocation if there are existing interest holders.

It was also raised with the committee that there are no appeal or arbitration provisions in the Bill specifically relating to the freehold model. DNRM provided the following comments in relation to appeal rights and procedures:

> *As set out in clauses 5 of the Bill, for example, proposed new section 32B which sets out definitions for new Part 2A of the ALA includes an " appeal period" which is referred to in new section 32T (2), section 32ZA(h), section 32ZD, and section 32ZE(a).*
>
> *The appeal is to the Land Court. The Land Court Act 2000 deals with procedural processes relevant to the appeal.*
>
> *Appeal rights are limited to a person who receives an information notice in relation to the available land. Where the trustee refuses an application, the trustee must give the applicant an information notice.*[34]

Committee Comment

The committee notes the concern expressed by community members regarding the level of community confidence in trustees to meet the requirements outlined in the Bill when implementing the freehold option. Indeed, the committee observed first-hand the cautious relationship which exists in some communities between the Indigenous councils, traditional and historic owners and Native title bodies. In many communities, the complexity of land tenure and the interests of particular tenure holders may present intractable obstacles to progressing the freehold option.

The committee acknowledges that the Bill requires the Minister to be satisfied that Native title has been addressed when granting freehold title, and that in effect this will require Native title consent by way of a settled Indigenous Land Use Agreement. Given there is significant support for additional probity measures and independent oversight, the committee is recommending that the Minister consider amending the Bill to include the requirement for independent oversight of the freehold process, applying specifically to those Indigenous communities where the council acts both as local government authority and land trustee. It may be appropriate that such probity measures are made optional, at the discretion of the Minister, in communities where the trusteeship has been transferred to a registered Native title corporation.

Further, the committee is concerned that the Land Court appeal and arbitration measures provided under the existing legislative framework may be inappropriate or inaccessible to members of Indigenous communities. The committee believes that aggrieved community members should be afforded opportunities to object to, or subsequently appeal, an unjust decision of the trustee in relation to the making of the freehold instrument or the allocation of available land, but that in the first instance disputes should be considered and/or resolved at the community level.

The committee recommends that the Bill be amended to provide an arbitration process to hear disputes or appeals relevant to the making of the freehold instrument or the allocation of available land. This arbitration process should be independent of trustees and involve community members and traditional owners. The arbitration process should be established as part of the freehold

[33] Sabatino, Cr M. 2014, *Draft Hammond Island public hearing transcript*, 25 July, p. 12.
[34] DNRM, 2014, *Correspondence*, 14 July

instrument and therefore would require that the freehold model outlined in the Bill reflect this additional requirement.

Finally the committee notes that submitters have sought additional assurances that broader consultation within communities is undertaken, as part of the freehold process, and that consensus is achieved. The committee notes that these issues will be carefully considered by the Minister when approving freehold instruments and granting freehold tenure. As such the committee does not believe further additional requirements to satisfy the concerns of submitters are warranted or would be practical. The committee invites the Minister to outline for the House what evidence relating to consultation and community consensus he will consider when approving freehold instruments to grant freehold tenure.

Recommendation 3

The committee recommends that the Bill be amended to provide for a community arbitration process as part of the freehold model to hear disputes or appeals relevant to the making of the freehold instrument or the allocation of available land. This arbitration process should be independent of trustees, involve members and traditional owners, and should consider all disputes prior to referral to the Land Court or judicial review.

Point for clarification

The committee requests the Minister for Natural Resources and Mines to outline for the information of honourable members what evidence relating to consultation and community consensus he will consider when approving freehold instruments to grant freehold tenure.

c) Interest holders and eligible persons

The Bill provides two pathways through which freehold can be granted. Mr Ken Carse of DNRM explained these processes at the Mornington Island public hearing:

> *There are two processes that we have put in the bill to get the land. One is where there is already interest in the land such as a lease. Where there is an interest in the land, the only person who can get the land freehold is the person who has the interest. That has to be decided by the community. It has to be put into the freehold schedule that they will use that process. Where there is no interest in the land, the trustee must use an open process like an auction or ballot or something like that so that the trustee just does not decide, 'I am giving you freehold.' It goes through an open process.* [35]

The Bill defines 'interest holders' as including:

> ***32B Definitions for pt 2A***
>
> ***interest holder****, for available land, means a person who holds any of the following interests in the land—*
>
> *(a) a registered lease granted under this Act or the Land Act, other than a townsite lease;*
>
> *(b) a lease entitlement under the new Land Holding Act;*
>
> *(c) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act;*
>
> *(d) a registered sublease, including a registered lease of a townsite lease;*

[35] Carse, K. 2014, *Draft Mornington Island public hearing transcript*, 23 July, p. 2

(e) a residential tenancy agreement for a social housing dwelling situated on the available land;

(f) a right to occupy or use the available land under section 199.

The Bill also specifies that only eligible persons can apply for the initial grant of freehold, regardless of whether they hold an existing interest in land. Eligibility, as defined in the Bill, is restricted to persons who are:

(a) an Aboriginal person or Torres Strait Islander; or

(b) the spouse or former spouse of—

(i) a person mentioned in paragraph (a); or

(ii) an Aboriginal person or Torres Strait Islander who is deceased.

As has been noted by submitters, whilst Native title holders are included in the definition of eligible persons, they are excluded from the definition for interest holders. Therefore only when there are no interest holders, can the land be made available to other eligible persons. Native title holders and claimants will not have a first right to express an interest in a grant of freehold.

Submitters expressed the view that this creates unnecessary tension between Native title holders, traditional owners of land, the trustees and other members of the community. This may lead traditional owners to reject the freehold proposal fearing that they will lose parts of their traditional land to others. This may preclude others within their communities benefiting from home ownership.

The TSIRC noted in their submission:

We note 'interest holders' identified in the Bill as the only persons eligible for grant of Ordinary Freehold where such interests apply to said land. It is noted that Native title interests are not recognised in this list… We consider that the rationale for excluding Native title rights and interests from the ambit of 'interest holders' is the State's perception that traditional ownership is not readily identifiable as not recorded in writing and/or identifying clearly said eligible individuals for an Ordinary Freehold grant.

The State must be made aware of the circumstances in which the 'interest holders' given preference currently under the Bill obtained their respective interests. Availability of land in Aboriginal and Torres Strait Islander Communities is scarce. In order to ensure families are adequately housed, Common Law holders of Native title ("Traditional Owners") have been forced to allow social houses and other public infrastructure, to be constructed on their lands. Of late, the State has further required the grant of 40 year leases by the Trustees of land back to the State in order to secure this capital investment. Traditional Owners have not been compensated sufficiently for this burden. Land has been temporarily 'gifted' by Traditional Owners for social housing purposes on the basis of necessity, absent intention to extinguish such rights.

The Bill appears to assume by rendering 'interest holders' the only eligible applicants for Ordinary Freehold interest (where such interest holders exist with respect to the said land), that Traditional Owners (where different from the said 'interest holder') shall automatically agree to extinguish their Native title rights and interests upon such grant. Furthermore, it is assumed they will do so absent compensation claim. On the contrary, we would suggest that extinguishment would, on the whole, likely only be validated under the Native title Act 1993 (Cth) in instances where the Traditional Owner(s) themselves were the grantees of the Ordinary Freehold interest. We consider that this shall provide an obstacle to grant of

Ordinary Freehold in instances where 'interest holders' and Traditional Owners over the same land, differ. This situation is widespread in the Torres Strait.[36]

Mr Gilkerson, representing the TSRA further commented at the public hearing on Hammond Island:

The first point is to reiterate what the mayor has said about the central importance of this question of the definition of 'interest holder' as it relates to Native title holders, as it relates to traditional owners and as the definition of 'interest holder' in the bill interrelates with the allocation process that is provided for. I think it is very likely that the PBC chairs will direct us to indicate to your committee that it is vital that the definition of 'interest holders' make provision, at least in this region, for the particular traditional owner for the parcel of land that may be proposed for allocation to the freehold. I understand the complications that Ken has alluded to, but I would be confident that, with the appropriate detailed discussion, there is a means by which that definition can be amended to accommodate in this region the particular traditional owner for a particular parcel of land ... Indeed, the Queensland government has already participated in initiatives whereby the vital Native title interests of a particular traditional owner for a particular parcel of land are acknowledged, identified and recognised. I refer in that regard to the template infrastructure and housing ILUA that is currently under negotiation for this region. I would very strongly urge the committee to hear more from the PBC chairs post the meeting week after next about that issue.[37]

DNRM responded to this matter as follows:

The freehold model in the Bill provides for communities to adopt additional eligibility criteria (restricting who can apply for freehold) additional to the restrictions included in the Bill.

These additional eligibility criteria could, for example restrict applications for freehold to traditional owners. Therefore restrictions such as requested are already capable of being applied and are a matter for each community.

Under the freehold model there are two processes for the trustee to allocate freehold; these are:

- *The interest holder allocation process; and*
- *The no interest holder allocation process.*

Where a native title holder has an 'interest' in the land such as a lease or is a social housing tenant, then subject to meeting the requirements in the Bill and the freehold instrument the native title holder could apply for freehold.

Where there is no interest in the land then any native title holder is able to participate in the allocation process provided they meet the requirements in the Bill and any requirements in the freehold instrument.

The Bill provides a particular allocation process where there is an 'interest' in the land. This provides a level of certainty as to who the qualified person is as they can be searched on a register, this is not the case for native title holders.

However, as noted above a native title holder can apply where there is no existing interest such as a lease or social housing through the open allocation process, or they can obtain an interest themselves and utilise the interest holder allocation process.

[36] Torres Strait Island Regional Council, *Submission no. 1*, pp. 2-3
[37] Gilkerson, O. 2014, *Draft Hammond Island public hearing transcript*, 25 July, p. 8

> *Including native title holders as an interest would also mean that no land would be available through the open allocation process as there would be an interest, i.e. native title, over all the land.*[38]

Mr Chris Foord, a resident of Injinoo in the Northern Peninsula Area, and manager of the community owned Indigenous Corporation, Bamaga Enterprises Limited (BEL) indicated concern that the Bill does not allow for registered Indigenous owned corporations to express an interest in the grant of freehold:

> *The Bill excludes corporations which is very short sighted because it is community owned indigenous corporations, not Council, especially in the NPA, that are driving community and economic development...*
>
> *The Bill is also discriminatory as it does not afford indigenous people the same legal rights as mainstream Australians. That is, if an indigenous business person wishes to own a freehold property in a Corporation owned by them for tax or other purposes they are not allowed to do so. They cannot therefore protect the family house, for example, by having it owned by a corporation should they personally be beset by financial difficulties…*
>
> *It should be noted that community based indigenous corporations are the only entities (apart from Government) that have the expertise and funding resources to build staff housing or any housing...*
>
> *Excluding community based indigenous corporations from owning freehold land in the Bill, will forever lock community into their present level of economic development, lock out any outside entrepreneurs whether indigenous or otherwise from establishing businesses in the community, continue to make the employment and retention of staff difficult and costly and make it commercially impossible to build staff housing due to excessive lease fees which is the suggested alternative for corporations in the Bill.*

Mr Foord recommended that the definition of an indigenous person should be amended to include "community based indigenous corporations" in the same way that other areas of legislation allow for a person to be a corporation and/or for corporations to have property and financial rights:

> *The Bill should allow such corporations to own freehold land otherwise severe restrictions will be placed on community owned enterprises as regards future economic development.* [39]

In relation to the request to extend the freehold option to Indigenous owned corporations, DNRM responded:

> *The option of allowing corporations to be granted freehold was considered in the discussion paper titled "Providing freehold title in Aboriginal and Torres Strait Islander communities" released on 15 November 2012.*
>
> *A number of stakeholders rejected any entities other than individuals as being entitled to obtain freehold. As a result the Bill does not provide the ability to grant freehold to corporations or any level of government.*
>
> *Additionally, the Bill does not preclude Indigenous people from applying for freehold and then entering joint ventures to develop the land or selling it to corporations.* [40]

[38] DNRM, 2014, *Correspondence*, 14 July

[39] Note that 'community based indigenous owned corporations' is specifically referring to those corporations registered with the Office of the Registrar of Indigenous Corporations established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

[40] DNRM, 2014, *Correspondence*, 7 August.

Committee Comment

The committee acknowledges the concerns raised by submitters that Native title holders have not been formally recognised in the Bill as holding an existing interest for the purposes of the initial grant of freehold. Based on the advice from DNRM, the committee appreciates that including Native title holders within the definition of interest holder may prove administratively difficult and would increase the risk of displacement of social housing tenants who are not traditional owners.

The committee notes the concern of traditional owners that they may lose traditional land to outside interests and/or non-traditional owners. The committee is confident that the Bill includes sufficient flexibility for trustees to limit the allocation and grant of freehold in ways that reflects the values and wishes of their communities. Additionally the committee notes that steps can be taken by traditional owners to establish an 'interest' in order for them to be eligible for the grant of freehold.

The committee notes the suggestion that conflict between Native title holders and historical owners could dissuade communities from taking up the freehold option. The committee believes that the community information program it has recommended will help to avert these problems.

The committee notes the proposal that community-based Indigenous-owned corporations be identified as 'eligible persons' for the purposes of expressing an interest in the grant of freehold tenure in communities. The committee considers that this is a sensible proposal and acknowledges the significant role that community-based Indigenous-owned corporations play in the social and economic development of Aboriginal and Torres Strait Islander communities. While the intent of this Bill and freehold model is primarily to increase opportunities for individual home ownership, the committee recommends that community-based Indigenous-owned corporations should be recognised as eligible for freehold in the allocation processes where there are no existing interests.

Point for clarification

The committee invites the Minister for Natural Resources and Mines to explain to honourable members the basis for not including Native title holders in the definition of 'interest holders' for the purposes of the initial grant of freehold, and to outline how aspects of the freehold model could be applied to protect the interests of Native title holders and provide eligibility to Native title holders.

Recommendation 4

The committee recommends that the Bill be amended to allow community-based Indigenous-owned corporations registered under the Commonwealth *Corporations (Aboriginal and Torres Strait Islander) Act 2006* to be eligible for the grant of freehold under the allocation process for available land where there are no interest holders.

d) Freehold option land

The Bill provides that only freehold option land can be made available for the purposes of the grant of freehold.

> ***32B Definitions for pt 2A***
>
> ***freehold option land*** *means land in the Aurukun Shire Council's area, the Mornington Shire Council's area or an indigenous local government's area if—*
>
> *(b) the land is in an urban area.*
>
> ***urban area*** *means an area identified as an area intended specifically for urban purposes, including future urban purposes (but not rural residential or future rural residential purposes) on a map in a planning scheme that—*
>
> *(a) identifies the areas using cadastral boundaries; and*

> *(b) is used exclusively or primarily to assess development applications under the Sustainable Planning Act 2009.*
>
> *Example of a map— a zoning map*
>
> ***urban purposes** means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes.*

In a practical sense, this limits the freehold option to land within the main township or shire where roads and services are connected. In most cases the "township" is a smaller area within the broader DOGIT area (or ILGA boundary).

Mr Luttrell, Director, Aboriginal and Torres Strait Islander Land Policy, DNRM further explained at the Woorabinda public hearing on 21 July 2014 what land will be available for the purposes of freehold:

> *In fact, the bill says that the only area that could be the subject of freehold is what is the urban footprint, which is known as the town area. In the context of Woorabinda, that boundary will be identified through the planning scheme. We anticipate that that will be basically where the council has its infrastructure. So if you wish to be beyond that area, the only option to obtain an interest in that land will be leasing. So in the town area, or the future town area, that will be where the freehold option would be available.*[41]

There was generally broad support for this approach expressed across submissions to the committee's inquiry and by witnesses at the public hearings. For example, the North Queensland Land Council (NQLC) noted in their submission support for the limiting of freehold only to township land, rather than land across the whole DoGiT area:

> *The freehold option in the Bill will be limited to townships which are defined as being land identified in the relevant local planning schemes as "urban" or "future urban" use. NQLC supports this approach because it will avoid the potential for large tracts of land being permanently alienated from Aboriginal community ownership. This is important given that land once converted to freehold, can be sold to non-Aboriginal people which itself has the potential to significantly reduce the amount of land held in aboriginal ownership… and which, over time, could effectively fracture the aboriginal communities residing there.*[42]

However submissions noted that, in some circumstances, Aboriginal and Torres Strait Islander people have built dwellings, run businesses and/or reside on traditional land that is within the DOGIT or ILGA boundary but outside of the defined "township" area.

For example, Mr Vincent Mundraby, a resident and traditional owner of the Yarrabah Aboriginal community, submitted that block holders of land outside of the township where people had established residences and successful farming businesses should be afforded the opportunity to be issued freehold title. Mr Mundraby expressed the view that this was a matter of natural justice due to the long association these people have with the land and the long and ongoing process that people have endured in order to secure tenure over these properties. Mr Mundraby called on the State Government to consult with the lease holders with the view of providing freeholding to these people and to help them realise their aspirations of private ownership.[43]

The committee requested the department to provide information outlining the reasons for limiting the freehold option to township land. In response, DNRM advised the committee:

> *In the consultation draft of the Bill, the freehold option applied to all trust land. Concerns were raised with the government during consultation at the potential for large areas of community land to be granted to individuals and lost from the community for future*

[41] Luttrell, A. 2014, *Draft Woorabinda public hearing transcript*, 21 July, p. 6.
[42] North Queensland Land Council, *Submission no. 4*, p.
[43] Mundraby, M. *Submission no. 9,* p. 1.

generations. A number of submissions on the consultation draft Bill strongly sought the limitation of the freehold model to townships.

In response to these concerns the Bill provides that freehold option land is restricted to townships. Limiting the option of freehold to townships will prevent large tracts of communal land being granted as freehold to individuals and lost from the communal land.

This amendment also has the advantage that the land will have already been identified for development through the local planning scheme process and in most cases already utilised and thereby lessening community concerns at taking up the freehold option.

The leasing regime already provides for 99 year home ownership leases with an as of right renewal process.

The simplified leasing framework in the Bill will enable trustees to easily grant leases of up to 99 years (with renewals) for any purpose.

The combination of the home ownership leases and the simplified leasing regime will mean that any development need outside of the townships can be accommodated without loss of the communal land.[44]

Committee Comment

Native title is a unique form of land right which recognises cultural and spiritual connections to lands of past, present and future generations. Due to this connection the committee appreciates the concern for loss of traditional lands from the communal ownership and benefit of future generations. Accordingly the committee accepts that there is broad general support for the limiting of the grant of freehold to land within townships (urban and future urban land as defined in the town planning schemes for each community).

However the committee recognises that every community has different circumstances and that there are examples across a number of communities where community members reside and/or run businesses on communal land outside of the defined township zones and that these people have expressed a strong desire to secure land tenure over these interests.

Whilst these people are able to access long term leases, the committee believes it would be unfortunate to perpetually deny them the opportunity to secure home and business ownership through freehold tenure. The committee therefore recommends that the Bill include a mechanism for Ministerial approval for the grant of freehold for land outside of township 'urban' areas, on a case by case basis. This option would exist only where all the necessary preconditions have been met, such as Native title consent, surveys and development approvals, and where the grant is supported by all relevant parties, namely the trustee, Native title holders, and interest holder.

Recommendation 5

The committee recommends that the Bill be amended to include the option for a special Ministerial grant of freehold for community land outside of township 'urban' areas where there is agreement from all relevant parties and demonstration that the necessary preconditions for approval of the grant have been met.

Other observations - social and economic issues in communities

The committee conducted public hearings in Aboriginal and Torres Strait Island communities of Yarrabah, Woorabinda, Mornington Island, Napranum, Injinoo, Hammond Island and Cherbourg. At these hearings the committee heard evidence on a number of matters not specifically relevant to the

[44] DNRM, 2014, *Correspondence*, 14 July

Bill but no less important to the policy objectives of improving opportunities for Indigenous home ownership. The committee wishes to bring these matters to the attention of honourable members.

These other issues noted during the committee's consultation activities include:

- **Severe housing shortages and significant overcrowding**: this persists across many communities, with multiple families residing in the same dwelling.
- **Concern for the availability of land for development within communities:** the committee heard of children's playgrounds and recreational areas being resumed for new housing constructions. The committee were also advised of limited land and slow progress securing land for commercial development purposes.
- **Limited housing available for business enterprises and social service providers:** the committee heard that this acts as a disincentive to attracting suitable workers to fill vacancies in the communities for essential services such as health care and education.
- **Limited employment**: the committee heard of the critical importance of jobs to economic opportunity.
- **Inability to meet home ownership costs:** many residents in the communities will lack the resources to service a loan and meet ongoing costs associated with owning property such as insurance, council service charges and rates.
- **Cost of housing maintenance**: there is a lack of tradespeople in communities to conduct maintenance service which acts as a major disincentive and barrier to home ownership. There is also a lack of skills and knowledge among community members to care for and maintain their homes. The remoteness of communities compounds the problem, increasing cost and availability of building materials.
- **Land issues and Native title claims/resolution**: progress in relation to land and trusteeship transfers, and resolution of historic leasing issues is progressing slowly. It may be the case that freehold will not be suitable for these communities until other land tenure issues are first resolved.

Committee comment

The committee notes that making freehold tenure available is not a guarantee for home ownership and housing market development in Indigenous communities. Whilst the land tenure reforms included in this Bill remove the barriers to freehold title and provide the first real opportunity to achieve the same land tenure as enjoyed elsewhere in Queensland, land tenure alone is not the only barrier to home ownership. Issues of social disadvantage, unemployment, affordable housing and maintenance services, land and housing availability and access to housing finance are critical issues which require attention.

The committee highlights these issues as being relevant to the overall objectives of the Bill. The committee invites the Minister for Natural Resources and Mines to provide regular reports to the House regarding progress by his department in relation to the granting of freehold, and regular reporting from the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs regarding the Freehold Pilot Program and other important initiatives supporting home ownership in Indigenous communities.

Recommendation 6

That the Minister for Natural Resources and Mines reports biennially to the House on the grant of freehold tenure in Indigenous communities.

Minister for Natural Resources and Mines

Recommendation 7

That the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs reports biennially to the House on the Freehold Pilot Program and other government initiatives supporting home ownership in Indigenous communities.

Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs

Right of public access to beach areas

The Bill seeks to amend the *Land Act 1994* to enable the Minister, on a case by case basis, to declare a conditional right of public access over a property where erosion has meant that access along the area of the beach has been compromised by the private ownership of the beach area.

The basis for this amendment is outlined in the explanatory notes:

> *Most of the coastline is bordered by community purpose reserves and esplanades, however, in some instances, this land has been lost to the sea due to erosion and the sea has moved to some degree to be within the boundaries of private freehold and leasehold properties.*
>
> *Once the sand area of a 'beach' has migrated onto private freehold or leasehold land, the owner can lawfully prevent public access across the beach area. In addition, these land owners (and their respective insurers) may incur a significant public liability risk if the public has access to their private property.* [45]

Ms Jensen of DNRM, provided an overview of the key aspects of the beach access provisions during a briefing for the committee:

> *The main components of this amendment are: the declaration of a right of access with conditions to apply around that access; any declaration will be on a case-by-case basis with consideration of circumstances particular to the area; conditions may address such issues as vehicle access, camping, the lighting of fires, animals and any other restrictions that may be necessary, having regard to the circumstances; the area over which the right of access is located will be placed under the management and control of either the relevant local government or the state; when determining appropriate conditions for the relevant land, consultation will be undertaken between the manager of the land and the landowner; the owner of the land will be relieved of occupier liability except to the extent that any injury is caused by an intentional or a reckless act by the owner of the land; the boundary of the declared right of access will, where possible, be ambulatory and identified by a feature such as the toe of the foreshore dune and move with the beach; the right of access will be identified on the title of the affected lot; and the right of access and the conditions attached to it are subject to the application and operation of other legislation.* [46]

Whilst the purpose of this provision is to address specific beach access issues arising from erosion of beach frontage impacting three lots at Rules Beach in Central Queensland, the legislation if enacted could be applied to any future cases where beach erosion reduces the high water mark to within an existing private property.

Of the submissions received by the committee, only three specifically addressed the declaration of beach access provisions. The issues raised through submissions are outlined in the following discussion.

[45] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 3.
[46] Jensen, J. 2014, *Public briefing transcript*, 21 May, p. 5.

Owners' rights and compensation

The declaration only requires that the owner be given notice of the intention to declare part of the lot a 'declared beach area' (DBA) and can occur without the consent of the owner or anyone who would otherwise need to be consulted under the *Land Title Act 1994*. Additionally compensation is not payable to any person arising out of part of a lot becoming a DBA.

New section 431Q (6) provides that a regulation may declare area of seashore to be a declared beach area without consent of affected parties:

> *(6) The plan of survey may be registered without the consent of anyone whose consent would otherwise have been required under this Act or the Land Title Act 1994 if the plan otherwise complies with this Act or the Land Title Act 1994 and has been endorsed with the consent of the chief executive or the Minister.*

New section 431S provides that compensation is not payable for declared beach area:

> *A person is not entitled to relief or compensation from the State or anyone else under this Act, the Land Title Act compensation provisions, the Property Law Act relief provisions, the provisions of any other Act or otherwise for deprivation of an interest of any type in land, or for loss or damage of any kind, arising out of a part of a lot becoming a declared beach area.*

New section 431U (2) requires only that notice be given to the owner before making of the regulation:

> *(2) The Minister must give the owner of the lot a written notice stating the intention to declare a part of the lot a declared beach area.*

The Queensland Law Society (QLS) raised concern in their submission that in making the declaration the state removes the right of the owner to 'exclusive use and quiet enjoyment of that part of the lot', without any compensation for the loss of rights with respect to that part of the lot. QLS suggest this to be deprivation of fundamental legislative principles and of personal rights and property that accordingly 'deserves fair compensation'.[47]

NQLC identified that the removal of any requirement to consult with and/or gain the consent of identified interest holders who would otherwise need to be consulted under the *Land Title Act 1994* may impact on rights of Native title holders to be consulted on future acts.[48]

The explanatory notes explain the alternative policy approach[49]:

> *The other legislative option that is available is to acquire the strip of land that forms the beach under the Acquisition of Land Act 1967. This option will still be considered where it is a more appropriate solution, where, for example, it was proposed to construct infrastructure on the beach, such as a pipeline. Amendments to the Acquisition of Land Act 1967 contained in the Land and Other Legislation Amendment Bill 2014, which was introduced into the House on 19 March 2014, will enable a strip of private land to be acquired for a beach.*
>
> *However, in the absence of any proposed construction of infrastructure, this is not the preferred option because landholders would be deprived of the ownership and use of their land while government would be faced with the considerable cost of buying direct waterfront land. Where a right of public access is used, the owner retains the opportunity to*

[47] Queensland Law Society, *Submission no. 11*, p. 2.
[48] North Queensland Land Council, *Submission no. 4*, p. 4
[49] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 10.

regain the entire parcel of land if accretion results in the beach moving further seaward. This opportunity would not exist where the land has been acquired.

In response to these concerns, DNRM commented:

It is important to note that the land over which it is proposed to declare a right of access is, in the majority of cases, not land originally surveyed with beach frontage. Rather, the land had been separated from the sea by an esplanade or reserve.

Of all the approximately 250 blocks identified in Queensland to which this power of public access could be used, there is only one instance where an owner has sought to prevent public access. In other words, the vast majority of affected landowners have not made any moves to exercise a right of exclusive access.

The public has a perceived right to access beach areas throughout Queensland. This is also articulated in policy outcome six of the State Policy for Coastal Management which states that 'public access and use of the coast is maintained and enhanced for current and future generations.' In particular, policy outcome 6.2 states that 'exclusive private access to the foreshore and exclusive private use of beaches is to be avoided'.

It is a windfall to the owners that the esplanades or reserves in front of their properties have completely eroded away. The State never granted owners exclusive beach access and should not therefore be required to compensate them for their good fortune.

It is in the public interest for the public to have reasonably unrestricted access to the seashore, including for travelling from one place to another.

Committee comment

The committee appreciates that the public has an expectation that they are able to access beaches throughout Queensland, and notes that as a matter of policy, the State Government is committed to maintaining and enhancing public access and use of the coastal zone.

In circumstances where erosion has resulted in public access areas such as reserves and esplanades receding within the boundaries of private freehold and leasehold properties, and public access has been restricted, the committee supports measures to reinstate the right of public access to beach foreshore.

The committee believes that generally the Bill strikes the right balance and achieves the objective of maintaining beach access whilst also addressing possible concerns expressed by property owners regarding public civil liability. That being said, the committee believes that a ministerial declaration should only be a measure of last resort, and accordingly seeks assurances from the Minister that all reasonable efforts are made in the first instance to resolve beach access problems directly and amicably with the affected property owners. The committee therefore recommends that the Bill reflect the need for the Minister to be reasonably satisfied that the relevant parties have made attempts to resolve beach access disputes prior to regulatory intervention.

Recommendation 8

The committee recommends that the Bill be amended under new section 431U and/or 431V to include that the Minister be required to ensure that all reasonable steps are taken to negotiate with and resolve beach access disputes directly with the affected property owners prior to the declaration of a beach access area.

Civil liability for DBA

The Bill provides that the owner cannot be civilly liable in relation to the DBA unless the liability arises out of an 'act or omission made honestly or without negligence' on the owner's part. Any other liability arising is borne by the State.

The LGAQ[50], NQLC[51] and QLS[52] agree that occupier and public liability over the public access area remains an issue not appropriately dealt with by the Bill. QLS also suggest that the partial civil liability immunity proposed in the Bill does not appear to be adequate and continues to expose the owner to a level of risk.

> *The partial civil liability immunity proposed in s431W (4)(b) appears less effective than is warranted given the loss of the owners control of the declared beach area…the retention of civil liability for any negligent acts by an owner of the declared beach area continues to potentially expose the owner to a level of risk with respect to the part of the lot over which they no longer have control'.*[53]

The QLS suggest that proposed s431W (4)(b) be reworded to only retain civil liability for the lot owner for 'wilful or intentional acts which cause injury or loss' (as opposed to acts or omissions made honestly and without negligence) arguing that such a change would 'ensure that the state is not liable for intentional or wilful acts of the lot owner'.[54]

DNRM responded to the concerns regarding civil liability as follows:

> *There are several points to note in relation to an owner's potential liability in relation to a beach access area.*
>
> *Firstly, the Law Society has assumed, as already noted above, that the declaration of beach access is the equivalent of the State acquiring the land. That is not the case.*
>
> *The beach strip continues to be part of the property of the land owner. Subject to a limitation that public access must not be impeded; the land can continue to be used by the land owner.*
>
> *The conditions of public access will be prescribed on a case by case basis, which could depend on the purpose to which the owner wishes to utilise the land.*
>
> *Given the landowner's continued ownership and right to use the beach strip, it seems only reasonable, and in the public interest, that appropriate liability attach to such use.*
>
> *Secondly, the intention of section 431W is to only attribute liability to an owner in relation to direct actions. The Queensland Law Society appears to be reading section s431W (4)(b) in isolation rather than reading section 431W in its entirety. Section 431W(4) provides:*
>
> > *'The owner of a lot of which a declared beach area forms a part, and any other person having an interest in the lot—*
> >
> > > *(a) is not required, and cannot be required, to maintain, or to contribute to the maintenance of, any part of the declared beach area; and*
> > >
> > > *(b) is not, and cannot be made, civilly liable for an act done, or omission made, honestly and without negligence in relation to the declared beach area.'*

[50] Local Government Association of Queensland, *Submission no. 5*, p. 5.
[51] North Queensland Land Council, *Submission no. 4*, p. 4.
[52] Queensland Law Society, *Submission no. 11*, pp. 2-3.
[53] Queensland Law Society, *Submission no. 11*, p. 2.
[54] Queensland Law Society, *Submission no. 11*, p. 2.

However, the Department notes that section 13(6C) of the Countryside and Rights of Way Act 2000 (UK) provides that the creation of a right of way does not prevent an occupier from owing a duty of care in respect of any risk where the danger concerned is due to anything done by the occupier—

'(a) with the intention of creating that risk, or

(b) being reckless as to whether that risk is created."

The UK wording is consistent with the intent of section 431W and the Department undertakes to consult with the Office of the Queensland Parliamentary Counsel as to whether the UK wording provides more certainty to landowners.

Committee comment

The committee is satisfied with the department's response noting that the department has undertaken to consult with the Office of Queensland Parliamentary Council regarding the current wording of the Bill relating to landowners liability.

Point for clarification

The committee requests that the Minister for Natural Resources and Mines reports to honourable members the outcomes of his department's consultation with the Office of Queensland Parliamentary Council and what, if any, amendments will be made to the Bill in relation to an owner's potential liability over a declared beach access area.

Maintenance responsibility for DBA

LGAQ also raise concern that the Bill is vague in relation to the extent to which local or state government is responsible for "maintenance" of the declared beach area. They also consider that there is potential for increased risks to local government posed by the uncontrolled existence of privately owned improvements and existing private infrastructure within the declared beach area.

DNRN advised:

The Bill does not provide that the State Government may require a local government to be the manager of a declared beach access area.

Rather, the Bill provides that a declared beach access area be placed under the management of either the relevant local government or the State.

The relevant local government will be given the choice to take control of the declared beach access area. If the local government does not wish to take control of the area, the State assumes control and is recorded as the manager.

As the land subject of a declared beach area is beach and by its very nature subject to change, the obligation to maintain the area in a safe condition extends only as far as practicable and reasonable.

It is not anticipated that Council would be responsible for maintaining any existing infrastructure.[55]

Committee comment

The committee notes and is satisfied with the advice provided by the department regarding the intended maintenance responsibilities extended to local government over the declared beach area. Noting the concerns raised by local governments, the committee recommends that the department

[55] DNRM, 2014, *Correspondence*, 14 July

have further discussions with the Local Government Association of Queensland to clarify the intent of the maintenance and liability provisions and make any necessary amendments prior to the finalisation of the Bill.

Point for clarification

The committee invites that the Minister to clarify for the House that the concerns raised by LGAQ about maintenance responsibilities over declared beach areas have been resolved.

5. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee sought advice from the DNRM in relation to a number of possible fundamental legislative principle (FLP) issues. The following sections discuss the issues raised by the committee and the advice provided by the department.

Providing Freehold and Lease Simplification

Rights and Liberties of Individuals

Section 4(2)(a) *Legislative Standards Act 1992* - Does the Bill have sufficient regard to the rights and liberties of individuals?

a) Existing interest holders affected by freehold grants

Clauses 5 and 35 of the Bill insert new Part 2A into the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to allow particular land to be granted in freehold under the *Land Act 1994.*

The *Legislative Standards Act 1992* (LSA) expressly states that FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals. The above clauses may affect the rights of traditional owners, persons with an interest in a mortgage, the State and persons who are not Aboriginal persons or Torres Strait Islanders but who hold an interest in available land.

In relation to this FLP, the Explanatory Notes state:[56]

> *The Bill includes a number of safeguards to protect existing interests including the need for all interest holders to consent to an application for freehold and for the chief executive to consider whether there is any existing interest when deciding an application for grant of available land.*

However, new Part 2 s.32I(2) states that:

> *The purpose of the consultation is to enable the trustee to be reasonably satisfied it is appropriate for the freehold option land to be granted in freehold.*

The Bill does not provide any further guidance on how 'reasonably satisfied' is to be measured/determined or independently assessed, nor is there any requirement for majority consensus regarding freehold within a community.

Request for advice:

The committee sought advice from the department regarding the interpretation and assessment of 'reasonably satisfied', and what evidence a trustee will be required to produce to demonstrate their decision was consistent with the requirement in the Bill that they be 'reasonably satisfied' that the granting of freehold is appropriate.

[56] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, page 12.

DNRM Advice:

The term "reasonably satisfied" is used a number of times in the Bill. The term is defined to mean satisfied on grounds that are reasonable in the circumstances, see clauses 26(2) and 53(2) which amend respectively the schedule of definitions for the Aboriginal Land Act 1991 (ALA) and the Torres Strait Islander Land Act 1991.

The definition is broad because what constitutes 'reasonably satisfied' may likely vary for each trustee because each community has its own unique circumstances and considerations. For this reason, it is ultimately a matter for the trustee to decide whether or not to take up the option for their community.

The Bill sets out the processes and the requirements for the creation of documents which the trustee can use to demonstrate that their decision was consistent with the requirements in the Bill that they are reasonably satisfied that the granting of freehold is appropriate. In particular, freehold instruments must have been subject to notification, public consultation, and the results of public consultation.

The Bill requires the trustee to consult on the freehold instruments in the decided way and keep records about the consultation showing that the consultation was consistent with the decided way.

The Bill then requires the Minister approving the freehold instrument to have regard to the information given to the Minister, in particular that the trustee has consulted with the Native title holders for the freehold option land to be proposed to be included in the freehold schedule and the consultation undertaken by the trustee was consistent with the way the decided by the trustee.

Committee comment

The committee notes and is satisfied by the department's advice.

b) Model freehold instrument

The Bill provides that trustees may choose to adopt a 'model freehold instrument' which will be prescribed under regulation. Where a trustee adopts a model freehold instrument the requirements for full consultation are removed, as outlined in the Explanatory Notes which state '*the bill provides that a trustee can adopt a model schedule [which] provides a fast track to freehold in a community*'.[57]

It was not clear to the committee the process the Minister and the department would follow for developing the model freehold instrument, or the extent to which consultation is to be undertaken in its development. The committee was concerned that the effect of a trustee adopting a 'model freehold instrument' may, therefore, be to limit the right of consultation and review and affect the rights of existing interest holders.

Request for advice:

The committee asked the department to explain the process that will be followed in developing the 'model freehold instrument', and what consultation will be undertaken with stakeholders as part of this process.

DNRM advice:

The model freehold instrument will be made under regulation with the regulation itself being contained in the Bill – for example see clause 27 through to 30 of the Bill.

[57] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 5.

> *Accordingly the regulation has been subject to the same level of consultation as has the Bill. The making of the regulation in the Bill was set out in the consultation draft Bill. The content of the proposed regulation was set out in detail in the supporting explanatory material to the consultation draft, see for example under the heading Pathway 1 on page 8 of the explanatory material.*

Committee comment

The committee notes and is satisfied with the department's advice.

c) Existing lessees or applicants affected by changes to lease provisions

The transitional provisions (clauses 25 and 52 of the Bill) provide for existing leases and applications for leases under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* to be treated as if they are leases or applications for the same term under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991* as amended by the Bill.

As stated above, the LSA expressly states that FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals. The above clauses may affect the rights of existing lease holders and applications for leases.

The Explanatory Notes state:

> *The effect of treating existing leases and applications for leases under the amended Acts may be considered beneficial because the Bill simplifies or reduces requirements and restrictions on leases and applications.* [58]

However transitional provisions have not considered the circumstances/arrangements for existing leases where they expire and how they may be transferred to freehold upon expiration date of the lease, or the process for how a lessee may apply for the freehold option on the expiring leasehold land.

Request for advice:

The committee sought advice from the department on what transitional arrangements would be available to existing lessees to convert/transfer their lease to freehold upon the expiration of that lease.

DNRM advice:

> *The Bill provides for a holder of an existing interest to make application for freehold. An application for a lease or renewal of an existing lease will be captured by the leasing simplification transitional arrangements in the Bill.*
>
> *The Bill does not provide for conversion of existing interests but provides instead for the ability (subject to the freehold model being adopted) that people, including existing interest holders can apply for freehold.*
>
> *Under the Bill, where an interest holder applies for freehold, the grant of freehold automatically terminates any lease interest existing immediately prior to the grant of freehold. Registered interests on the lease are protected because they are automatically carried forward to the freehold tenure in the order in which they were registered.*
>
> *In the event that a person allows their lease to expire then that person ceases being an existing interest holder under the Bill.*

[58] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 12.

Committee comment

The committee notes and is satisfied by the department's advice.

Administrative Power

Section 4(3)(a) *Legislative Standards Act 1992* - Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Clauses 5 and 35 of the Bill insert new Part 2A into the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to allow the trustee of freehold option land to make a freehold instrument, allocate available land, and apply to the chief executive to grant available land as freehold.

As a matter of FLP, exercises of administrative power are to be well defined and subject to appropriate review. Given the potential for clauses 5 and 35 to affect the rights and liberties of individual and communal interests, the committee is concerned that the scope of administrative and decision making powers provided to the trustee in relation to the granting of land is not sufficiently defined so as to protect the rights and liberties of all interest holders to that land.

Request for advice:

The committee invited the department to explain what provisions are included in the Bill to limit the administrative power of the trustee, and the extent to which these administrative powers will be subject to appropriate review.

DNRM advice:

> *The trustee's administrative power is limited by the process for the development of and ultimately the contents of the freehold instrument, which includes the freehold schedule and freehold policy.*
>
> *The freehold instrument is developed by the trustee and it is that instrument that provides the applicable regime for the assessment of eligibility for allocation of land. The freehold instrument has already undergone extensive consultation in its development.*
>
> *Additionally, the freehold instrument is approved by the Minister. The Bill requires that the actions of the trustee must be consistent with the freehold instrument in allocating the available land to the eligible person. That is, the trustee must follow the allocation process.*
>
> *The Chief Executive, in deciding the application from the trustee, may rely upon the statutory declaration of the trustee of the trust that the trustee followed the allocation process and, where relevant, the certification of the probity adviser of the probity of the allocation process for the available land.*
>
> *Appeals from the decision of the chief executive can be made under the Judicial Review Act 1991.*

Committee comment

The committee notes and is satisfied by the department's advice.

Natural Justice

Section 4(3)(j) *Legislative Standards Act 1992* - Is the Bill consistent with principles of natural justice?

In granting freehold land, the Bill gives the trustee of the land a number of powers (clauses 5 and 35). The trustee consists of members of the community who may have interests in land or may be eligible

to apply for the allocation of available land. In most cases the trustee is not the same as the Native title representative bodies.

Legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate the following three principles: (1) something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker; (2) the decision maker must be unbiased; and (3) procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.[59]

The Explanatory Notes state:

> *The Bill includes a number of safeguards including:*
>
> - *requiring the trustee to consult on the making of freehold instruments and for a freehold instrument to be approved by the Minister before it has effect;*
> - *limiting the scope for the trustee to refuse an application for a grant of available land or to participate in the allocations process for available land;*
> - *a right of appeal if a person's application for a grant or to participate in the allocation process is refused;*
> - *giving an eligible person who is offered available land a 5 day cooling off period during which the person may rescind or revoke their acceptance of the offer; and*
> - *the trustee must engage a probity advisor to oversee the allocation process where there is no existing interest in the land.* [60]

Request for advice:

The committee sought advice from the department about the scope of appeal rights in relation to the granting of freehold land, as provided in clauses 5 and 35 of the Bill, who would be eligible to exercise these appeal rights, and who will consider these appeals.

The committee also sought assurances that the department was satisfied the following conditions have been met:

- members of the communities are informed and aware of their appeal rights and procedures for appeal
- timeframes and process for appeal are appropriate to the Aboriginal traditions and island customs, and to the discrete and remote locations of these communities, and
- that processes for the lodgment and consideration of appeals will be appropriate and independent of the trustee.

DNRM advice:

> *As set out in clauses 5 of the Bill, for example, proposed new section 32B which sets out definitions for new Part 2A of the ALA includes an " appeal period" which is referred to in new section 32T (2), section 32ZA(h), section 32ZD, and section 32ZE(a).*
>
> *The appeal is to the Land Court. The Land Court Act 2000 deals with procedural processes relevant to the appeal.*
>
> *Appeal rights are limited to a person who receives an information notice in relation to the available land. Where the trustee refuses an application, the trustee must give the applicant an information notice.*

[59] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 25.
[60] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 11.

A trustee may refuse an application, for example where:

- *the housing chief executive advises that there is a social housing dwelling on the land and the housing chief executive has not consented to the applicant making the application, or*
- *the trustee is not reasonably satisfied the applicant is in eligible person for the available land the subject of the application, or*
- *that all interest holders the available land have not made the application or have not consented to the applicant making the application, or*
- *the mortgagee has not consented to the applicant making the application where there is a mortgage over the available land.*

Committee comment

The committee notes and is satisfied by the department's advice. The committee has recommended additional appeal provisions to be included in the Bill.

Aboriginal Tradition and Island Custom

Section 4(3)(j) *Legislative Standards Act 1992* - Does the Bill have sufficient regard to Aboriginal tradition and Island custom?

Clauses 5 and 35 of the Bill insert new Part 2A into the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to allow particular land to be granted in freehold under the *Land Act 1994.*

In granting freehold land, the Bill gives the trustees of the land a number of powers (clauses 5 and 35). The trustee consists of members of the community who may have interests in land or may be eligible to apply for the allocation of available land.

The Bill requires the trustee to consult with Native title holders, where Native title holders are defined in reference to section 224 of the *Native Title (Queensland) Act 1993.*

The transitional provisions (clauses 25 and 52 of the Bill) provide for existing leases and applications for leases under the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991* to be treated as if they are leases or applications for the same term under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991* as amended by the Bill.

Clause 57 provides for the repeal of the *Aurukun and Mornington Shire Leases Act 1978*. In particular sections 19 and 20 of that Act provide for those persons who are authorised to enter, to reside in, or be in, the Shire of Aurukun or the Shire of Mornington (including, for example, persons holding leases, licences or permits for or over land in the shires). Section 26, similar to sections 19 and 20, was enacted to ensure the new lessee under the *Aurukun and Mornington Shire Leases Act 1978* would not be able to prevent the traditional practices of the Aboriginal people of the area.

The Scrutiny Committee had considered that legislation cannot affect Native title unless the specific legislation made express provision for that to occur.[61]

Here, the land is currently held communally for the benefit of the Aboriginal or Torres Strait Islander inhabitants, traditional owners and their future generations.[62] The existing legislation does not allow for ordinary freehold title to be granted. The current situation is one of custodianship rather than ownership. The provisions in the Bill, if enacted, will reverse the situation to one of individual ownership rather than communal custodianship.

[61] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 87; Alert Digest 1997/13, p. 44, paras 8.23-8.24; Alert Digest 1997/12, p. 50, paras 7.25-7.27.

[62] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, p. 1.

Additionally, the provision for the granting of ordinary freehold title under the Bill does not appear to prevent the land from being on-sold at a later date to persons who are not Aboriginal or Torres Strait Islander. The granting of ordinary freehold may also extinguish or limit Native title rights.

Clause 5 of the Bill sets out in relation to approving the grant of available land:

> *(4) In deciding the application, the chief executive-*
>
> *(a) must be reasonably satisfied-*
>
> *(i) agreements or arrangements appropriate to granting the available land as freehold have been entered into or are in place, including, for example, in relation to the following-*
>
> *(A) native title…*

It is not clear to what extent the Native title agreement preserves the Native title interest once ordinary freehold title is granted or when that title is later on-sold.

Consideration of the effect of legislation on the rights and liberties of individuals often involves examining the balance between the rights of individuals and the rights of the community or more general rights.[63]

Accordingly, the present case raises the issue of balancing individual interests (right to ordinary freehold title) and community interests (ensuring the land remains with Aboriginal and Torres Strait Islander persons for future generations, and preserving Native title). The Explanatory Notes do not address this specific question but indicate the level of consultation in relation to Aboriginal and Torres Strait Islander persons and the granting of freehold title under the proposed Bill:

> *The Bill has been the subject of wide consultation with Aboriginal people and Torres Strait Islanders affected by the initiatives in the Bill. This has included the Premier writing to the Mayors of Aboriginal and Torres Strait Islander communities and other relevant stakeholders on 16 November 2012 advising them of the government's decision to provide them with the option of freehold title for their community; public release of a discussion paper in November 2012; targeted, face to face consultation undertaken by the Assistant Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs with the relevant Aboriginal and Torres Strait Islander Councils in the period December 2012 to April 2013; face to face consultation was also undertaken by the Assistant Minister with all the Native Title Representative Bodies; the Chief Executive Officers of the Aboriginal and Indigenous Regional Councils; and the Native title prescribed bodies corporate in the Torres Strait. Newspaper advertisements were also placed in the relevant local papers during March 2013 seeking submissions in response to the discussion paper. A consultation draft of the Bill and accompanying explanatory material were released for public consultation in December 2013 with a closing date of 28 February 2014.*
>
> *The Department of Natural Resources and Mines also directly consulted with the following stakeholders: Indigenous local councils through the Local Government Association of Queensland and individual meetings with Torres Strait Native Title Prescribed Bodies Corporate and the Torres Strait Regional Authority's Native Title Office; Torres Strait Island Regional Council; North Queensland Land Council and Yarrabah Aboriginal Shire Council; Cape York Regional Organisations; Queensland South and Torres Strait Island and Horn Island registered Native title body corporates.*[64]

[63] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 138.

[64] Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014, Explanatory Notes, Explanatory Notes, p. 13-14.

If the provision of ordinary freehold title does not ensure the land will remain for the benefit of Aboriginal or Torres Strait Islander persons in the future, and does not ensure the preservation of Native title rights; there may be insufficient regard to Aboriginal tradition and Island custom.

Further, the Bill includes requirements for the trustee to consult on the making of freehold instruments and the allocation of freehold option land, and for a freehold instrument to be approved by the Minister before it has effect only after being reasonably satisfied that the trustee has consulted with Native title holders.

Section 224 of the *Native Title (Queensland) Act 1993* defines the term "Native title holders" as follows:

> *"The expression native title holder, in relation to native title, means:*
>
> *(a) if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interests on trust--the prescribed body corporate; or (b) in any other case--the person or persons who hold the native title."*

Use of this definition may create some uncertainty as to the status of traditional owners with a registered Native title claim, which has not progressed to a final determination – the Native title claimants. The *Native Title (Queensland) Act 1993* confers the same procedural and negotiation rights on registered Native title claimants as those afforded to traditional owners with a determined Native title claim, by making specific mention of registered Native title claimants.

The committee is concerned that by limiting the scope of required consultation to Native title holders, thereby excluding Native title claimants from their procedural and negotiation rights and from the potential benefits associated with the freehold proposal, there may insufficient regard to the rights and liberties of traditional owners.

Native title interests appear to be excluded from the consideration of the initial grant of freehold. The Bill defines interest holder as follows:

> *interest holder, for available land, means a person who holds any of the following interests in the land—*
>
> *(a) a registered lease granted under this Act or the Land Act, other than a townsite lease;*
>
> *(b) a lease entitlement under the new Land Holding Act;*
>
> *(c) a 1985 Act granted lease or a new Act granted lease under the new Land Holding Act;*
>
> *(d) a registered sublease, including a registered lease of a townsite lease;*
>
> *(e) a residential tenancy agreement for a social housing dwelling situated on the available land;*
>
> *(f) a right to occupy or use the available land under section 199.*

Request for advice:

The committee sought assurances that the department has sufficiently considered the conflict between communal custodianship and individual ownership arising from new Part 2A to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*, and that the Bill has sufficient regard for: (a) the Aboriginal tradition and Island customs and (b) the rights and liberties of Native title holders and claimants.

The committee also sought advice from the department that provisions within the Bill concerning consultation requirements, notification timeframes, cooling off provisions and rights of appeal are culturally appropriate and have sufficient regard to Aboriginal tradition and Island custom.

Further the committee asked the department to advise if the exclusion of Native title from the definition of 'interest holder' will have any impact on the eligibility of individuals to freehold option land and the right of appeal for Native title holders and claimants.

DNRM advice:

Conflict between 'communal custodianship' and 'individual ownership

> *The department can assure the committee that in designing the Bill the department considered the potential conflict between "communal custodianship" and individual ownership. This conflict is at the heart of the structure of the Bill in that the freehold option is an option to be adopted or not adopted by the trustee for the community.*
>
> *This is further taken into account by under the Bill through:*
>
> - *the ability to tailor the freehold instrument by way of the available land and the freehold policy by way of participation criteria;*
> - *the allocation method for available land;*
> - *the sale price; and the cost to be recovered from the sale price; and*
> - *how the community will be consulted about the allocation process.*

Sufficient regard for Aboriginal tradition and Island custom

> *For the reasons above, the department is satisfied that the Bill has sufficient regard for aboriginal tradition and Island custom and the rights and liberties of Native title holders and claimants.*

Particular provisions are culturally appropriate

> *The department further assures the committee that the Department considers that the provisions of the Bill concerning consultation requirements, notification timeframes, cooling off provisions and rights of appeal are culturally appropriate and have sufficient regard to aboriginal tradition and Island custom. This is because the Bill is not prescriptive of the content of many of these elements. Rather the Bill recognises the importance of these elements being delivered by the trustee in a culturally appropriate way, taking into account aboriginal tradition and island custom for their particular trustee community.*

Exclusion of Native title holders from the definition of 'interest holder'

> *Native title holders are not excluded from applying for freehold under the Bill. Native title holders can participate in any open allocation process, that is, where there is no existing interest in the land. When a Native title holder holds an interest, as that term is used in the Bill, then that Native title holder (as an eligible holder of that interest) may make application to the trustee of the land to request the allocation of freehold land through the interest holder allocation process – just as any other interest holder can for their interest.*
>
> *Native title holders have their Native title rights protected under the Native title Act 1993 (Cth) (NTA). Accordingly there is no need to otherwise deal with the issue under this Bill. In accordance with the NTA, there will need to be evidence that Native title is extinguished over the land to be freeholded, or where Native title may continue to exist over the land, that there is a registered Indigenous land use agreement evidencing the Native title party's consent to the proposed freehold grant.*

Committee comment

The committee notes and is satisfied by the department's advice.

Right of Public Access to the Beach

Rights and Liberties of Individuals

Section 4(3)(i) *Legislative Standards Act 1992* - Compulsory acquisition of property: Does the Bill provide for the compulsory acquisition of property only with fair compensation?

Clause 61 of the Bill inserts a new Chapter 7, Part 3B in the *Land Act 1994* that would apply to land in a coastal area that includes within its boundaries land that has effectively become beach. The amendment will provide that a regulation may declare any part of the land that is effectively beach in nature to be a 'declared beach area'. A declared beach area will be open to public use and enjoyment (even though remaining in the ownership of the land owner) with control and responsibility for the area passing to the State, or to a local government if the local government agrees to accept that control and responsibility.

Clause 61, new section 431S of the Bill provides that the State will not be liable for compensation to the land owner for the creation of a right of public access across a beach within that land owner's property.

Section 4(3)(i) of the LSA states that legislation should provide for the compulsory acquisition of property only with fair compensation.[65] In its past work, the former Scrutiny of Legislation Committee noted that it is generally acknowledged that compulsory acquisition of property must only be made with compensation.[66]

The Oxford dictionary defines 'acquire' as to: *"Buy or obtain (an asset or object) for oneself".*[67]

Here the proposed clause will provide for the State or Local Government to obtain the *use* of an asset for their designated purpose (public access to certain beach areas). There is a compulsory acquisition, however, it is of the right to use the asset, rather than of the asset itself. A broad interpretation of section 4(3)(i) may arguably be taken to include a compulsory acquisition of the usage rights for an asset.

The Office of the Queensland Parliamentary Council (OQPC) Notebook states, "*A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason".*[68]

The proposed clause appears to provide for an interference with a person's property without compensation. However, the OQPC Notebook also states:

> *The Scrutiny Committee accepts a legal opinion that the enactment of legislation interfering with pre-existing rights does not normally, at law, give rise to any legal claim on the part of those persons adversely affected. Its view is that the only exception is if a statute has the effect of compulsorily acquiring property, in which case (the former Scrutiny Committee considered) the courts will usually interpret the legislation as conferring an entitlement to fair compensation.* [69]

Previously, the additional usage of an existing easement, without compensation to the landholder, has been referred to Parliament without express objection by the Scrutiny Committee. In that case

[65] *Legislative Standards Act 1992*, section 4(3)(i).
[66] Alert Digest 1996/7, pages 27-28, para. 7.13.
[67] Oxford dictionary online, http://www.oxforddictionaries.com/definition/english/acquire, accessed at 27 May 2014.
[68] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 73.
[69] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 73-74; Alert Digest 2001/3, p.3, para. 20.

certain provisions enabled existing electricity easements to be used to lay further cabling for other services without compensation to the landholder.[70]

In this case, the interference with land provided for in clause 61 appears to be greater than the additional usage of an existing easement but less than a narrow interpretation of the compulsory acquisition of property.

Request for advice:

The committee sought assurances from the department that the interference with private land provided for in clause 61, without compensation, is justified in the circumstances, and that proposed new section 431S of the Bill has sufficient regard to the rights and liberties of affected individuals.

DNRM advice:

> *The land over which it is proposed to declare a right of access is, in the majority of cases, not land originally surveyed with beach frontage. Rather, the land had been separated from the sea by an esplanade or reserve. It is a windfall to the owners that the esplanades or reserves in front of their properties has completely eroded away. The State never granted owners exclusive beach access and is of the view that there is no requirement to compensate them for their good fortune.*
>
> *It is in the public interest for the public to have reasonably unrestricted access to the seashore, including for travelling from one place to another. Further, the value of the rights being affected, is highly questionable since the area where the access right is granted is a sandy strip on which cultivation or construction is impracticable.*
>
> *The department's position is that the interference with private land, without compensation, provided for in clause 61 is justified in the circumstances, and that proposed new section 431S of the Bill has sufficient regard to the rights and liberties of affected individuals.*

Committee comment

The committee notes and is satisfied by the department's advice. Elsewhere in this report, the committee has sought further clarification in relation to these issues.

Aboriginal Tradition and Island Custom

Section 4(3)(j) *Legislative Standards Act 1992* - Does the bill have sufficient regard to Aboriginal tradition and Island custom?

As explained above, clause 61 of the Bill enables a right of beach access to be declared across land granted in trust or leasehold land.

It is possible that Native title will exist on land granted in trust or leasehold land to which a right of beach access may be declared.

Legislation should have sufficient regard to Aboriginal tradition and Island custom.[71] The Scrutiny of Legislation Committee considered that this FLP encompassed two considerations – (i) legislation should be drafted to recognise Aboriginal and Islander customary law and to avoid unintended legislative impacts on traditional practices; and (ii) 'limited concession' to Aboriginal tradition and Island custom was based on *'a recognition of the unique status of Aborigines and Torres Strait Islanders as Australia's indigenous peoples."*[72]

[70] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 78.
[71] *Legislative Standards Act 1992*, section 4(3)(j).
[72] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 79.

The Scrutiny of Legislation Committee recognised the significance of consulting with Aboriginal and Islander people and representative bodies on proposed legislation.[73]

It is not possible from the provisions contained in the current Bill, to determine whether Native title will be affected (as the provisions, if enacted, will apply on a case by case basis at the discretion of the Minister).

Further, the former Scrutiny of Legislation Committee had stated that responsibility for monitoring the affects on Native title rests with the drafters and developers of the legislation. The committee's role is to consider whether legislation has had sufficient regard to this issue.[74]

The Explanatory Notes state:

> *The beach access provisions in the Bill are deliberately silent in relation to the effect of the reforms on Native title and also in relation to compensation. Such silence cannot be construed that the Bill is seeking to over-ride the Commonwealth Native Title Act 1993. The Bill cannot override the Commonwealth Native Title Act 1993. It is silent on these matters as they are dealt with under the Commonwealth Native Title Act 1993. There is no need for the State, and nor should it, to re-enact the protections and provisions of the Commonwealth Native Title Act 1993, in state legislation or limit the types of land and resource dealings it can carry out as the Commonwealth Act ensures that native title is protected through compliance under the future act regime.*
>
> *When doing acts that affect Native title, it is the Commonwealth Native Title Act 1993 that sets out the requirements for addressing Native title, the effect on Native title, the relevant procedural rights and compensation for the effect on Native title. It is the Commonwealth Native Title Act 1993 which allows the States and Territories to validly proceed with land and resource dealings subject to the requirements of the Commonwealth Act.*
>
> *It is important to note that the State cannot cause extinguishment of Native title, or otherwise affect Native title, unless that is the outcome provided under the Commonwealth Native Title Act 1993. In relation to compensation for the effect on Native title, as noted above, there is no need for the Bill to deal with Native title compensation as compensation for the effect on Native title is dealt with under the Commonwealth Native Title Act 1993. It is a matter for the Native title party to bring a compensation application forward in the Federal Court unless agreement is otherwise reached in the form of a registered Indigenous Land Use Agreement (ILUA).*

Request for advice:

The committee sought assurances that the department will have procedures in place to ensure the department carries out the appropriate consultation and research with respect to Native title before declaring a beach area as a 'declared beach area'.

DNRM advice:

> *When doing acts that affect Native title, it is the Native Title Act 1993 (Cth)that sets out the requirements for addressing Native title, the effect on Native title, the relevant procedural rights and compensation for the effect on Native title.*
>
> *Consistent with these requirements and those in the Bill the department will have adequate procedures in place to ensure there is appropriate consultation with affected parties and*

[73] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 80; Alert Digest 2001/1, p. 16, para. 5.

[74] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 86; Alert Digest 1997/6, p. 46, paras. 6.7-6.11.

that Native title implications are researched before declaring a beach area as a 'declared beach area'.

Committee comment

The committee notes and is satisfied by the department's advice.

Appendix A – List of submitters

1. Torres Strait Island Regional Council (TSIRC)
2. Dr Sharon Harwood
3. Cape York Land Council Aboriginal Corporation (CYLCAC)
4. North Queensland Land Council (NQLC)
5. Local Government Association of Queensland (LGAQ)
6. Mr Percy Neal, Yarrabah Resident
7. Mr Darryl Gibson, Yarrabah Resident
8. Bwgaman Aboriginal Land Trust of Palm Island (BALT)
9. Mr Vincent Mundraby, Yarrabah Resident
10. Ngurupai Kaurareg Aboriginal Land Trust (KALT)
11. Queensland Law Society (QLS)
12. Mr Chris Foord, Injinoo resident
13. Apudthama Aboriginal Land Trust (AALT)

Appendix B – Briefing officers and hearing witnesses

Briefing officers

Mr Neil Bray, Valuer General, State Valuation Service, Department of Natural Resources and Mines

Mr Ken Carse, Principal Policy Officer, Aboriginal and Torres Strait Islander Island Services, Department of Natural Resources and Mines

Mr Greg Coonan, Director, Operations Support, Department of Natural Resources and Mines

Ms Judith Jensen, Executive Director, Aboriginal And Torres Strait Islander Land Services, Department of Natural Resources and Mines

Mr Gary Kleidon, Manager, Program Implementation And Review, Department of Local Government, Community Recovery and Resilience

Mr Rex Meadowcroft, Director, Legislative Support, Department of Natural Resources and Mines

Mr Joe Piccini, Principal Adviser, State Valuation Service, Department of Natural Resources and Mines

Witnesses at the public hearing held in Woorabinda on 21 July 2014

Mr William Gulf, Deputy Mayor, Woorabinda Aboriginal Shire Council

Mr Campbell Leisha, Elder

Mr Terry Munns, Mayor, Woorabinda Aboriginal Shire Council

Mr Andrew Luttrell, Acting Executive Director, Aboriginal and Torres Strait Islander Land Services, Department of Natural Resources and Mines

Mr Geoffrey Rynne, Private capacity

Ms Davina Tilberoo, Private capacity

Witnesses at the public hearing held in Mornington Island on Wednesday, 23 July 2014

Mr Ken Carse, Principal Policy Officer, Aboriginal and Torres Strait Islander Land Services, Department of Natural Resources and Mines

Ms Karen Chong, Private Capacity

Mr Adrian Jacob, Private Capacity

Mr Jack Juhel, Private Capacity

Ms Farrah Linden, Private Capacity

Mrs Delma Loogatha, Private Capacity

Ms Rosalin Sipirok, Private Capacity

Mr Thomas Wilson, Private Capacity

Witnesses at the public hearing held in Napranum on Thursday, 24 July 2014

Mr Garry Bailetti, Principal Engagement and Planning Officer, Remote Indigenous Land and Infrastructure Program Office, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs

Mr Philemon Mene, Mayor, Napranum Aboriginal Shire Council

Mr Amos Njaramba, Chief Executive Officer, Napranum Aboriginal Shire Council

Mr Ken Carse, Principal Policy Officer, Aboriginal and Torres Strait Islander Land Services, Department of Natural Resources and Mines

Ms Moira Bosen, Private capacity

Ms Jackie Madua, Private capacity

Ms Brooke Prentis, Private capacity

Witnesses at the public hearing held in Injinoo on Thursday, 24 July 2014

Mr Anthony Mara, Councillor, Northern Peninsula Area Regional Council

Mr David Byrne, Facilitator, Apudthama Land Trust

Mr Bernard Charlie, Mayor, Northern Peninsula Area Regional Council

Mr Ken Carse, Principal Policy Officer, Aboriginal and Torres Strait Islander Land Services, Department of Natural Resources and Mines

Mr Robert Bagie, Private capacity

Ms Yodie Batske, Private capacity

Mr Roy Blanco, Private capacity

Mr Mark Gebadi, Private capacity

Mr Meun Lifu, Private capacity

Ms Gina Nona, Private capacity

Ms S. Nona, Private capacity

Mr Tolowa Nona, Private capacity

Mr Robert Sallee, Private capacity

Mr Nicholas Thompson, Private capacity

Witnesses at the public hearing held in Hammond Island on Friday, 25 July 2014

Mr Fred Gela, Mayor, Torres Strait Island Regional Council

Mr Keith Fell, Deputy Mayor, Torres Strait Island Regional Council

Mr Mario Sabatino, Councillor, Torres Strait Island Regional Council

Mr Horace Baira, Councillor, Torres Strait Island Regional Council

Mr Oliver Gilkerson, Legal representative for Torres Strait Regional Authority

Mr Maluwap Nona, Board member, Torres Strait Regional Authority

Mr Yen Loban, Deputy Mayor, Torres Shire Council

Mr Ken Carse, Principal Policy Officer, Aboriginal and Torres Strait Islander Land Services, Department of Natural Resources and Mines

Ms Tomasina Mam, Private capacity

Ms Nancy Pearson, Private capacity

Mr John Blayumi, Private capacity

Witnesses at the public hearing held in Cherbourg on Tuesday, 29 July 2014

Mr Michael Bond, Chairperson, Wakka Wakka Aboriginal Corporation

Mr Norman Bond, Private capacity

Mr Ken Bone, Mayor, Cherbourg Aboriginal Shire Council

Mr Harold Chapman Jr, Private capacity

Mr Andrew Luttrell, Director, Policy, Department of Natural Resources and Mines

Mr Arnold Murray, Private capacity

Mr Gordon Wragge, Councillor, Cherbourg Aboriginal Shire Council

Appendix C – Summary of submissions

This summary compiled by committee staff includes advice provided by the Department of Natural Resources and Mines on issues raised by submitters.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
1	Torres Strait Island Regional Council (TSIRC)		No specific section	The TSIRC provided qualified support for the Freehold proposal subject to: • *The State providing appropriate financial resources and support to enable the Trustee consult with beneficiaries in accordance with the requirements of the Act, and undertake the administrative and planning work to effect the freehold scheme; and* • *There being sufficient legislative flexibility to give the Trustee sole discretion as to its Freehold Schedule across areas such as the extent of land available, eligibility for initial grant and purchase price.*	The Department of Natural Resources and Mines (DNRM) thanks the Torres Strait Islander Regional Council for their submission and qualified support of the Bill. DNRM makes the following points in relation to the concerns raised in their submission: 1. The Bill states in new section 28I: *The purpose of the consultation is to enable the trustee to be reasonably satisfied it is appropriate for the freehold option land to be granted in freehold.* Therefore the nature and extent of any consultation is a matter for each trustee to determine. The freehold instrument can be used as means to inform community about what freehold tenure means and the responsibilities of owning freehold, along with the proposed process to make freehold available. Where State agencies are undertaking land tenure activity in a community then a collaborative approach with council can be achieved. Limited funding has been set aside for a pilot project for implementing the freehold model in several communities. Expressions of interest for communities wishing to participate in this pilot project will be announced later this year by the Honourable Mr Glen Elmes MP, the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs. 2. The Bill provides flexibility and discretion for trustees regarding these matters. New section 32D in the Bill allows a trustee to make a freehold instrument. The freehold instrument is made up of a freehold schedule and a freehold

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					policy. The trustee must identify what land will be made available for freehold in the freehold schedule and set the eligibility and purchase price in the freehold policy. These are all matters for the trustee to determine.
				TSIRC argued that $75,000 pledged by the State for consultation by Trustees for 'pilot' communities, is grossly insufficient to undertake sufficient consultation across the remote islands/regions of their LGA. *Recommendation: That the State prepares a fair and reasonable budget to provide sufficient funding to Trustees to consult on the Freehold Proposal, including but not limited to engagement of Probity Officers.*	The funding is for a pilot project and is only intended to cover a small number of communities. Expressions of interest for communities wishing to participate in this pilot project will be announced later this year by the Honourable Mr Glen Elmes MP, the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs. TSIRC should you consider this opportunity when it is announced. The policy behind the freehold model is that it is optional and is to be self-funding. Costs such as engaging a probity officer can be recovered through the purchase price for the freehold land as this money goes to the trustee.
2	Dr Sharon Harwood		No specific section	The Bill demonstrates the Newman government commitment to creating equal opportunities to access and create economic development in remote Indigenous communities.	DNRM thanks Dr Harwood for her submission and notes Dr Harwood's acknowledgement of the aims of the Bill.
				The Bill should provide for consistent terminology used by the Queensland Planning Provisions to describe the precise location of where free hold options will be made available i.e. Urban and Future Urban or Township Zone.	The Bill does not require amending the term urban area. The term 'urban area' is not a technical term but takes on its general or common meaning. As stated in the Bill: ***urban purposes** means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes.* The planning schemes prepared to date have used a variety of terminology, but they are all covered by the broad definition used in the Bill. This will be confirmed by the Department of Aboriginal and Torres Strait and Multicultural Affairs who are managing the

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					planning scheme process for the communities.
				Neither the Bill, nor other state government policies address half of the solution to stimulating economic development within remote Indigenous communities. Noting that 'a person needs a job to pay a mortgage and access to the implicit capital value of their land assets to increase growth and production rates', Dr Harwood was critical that job creation was not addressed adequately in either this Bill or any of the other interventions applied by the government.	The Department of Natural Resources and Mines (DNRM) considers this is a policy matter and beyond the scope of the Bill.
				Dr Harwood questioned why more attention has not been paid to creating economic development opportunities via the planning scheme and the property system, rather than a single focus on private home ownership in the Indigenous communities.	DNRM considers this is a policy matter and beyond the scope of the Bill.
				Noted concern for the absence of detail to provide for the granting of Aboriginal Freehold Land outside of an Aboriginal Local Government Area, but within a LGA. There has been no provision within the Bill for freehold as an option for Land Trusts that hold land outside of an Aboriginal Local Government Area. For example, in the case of the Eastern Kuku Yalanji (EKY) nation, the territory of which is located within two non-Indigenous Shires (Cook and Douglas shires) that both have planning schemes governing development. This is an issue of equity to all Aboriginal people in Queensland and should be acknowledged and addressed directly.	A policy decision was made that the Bill would be directed at providing the option of freehold in Indigenous communities and would not apply to Aboriginal land outside of an Aboriginal local government areas. However, the ability to obtain ordinary freehold land already exists under the *Land Act 1994* and this process can be used for Indigenous lands outside of the communities covered by the Bill.
3	Cape York Land Council Aboriginal Corporation (CYLCAC)		No specific section	Before any option for freehold is made available in Aboriginal towns two threshold issues must be addressed. The first issue is the transfer of DOGIT and other transferrable land within townships to the tenure of Aboriginal freehold, and from the trusteeship of Council (or other trustees) to an Aboriginal corporation which	DNRM thanks the CYLCAC for their submission and notes their concerns. The Bill, if enacted by the Queensland Parliament, will simply put in place the mechanism for taking up freehold. No freehold will be granted or able to be granted simply by the Bill being enacted.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				includes land trustee within its functions. The second issue is to address native title on a township wide basis through a township Indigenous Land Use Agreement (ILUA) so that a process for the surrender of native title and a formula for compensation is agreed.	The Bill allows for these two issues to be addressed – it is a matter for each community as to how and when they choose to address them. The transfer of DOGIT land is not required for the freehold model to operate and as such it is not a legislative prerequisite. A township wide ILUA is strongly supported from a cost efficiency perspective and importantly freehold cannot be granted (where native title continues) without an ILUA in place. However, as the freehold model is optional, it is a matter for trustees whether they wait until an ILUA or transfer is in place before they commence on their community's freehold instrument or proceed in advance.
				CYLCAC expressed concern that there has not been any direct consultation with native title holders or individual traditional owners, and noted that whilst there may be "in principle" support has been given by the Aboriginal Shire Council, this is not necessarily representative of the views of the broader community "Aboriginal community, native title and Traditional Owner stakeholders for this matter are far more extensive and relevant than Aboriginal Shire Councils". Accordingly they suggested that more extensive consultation be taken with the people affected by the Bill to ensure that community members, native title holders and traditional owners are aware of or fully understand the detail or implications of the freehold model proposed in the Bill.	Freehold is not being imposed on any community by the Bill if enacted by the Queensland Parliament. Commencement of the Bill simply means that the framework is in place for communities to begin the freehold process if they wish to. It is up to the trustee and the communities themselves to decide if and when they commence. Community members and native title holders should consider the implications of taking up freehold carefully. That decision is however a matter for the trustee in consultation with the community. Consultation by the trustee with the community and native title holders is required under the Bill in particular new section 32I.
				Further assistance must be provided for all communities to address the full range of pre-conditions necessary for home ownership and economic development to be enabled. CYROs have previously made detailed submissions about the land, finance and human capacity pre-conditions that are necessary to enable development	It is anticipated that for a typical block of land in a community many of these issues will have already been dealt with and the applicant will not be required to meet the cost. Currently, there is a coordinated program by the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				to occur.	(DATSIMA) and the DNRM undertaking the following work in Indigenous communities: • Surveying and subdividing all lots in townships • Preparing *Sustainable Planning Act 2009* compliant planning schemes • Resolving road alignments and tenure anomalies including those resulting from the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. • Negotiating ILUAs The majority of this work is anticipated to be either completed, or well underway, prior to the Bill's proposed commencement of 1 January 2015. Where a person wishes to purchase a standard lot within a town and there is an ILUA in place there may be limited to nil costs for the applicant to cover. Where the State is preparing ILUAs attempts will be made to include leasing and freehold consent into the ILUAs, however this is subject to the other party's consent. However, where the State is not negotiating an ILUA then, just as for anywhere else in the State, people who propose a development that may affect native title need to comply with the *Native Title Act 1993* (Cth).
				CYLCAC suggested simple trust accounts must be established to support home ownership and economic development projects (regardless of land tenure) to provide confidence to development proponents and attract mainstream finance into Aboriginal towns.	DNRM considers this is a policy matter and beyond the scope of the Bill.
				CYLCAC indicated that they believed draft house valuations proposed by the State for negotiation with Councils are too high, and raised concern that Councils, as temporary DOGIT trustees, were not the appropriate party to be making these decisions. They argued that,	DNRM considers this is a policy matter and beyond the scope of the Bill.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				land transfers to an Aboriginal land trust corporation must precede the setting of house sale prices.	
4	North Queensland Land Council (NQLC)		No specific section	The concern for NQLC is that the bill has the potential to create a divide in aboriginal communities leading to a two strata society which is counterproductive to efforts to advance aboriginal wellbeing and living conditions. They note in their submissions that "Many aboriginal people living in Yarrabah and Palm island are economically disadvantaged and will not have the means to purchase the social housing or to raise the money for that purpose through a mortgage or personal loans".	DNRM thanks NQLC for their submission and notes their concerns with the Bill. Importantly it should be noted that the Bill, if enacted by the Queensland Parliament, will simply put in place the mechanism for taking up freehold. No freehold will be granted or able to be granted simply by the Bill being enacted. In order for freehold to be granted, the community must first take up the option of freehold and where native title continues then the consent of the native title holders is required. In addition, communities can control how much and what land is made available and how it is to be made available through the freehold instrument. This is matter that the communities need to consider before deciding to take up the freehold option. It is then a matter for individuals to decide whether to purchase land based on their own individual circumstances. The Bill simply provides individuals with this option that otherwise has previously been denied them.
				NQLC expressed concern that issues associated with native title have not been adequately addressed by the State. They noted that the conversion to freehold of native title land is likely to attract compensation in accordance with the *Native Title Act 1993* (Cth); and that as the state government does not appear to be providing and funds towards the payment of Native Title compensation, that this burden will likely fall upon the recipient of the freehold. 'This would be imposing an additional burden on persons who are already economically disadvantaged." CYLC also suggested that there would need to be support for the negotiation of the ILUA and the lodging of the compensation claim.	When doing acts that affect native title, it is the Commonwealth *Native Title Act 1993* (NTA) that sets out the requirements for addressing native title, the effect on native title, the relevant procedural rights and compensation for the effect on native title. The State must, and will, comply with the NTA when doing acts affecting native title under the provisions of the Bill. The State cannot cause extinguishment of native title, or otherwise affect native title, unless that is the outcome provided under the NTA. In relation to compensation for the effect on native title, it is a matter for the native title party to bring a compensation application forward in the Federal Court unless agreement is

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					otherwise reached in the form of a registered Indigenous Land Use Agreement (ILUA). The State will require that compensation is dealt within any ILUA consenting to the grant of freehold. Compensation is a matter for the proponent to address - just as it is for any other ILUA. Where the State is preparing an ILUA attempts will be made to include leasing and freehold consent into the ILUA, however this is subject to the other parties' consent. Native title holders will decide whether or not to consent to the grant of freehold and the amount of compensation, knowing that the land will go to an Indigenous person. This should be a factor in their decision. Ultimately, if the native title holders value native title over freehold title then that is their value judgement, or perhaps more appropriately, a cultural judgement, which should be respected. That is their choice. Any reasonable costs can be recovered through the purchase price set by the trustee. The State is making freehold available - it is up to the community, including the native title holders, to take up the option, and if so, how best to they take up the option to suit their community.
5	Local Government Association of Queensland (LGAQ)		No specific section	In principle, the LGAQ supports the objectives of the Bill. The State Government's commitment to ensure that Aboriginal and Torres Strait Islander communities have the same access to freehold land tenure as available in all other communities in Queensland is commendable and supported.	DNRM thanks LGAQ for its in principle support of the objectives of the Bill
				LGAQ acknowledges that providing freehold land in Aboriginal and Torres Strait Islander communities is both a significant and divisive subject and, in itself, is not an assurance of economic development.	The Bill will implement the Queensland Government's commitment to ensure that Aboriginal and Torres Strait Islander communities have the same access to freehold title as available throughout Queensland and to remove barriers to economic development in these communities.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					Under the Bill taking up freehold is optional and the Bill simply provides the mechanism for communities to take up freehold if they choose to. The Bill also requires consultation by the trustee with the community and native title holders, see new sections 32I and 28I.
				Recognising that land administration matters in Aboriginal and Torres Strait Islander communities are complex, and cautioned that reforms to land tenure arrangement must proceed at a pace whereby all stakeholders are well-informed and at ease with the process.	If enacted by the Queensland Parliament, commencement of the Bill simply means that the framework is in place for communities to begin the freehold process if they wish to. It is up to the trustee and the communities themselves to decide if and when they commence. The Bill also requires mandatory consultation with the community and native title holders before a decision is made as to whether to take up the option of freehold title in a community .
				In order for the Bill's proposed reform program to be clearly understood by all stakeholders, the LGAQ advocates for an overarching land administration and housing strategy to be developed to guide all activities, legislative and otherwise, related to the land tenure; land administration; and housing programs, as well as to identify the long-term goals and objectives for the Aboriginal and Torres Strait Islander land reform agenda.	The Government is implementing land tenure reform in Aboriginal and Torres Strait Islander communities, by: • resolving legacy issues through the *Aboriginal and Torres Strait Islander Land Holding Act 2013* • providing the same land ownership opportunities through access to freehold • cutting red tape by simplifying leasing under the *Aboriginal Land Act 1991* (ALA) and the *Torres Strait Islander Land Act 1991* (TSILA) The department is working closely with two key partners in this reform: • With the Department of Aboriginal and Torres Strait and Multicultural Affairs to reduce transaction costs where possible through a coordinated effort to bring the land administration systems in Indigenous communities up to par with comparable non-Indigenous communities including developing planning schemes, surveying and subdividing all lots in the townships.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					• With the Department of Housing and Public Works particularly in relation to achieving home ownership and social housing outcomes.
				The LGAQ suggests that trustees, whether also a local government, or a Registered Native Title Body Corporate (RNTBC), are not adequately resourced to perform a comprehensive engagement process as is suggested in the Bill. The LGAQ noted that the indigenous local governments are experiencing a reduction in their general purpose funds and that eleven (11) of the sixteen (16) Aboriginal and Torres Strait Islander local governments have recently been identified by the Queensland Audit Office as being high risk with respect to financial sustainability.	The policy behind the freehold model is that the State will not be paying for the surrender or relinquishment of native title and the process is to be self-funding, with any costs incurred by the trustee able to be recovered through the freehold land purchase price.
				To achieve suitable participatory community engagement, the LGAQ favours a local government facilitated program that is sufficiently flexible to meet the needs and aspirations of each Aboriginal and Torres Strait Islander community. In addition, such a program will require financial assistance and support from the other spheres of government to ensure local governments are suitably resourced and have the capacity to undertake this work	DNRM notes LGAQ's suggestion but considers this issue to be beyond the scope of the Bill. However, it is noted that the Department of Local Government, Community Recovery and Resilience provides support for local governments including grants and subsidies.
				The LGAQ suggests that an Indigenous Land Use Agreement (ILUA) will be a key early step in any freehold land model or process. An ILUA is also considered particularly valuable in assisting a council carry out regular local government service delivery and meet legislative obligations. As such, the LGAQ recommends ILUAs be negotiated and developed for each of the sixteen (16) Aboriginal and Torres Strait Islander local government areas in advance of the commencement of the Bill/Freehold scheme process.	ILUAs are necessary for the grant of freehold. It is noted that the proposed Torres Strait Regional ILUA, being negotiated by the Department of Aboriginal and Torres Strait and Multicultural Affairs and the Torres Strait Regional Authority, includes freehold for traditional owners. Where the State is preparing an ILUA attempts will be made to include leasing and freehold consent into the ILUA, however this is subject to the other parties' consent. If enacted by the Queensland Parliament, commencement of the Bill simply means that the framework is in place for communities to begin the freehold process if they wish to. It is up to the

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					trustee and the communities themselves as to when they commence. They can commence prior to having an ILUA in place, but as noted above an ILUA is a requirement for freehold to be granted where native title continues.
				The LGAQ recommends that a communication and engagement strategy be developed that includes information and/or guidance targeted at each of the various stakeholder groups, such as local government, trustees and lessees, community reference panels, and individual residents. It will be appropriate to include information suitable for culturally and linguistically diverse (CALD) individuals. Such a strategy should enable all stakeholders affected by this Bill and other Aboriginal and Torres Strait Islander land reforms demonstrably understand the process and participate accordingly in making informed decisions.	DNRM notes LGAQ's recommendation about a communication and engagement strategy and will assist through providing support and explanatory information on the department's website. In addition the pilot project will be used to determine what, if any, additional information or engagement is required.
6	Mr Percy Neal, Yarrabah Resident		No specific section	Mr Neal suggested that the Bill should reflect a choice of whether the individual applicant prefers (1) Aboriginal Freehold; (2) Ordinary freehold; or (3) 99 year lease over the lot of land. He said that in his case he preferred ordinary freehold. He also noted in his submission that home ownership is a choice for the individual, which is a separate issue from welfare reform policies.	DNRM thanks Mr Neal for his submission and notes that the Bill currently provides for these options both at a community level and at an individual level. A community can decide to not take up the freehold option or take it up over part of the town land thus leaving the balance as Aboriginal freehold and subject to leasing. Alternatively an individual can choose to apply for a lease or for freehold (where it has been made available in that community).
8	Bwgaman Aboriginal Land Trust of Palm Island (BALT)		No specific section	The Bwgaman Aboriginal Land Trust of Palm Island support the objective of the Bill on the basis that it would allow for the development of the 53 acres of community land in Aitkenvale, Townsville granted to the BALT under a DOGIT arrangement. They noted that the 'introduction to allow freehold ownership of indigenous titled land is one that will support this development'.	DNRM thanks the Bwgaman Aboriginal Land Trust of Palm Island for their submission and notes the following in response to their submission. The ability to obtain ordinary freehold land already exists under the *Land Act 1994* (ALA). This can apply even where there is ALA freehold. If the trustee of ALA freehold wishes to pursue ordinary freehold they should contact the Aboriginal Land Acts

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					Branch of DNRM on Freecall 1800 067 615. Note: Could the department please clarify if this land is indeed applicable under the act, or if it does not fall under the category of 'freehold option land'? *Response* *The department confirms that the Aboriginal freehold land at Aitkenvale is not land that is subject to the Bill as it is not within an Indigenous local government area.* *Additionally, the Aitkenvale land can currently be developed through the leasing provisions in the ALA. These leasing provisions will be simplified as a result of the Bill.*
9	Mr Vincent Mundraby, Yarrabah Resident		No specific section	Mr Mundraby raised concern that the Bill does not provide the option of freehold to lands outside of the township. His concern was that Yarrabah Share Farmers/Block Holders of lands outside of the township and where these people have established residences and successful farming businesses should be afforded the opportunity to be issued freehold title. Mr Mundraby also expressed the view that this was a matter of natural justice due to the long association these people have with the land and the long and ongoing process that people have endured in order to secure tenure over these properties. Mr Mundraby called on the state government to consult with the lease holders with the view of providing freeholding to these people and to help them realise their aspirations of private ownership	DNRM thanks Mr Mundraby for his submission and notes his concerns with certain aspects of the Bill. Could the department please outline the reasons for limiting the freehold option to township land? *Response* *In the consultation draft of the Bill, the freehold option applied to all trust land. Concerns were raised with the government during consultation at the potential for large areas of community land to be granted to individuals and lost from the community for future generations. A number of submissions on the consultation draft Bill strongly sought the limitation of the freehold model to townships.* *In response to these concerns the Bill provides that freehold option land is restricted to townships. Limiting the option of freehold to townships will prevent large tracts of communal land being granted as freehold to individuals and lost from the communal land.* *This amendment also has the advantage that the land will have already been identified for development through the local*

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					planning scheme process and in most cases already utilised and thereby lessening community concerns at taking up the freehold option. *The leasing regime already provides for 99 year home ownership leases with an as of right renewal process.* *The simplified leasing framework in the Bill will enable trustees to easily grant leases of up to 99 years (with renewals) for any purpose.* *The combination of the home ownership leases and the simplified leasing regime will mean that any development need outside of the townships can be accommodated without loss of the communal land.*
10	Ngurupai Kaurareg Aboriginal Land Trust (KALT)		No specific section	The Kaurareg Aboriginal Land Trust outright oppose the freehold option and the Bill. Notwithstanding this opposition, they make a number of recommendations that they note 'should not be interpreted as indicating support for enactment of the Bill'.	DNRM thanks the Kaurareg Aboriginal Land Trust for their submissions and acknowledges their opposition to the Bill.
				KALT raise concerns in their submission about the lack of consultation with traditional owners of the lands that will be subject to the freehold option in the Bill. They note that the Kaurareg people are acknowledged as the traditional owners of Kerriri (Hammond Island) and that the Kaurareg people have a registered native title claim over the island. Accordingly, Kaurareg has procedural rights under the Native Title Act 1993 (Cth) ('NTA') in respect of future land use decisions that will affect their native title rights and interests. The Land Trust Executive Committee and Kaurareg Senior Aboriginal Elders are concerned that full and meaningful consultations with their community have not been honoured nor do they satisfy the requirements of section 223(t)(a)(b)(c) of the *Native Tttle Act 1993*	There have been significant consultation opportunities on the freehold proposal and the Bill including a meeting with the Kaurareg NTBC: • public release of a discussion paper in November 2012 with newspaper advertisements seeking submissions • meetings with Native Title Representative Bodies in 2013 and 2014 • meeting on Horn Island with the native title prescribed bodies corporate in the Torres Strait including the Kaurareg NTBC • a consultation draft of the Bill and accompanying explanatory material were released for public consultation in

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				(Cwth). They note that this is of particular concern to the traditional owners of Hammond Island given that currently the trustee of the DOGIT is the Torres Strait Island Regional Council, not the traditional owners *Recommendation: The Queensland Government should undertake direct and adequate consultations with the people of Hammond Island, ensuring that they are fully informed of the implications of the Freeholding Scheme for Kaurareg ownership and control of their traditional lands before the Bill is progressed. Consultation should take the form of public meetings as well as targeted consultation with native title holders and claimants.*	December 2013 with a closing date of 28 February 2014. Importantly it should be noted that the Bill, if enacted by the Queensland Parliament, will simply put in place the mechanism for taking up freehold. No freehold will be granted or able to be granted simply by the Bill being enacted. In order for freehold to be granted the community must first take up the option of freehold and where native title continues then the consent of the native title holders is required.
				Almost all of the land on Hammond Island currently is the subject of a Deed of Grant in Trust ('DOGIT'). Although the Queensland government recognised Kerriri (Hammond Island) as traditional 'Aboriginal' land in 2010 when, under amendments to the Aboriginal Land Act 1991 (ALA) and the Torres Strait Islander Land Act 1991 (TSILA), Hammond Island was brought under the ALA instead of the TSILA as had previously been the case, at this point in time the registered Trustee of the DOGIT is the Torres Strait Island Regional Council. Amendments to the ALA include provision for the transfer of DOGIT land back to Aboriginal traditional owners to be held in trust for the benefit of traditional owners. But provision for the transfer of DOGIT land back to Aboriginal traditional owners has not taken effect on Hammond Island as at this date. In particular, they consider that before any further amendments to tenure arrangements on their traditional lands are contemplated by the Queensland Government that the transfer of the DOGIT to Hammond Island's traditional owners should first take effect. *Recommendation: The transfer of the DOGIT for*	Consultation for the transfer of Hammond Island is on-going. Submissions from bodies applying to hold the land closed 30 June 2014. This information needs to be assessed for consideration of a proposed grantee. It is not anticipated that transfer could occur before mid-2015. This timeline would be consistent with when freehold could practicably be taken up as a community must first have a planning scheme in place. However, irrespective of whether the transfer of the DOGIT has occurred, no freehold can be granted, where native title continues, without the consent of the native title holders.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				Hammond Island in accordance with the terms of the Aboriginal Land Act 1991 should be completed before the Bill is progressed.	
				The removal of lands from the beneficial schemes of land holding under the *Aboriginal Land Act 1991*and the *Aboriginal and Torres Strait Islander Land Holding Act 2013*, and the extinguishment or surrender of native title over the area could have the effect of vastly changing the character of affected communities. With this in mind, the Kaurareg people consider that a robust process for native title consent should be part of the Bill.	Under the model taking up freehold is optional and the Bill simply provides the mechanism for communities to take up freehold if they choose to. The Bill also limits the initial grant of freehold are restricted to Indigenous persons (or their spouses or ex-spouses). The possibility of the freehold land being sold to persons from outside the community is a very real possibility and trustees, community members and native title holders specifically, need to consider this possible outcome before taking up the freehold option. However, this is a choice for the community itself, the Government is not imposing this decision on communities. So if a community does take up the freehold option then that is a clear indication of their view on these issues. Additionally, it should be noted that where native title continues, no freehold can be granted without the consent of the native title holders through an Indigenous Land Use Agreement.
				It is not clear to the Kaurareg people why the Queensland Government considers that the Freeholding Scheme will be of benefit. The existing provisions of the Aboriginal Land Act already allow for the grant of long leases (including for home ownerships and commercial purposes) by trustees of DOGIT areas within the terms of the trust, without extinguishment of native title, or removal of the land from the DOGIT.	The Bill will implement the Queensland Government's commitment to ensure that Aboriginal and Torres Strait Islander communities have the same access to freehold title as available throughout Queensland and to remove barriers to economic development in these communities. However, the freehold model is voluntary and importantly the leasing regime is being simplified, whether a community takes up the freehold model or not.
				Because there would be no restrictions on use or disposal of freehold land, it is possible that the land could pass permanently from ownership by Aboriginal or Torres Strait Islander people or organisations. As well as simple	As noted above the Bill, if enacted by the Queensland Parliament, will simply put in place the mechanism for taking up freehold. No freehold will be granted or able to be granted simply by the Bill being enacted.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				sale of the land to non-Aboriginal people, land could be transferred to a bank on default of any mortgage over the land, or to non-Aboriginal persons through a property settlement associated with the end of a marriage or other domestic relationship. The Kaurareg people are concerned about the possible consequences for their traditional lands by this lack of restriction on grant or disposal to non-Aboriginal people.	Land use is not controlled by the Bill but is a matter for the relevant planning scheme and other relevant legislation. In order for freehold to be granted the community must first take up the option of freehold and where native title continues then the consent of the native title holders is required. As a result of feedback on the consultation draft Bill, the freehold model has been limited to township areas. This would mean for Hammond Island, for example, if the freehold model was taken up it could only apply to the township itself, the remaining land would remain DOGIT until such time it was transferred under the ALA and would therefore obviously remain available to the Kaurareg people. Another feature of the freehold model is that the land to be made available for freehold can be limited through the Freehold Schedule and the eligibility criteria for who can apply can be restricted through the Freehold Policy.
				Whilst draft or somewhat completed planning schemes are being progressed across the indigenous local government areas, the KALT raised concern that in many cases the native title holders and/or traditional owners have not been consulted by the trustees or made aware of the planning/zoning proposals in these region. Recommendation: If the local planning instruments are to be the basis of the model freehold schedules, the status of these plans in should be clarified with the affected communities, and the Government should ensure that adequate consultation has occurred with traditional owners before the plans are finalised.	This is a matter for the relevant local government who are ultimately responsible for the local planning scheme and therefore beyond the scope of the Bill. There is a statutory notification process for planning schemes. This process involves public notification and opportunity to comment. In preparation for the Hammond Island planning scheme the consultation has included the Kaurareg Land Trust and the Kaurareg native title body will be consulted in July 2014. This is preparatory consultation, the statutory consultation is yet to commence.
Chapter 2 Aboriginal and Torres Strait Islander Land Amendments Parts 1-7					
1	Torres Strait Island Regional Council (TSIRC)	Cl. 5/Cl.35 Insertion of new part 2A – Cl.32B	Ordinary freehold land tenure	TSIRC note 'interest holders' identified in the Bill as the only persons eligible for grant of Ordinary Freehold where such interests apply to said land. It is noted that Native Title interests are not recognised in this list. We	*Surrender of native title and compensation* Native title holders can apply for freehold under the freehold model in the Bill. There is no assumption in the Bill that native

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
		Definitions for pt 2A – eligible person; and interest holder		understand that Native Title interests in land are not registrable interests against land title, however they are far more fundamental than any registrable interest identified in the current definition of 'interest holders' in the Bill. We consider that the rationale for excluding Native Title rights and interests from the ambit of 'interest holders' is the State's perception that traditional ownership is not readily identifiable as not recorded in writing and/or identifying clearly said eligible individuals for an Ordinary Freehold grant. The State must be made aware of the circumstances in which the 'interest holders' given preference currently under the Bill obtained their respective interests. Availability of land in Aboriginal and Torres Strait Islander Communities is scarce. In order to ensure families are adequately housed, Common Law holders of Native Title ("traditional owners") have been forced to allow social houses and other public infrastructure, to be constructed on their lands. Of late, the State has further required the grant of 40 year leases by the Trustees of land back to the State in order to secure this capital investment. Traditional owners have not been compensated sufficiently for this burden. Land has been temporarily 'gifted' by Traditional Owners for social housing purposes on the basis of necessity, absent intention to extinguish such rights. The Bill appears to assume by rendering 'interest holders' the only eligible applicants for Ordinary Freehold interest (where such interest holders exist with respect to the said land), that Traditional Owners (where different from the said 'interest holder') shall automatically agree to extinguish their Native Title rights and interests upon	title holders will automatically agree to the extinguishment of native title. When doing acts that affect native title, it is the Australian Government's Native Title Act 1993 (NTA) that sets out the requirements for addressing native title, the effect on native title, the relevant procedural rights and compensation for the effect on native title. The State must, and will, comply with the NTA when doing acts affecting native title under the provisions of the Bill. Native title holders will decide whether or not to consent to the grant of freehold and the amount of compensation, knowing that the land will go to an Indigenous person. The State will require that compensation is dealt within any ILUA consenting to the grant of freehold. Compensation is a matter for the proponent to address - just as it is for any other ILUA. *Traditional owners should have first refusal for freehold.* The freehold model in the Bill provides for communities to adopt additional eligibility criteria (restricting who can apply for freehold) additional to the restrictions included in the Bill. These additional eligibility criteria could, for example restrict applications for freehold to traditional owners. Therefore restrictions such as requested are already capable of being applied and are a matter for each community. Under the freehold model there are two processes for the trustee to allocate freehold; these are: • The interest holder allocation process; and • The no interest holder allocation process. Where a native title holder has an 'interest' in the land such as a lease or is a social housing tenant, then subject to meeting the requirements in the Bill and the freehold instrument the native

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				such grant. Furthermore, it is assumed they will do so without making any compensation claim. On the contrary, we would suggest that extinguishment would, on the whole, likely only be validated under the *Native Title Act 1993* (Cth) in instances where the Traditional Owner(s) themselves were the grantees of the Ordinary Freehold interest. ***We consider that this shall provide an obstacle to grant of Ordinary Freehold in instances where 'interest holders' and Traditional Owners over the same land, differ. This situation is widespread in the Torres Strait.*** Where RNTBC's have a statutory right of first refusal as grantees of Aboriginal or Torres Strait Islander Land under the ALA or TSILA in Communal Freehold to be held for and on behalf of the Traditional Owners, it follows that Traditional Owners should have a right of first refusal for the grant of Ordinary Freehold over the same land. It would appear that compensation for extinguishment of Native Title is unfunded under the Freehold Proposal. To this end, we would consider that the only prospect of reasonably reducing a compensation claim by affected Traditional Owners is to ensure Traditional Owners themselves obtain the benefit of such Ordinary Freehold grant. *Recommendation: That the Bill include Common Law Holders of Native Title as an eligible 'Interest Holder' under the ALA and TSILA amendments.*	title holder could apply for freehold. Where there is no interest in the land then any native title holder is able to participate in the allocation process provided they meet the requirements in the Bill and any requirements in the freehold instrument. The Bill provides a particular allocation process where there is an 'interest' in the land. This provides a level of certainty as to who the qualified person is as they can be searched on a register, this is not the case for native title holders. However, as noted above a native title holder can apply where there is no existing interest such as a lease or social housing through the open allocation process, or they can obtain an interest themselves and utilise the interest holder allocation process. Including native title holders as an interest would also mean that no land would be available through the open allocation process as there would be an interest, ie native title, over all the land. *Native title extinguishment and compensation* When doing acts that affect native title, it is the Australian Government's Native Title Act 1993 (NTA) that sets out the requirements for addressing native title, the effect on native title, the relevant procedural rights and compensation for the effect on native title. It is the NTA which allows the States and Territories to validly proceed with land and resource dealings subject to the requirements of that Act. The State must, and will, comply with the NTA when doing acts affecting native title under the provisions of the Bill. The State cannot cause extinguishment of native title, or otherwise affect native title, unless that is the outcome provided under the NTA. In relation to compensation for the effect on native title, it is a matter for the native title party to bring a compensation application forward in the Federal Court unless agreement is otherwise reached in the form of a registered

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					Indigenous Land Use Agreement (ILUA). The State will require that compensation is dealt with in any ILUA consenting to the grant of freehold. It is noted that the draft Torres Strait Regional ILUA contemplates surrender of native title for granting freehold to native title holders at nil compensation. If native title interests choose to take up the freehold option over their land/dwellings, could this result in social displacement and homelessness for people currently living there? If so, what strategies are proposed to address this? *Response* *No one with an interest (as defined in the Bill) can be displaced. As noted by TSIRC being a native title holder is not considered an 'interest 'under the Bill. Where there is an existing interest eg a lease or social housing dwelling then only the interest holder (which includes a social housing tenant) can obtain freehold under the Bill (see new sections 32S and 28S) - no one can be displaced.* *Where there is no interest in the land then the allocation of the land must be through an open process such as an auction and is open to all eligible people (as defined by the Bill and through any further eligibility criteria set out in the Freehold Instrument).*
		Cl. 5/Cl.35 Insertion of new part 2A – 32D Trustee may make freehold instrument	Ordinary freehold land tenure	Trustees must be appropriately resourced in the Freehold Pathway in order to undertake the responsibilities set out in the Freehold Proposal. Notwithstanding the State's opinion that the Freehold Proposal shall be self-funded by purchase price, it is most cost-effective that those proposed individual Freehold lots identified in the Freehold Schedule, be surveyed concurrently. This shall	There are always unavoidable costs in moving from communal tenure to individual freehold title. To minimise these costs the bill provides for model freehold instruments. The extent of consultation for each community is a matter for the trustee. The government is instigating a coordinated and comprehensive effort to bring the land administration systems in Indigenous

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				be an upfront cost to the Trustee. Furthermore, it is not possible for Trustees at the outset, when incurring significant expense in undertaking full and frank consultation with its beneficiaries, undertaking significant survey work, preparing and adopting Freehold Schedules, obtaining ministerial consent to the Freehold Schedule and navigating the Freehold Pathway, to properly assess purchase price, absent certainty as to ultimate take up (i.e. the more applicants, the wider such costs may be spread, thereby reducing purchase price to the extent possible, rendering such option affordable in low-socio economic regions) as required under s32D(6)(c). Absent appropriate financial resources, Council has grave fears that all Trustee's will not be able to afford undertaking the Freehold Pathway prescribed and that there are real risks that the Freehold Pathway shall be frustrated and that individual Freehold shall become unavoidably cost-prohibitive for applicants.	communities up to date with comparable non-Indigenous communities across Queensland. Currently, the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs and DNRM are comprehensively upgrading the land administration systems in Indigenous communities. Where the land administration work, such as surveying has been undertaken and there is an ILUA in place then the cost for freehold would be very minimal to almost nil. If this work has not been completed, then it is a matter for the trustee and the community as to whether they wish to proceed with making freehold available at that time or wait until the survey work and ILUAs are completed. It is noted that the draft Torres Strait Regional ILUA contemplates surrender of native title for granting freehold to native title holders at nil compensation.
2	Dr Sharon Harwood	Cl. 5/Cl.35 Insertion of new part 2A – 32B Definitions for pt 2A – freehold option land; urban area; and urban purposes	Ordinary freehold land tenure	The terminology applied in the planning schemes is different to that in this Bill. The Bill provides for freehold option on land located within townships only, which is defined and identified in the relevant local planning scheme as urban or future urban use. 'Of the three planning schemes that I reviewed for the purposes of this submission – none use the definition of urban to delineate a place or location from 'non-urban''. *Recommendation: That it would be more appropriate to use consistent terminology between the two processes so that it is clear that land within the Township zones is the only locations that will be considered for potential freehold options*.	The Bill does not require amendment of the term urban area. The term 'urban area' is not a technical term but takes on its general or common meaning. Planning schemes identify areas for urban purposes including future urban purposes. Urban areas for the purposes defined (below) are zoned in the planning scheme under a number of different designations ranging from zones ie General Residential, Centre, Recreation and Open Space, Industry and Community Purposes or via a Township zone with precincts ie Industrial, Open Space, Business, Airport and Housing. As stated in the Bill: ***urban purposes*** *means purposes for which land is used in cities or towns, including residential, industrial, sporting, recreation and commercial purposes*.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				The land use rights attached to a piece of land are granted via the local planning scheme. Two issues arise relative to this notion. One being that there will not be an even distribution of free holding options for development provided to each Land Trust within a LGA, rather only those that has land within the Township zone. Secondly the economic value of the land in other non-Indigenous communities (remote and otherwise) is relative to (amongst other things) the land use rights inferred through a local planning scheme. Where the land use rights are Self and Code Assessable and Exempt, the value can be more readily calculated. However, where the land use is Impact Assessable – the economic value of the land is less certain (as it does not exist until after an approval has been granted by the Local Government). *Recommendation: There is a need to support the facilitation of improved land use planning and development of consistent planning scheme provisions across land trust areas within LGAs*	DNRM considers this issue to be beyond the scope of the Bill. Land use is not controlled by the Bill but is a matter for the relevant planning scheme and other relevant legislation. A policy decision was made that the Bill would be directed at providing the option of freehold in Indigenous communities and would not apply to Aboriginal land outside of an Aboriginal local government areas. However, the ability to obtain ordinary freehold land already exists under the Land Act 1994 and this process can be used for Indigenous lands outside of the communities covered by the Bill.
				The Bill provides well for those Aboriginal people who live within the 34 identified communities. What is still outstanding is a discussion about how to facilitate the same opportunities for Aboriginal people who live on Aboriginal Freehold Land that does not fall within a discrete Aboriginal LGA. I use the example of the EKY people as most of their land (with the exception of the 11km2 in Wujal Wujal Shire Council, but outside of the township) falls within Cook and Douglas Shires. It is essential that all Aboriginal people are afforded the same opportunity to access and create economic development opportunities through land tenure reforms. A further issue is that by limiting the freehold option to township land only, the government is limiting the	A policy decision was made that the Bill would be directed at providing the option of freehold in Indigenous communities and would not apply to Aboriginal land outside of an Aboriginal local government areas. However, the ability to obtain ordinary freehold land already exists under the *Land Act 1994* and this process can be used for Indigenous lands outside of the communities covered by the Bill. Development can, and does, occur outside of townships through the leasing regime. This alibility will be further strengthened by the simplification of the leasing regime provided for by this Bill. Providing the option of freehold outside of townships was not supported during the consultation on the freehold model.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				opportunity for growth and development in indigenous communities, particularly those where there is no available land for further development within the township and where planning scheme have identified land use areas outside of the township. For example the Land Use Plan for Wujal Wujal states that all future population growth will be accommodated and land suitable for economic development lies outside of the 'Township zone' and is affected by conservation overlays that in turn make all economic development impossible to achieve. Dr Harwood noted that she has not undertaken a comprehensive review of how much land is described as Aboriginal Freehold Land (AFL) or will be designated as AFL in the future to provide this committee with precise figures on land area and population that are affected by this omission. However I think it is something that the committee should acknowledge and address directly.	
3	Cape York Land Council Aboriginal Corporation (CYLCAC)	No specific clause	Ordinary freehold land tenure	The objective of land reform in Aboriginal towns should be to simplify the tenure mix and create a level playing field for development. It is therefore critical that a township wide native title solution is found. Otherwise the Bill will lead to a situation where land where native title continues to exist within towns will not be converted to freehold because the native title compensation issue will make its conversion unviable, but adjoining land where native title has been extinguished by a previous act will be converted to freehold. The tenure mix in communities will then remain complex which is undesirable and not conducive to development and economic improvement. *Recommendation: The State must continue with the resourcing of township ILUAs to enable the grant of leases for a range of purposes, and to enable the surrender of native title as part of the freehold process.*	DNRM considers this to be a policy matter and beyond the scope of the Bill. However, the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs is currently instigating a program of town-wide ILUAs for Indigenous communities in partnership with the Cape York Land Council.
				CYLCAC argued that only Aboriginal freehold should be	Councils are democratically elected to represent the whole

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				convertible to freehold in order to deliver on the objectives of simplifying land tenure mix across indigenous communities. - Aboriginal Shire Councils are temporary DOGIT trustees and as such are an inappropriate party to be making decisions about whether land tenure should be converted to freehold. - The current framework allowing Councils to respond to lot by lot applications for freehold, will therefore result in a more complicated tenure mix where some land tenure is freehold, some is Aboriginal freehold, some DOGIT, some LHA, some leased, some owned, etc. *Recommendation: That the option for DOGIT to be converted to freehold be removed from the Bill, and that the Bill make provisions to require that the transfer of land from DOGIT tenure and Council trusteeship to Aboriginal freehold held by an Aboriginal land trust corporation must precede the option to convert tenure to freehold*	community. Where native title holders do not agree with making freehold available then they can put forward this view to the trustee through the mandatory consultation process included in the Bill and ultimately they can refuse native title consent for the grant of freehold. The model does not prohibit any trustee from responding on a lot by lot basis. However, this may not be the most efficient process and the Bill does allow for the trustee, in consultation with the native title holders and community, to make all of the town area available for freehold. How freehold is made available and the timing of implementing the freehold option is up to each community. The community can proceed to freehold whilst the tenure is DOGIT or they could defer it until after any ALA transfer is completed – the decision is theirs.
				The Bill provides that an Aboriginal corporation land trust may decide to convert the land it holds to freehold. This is supported since the land trust could decide to convert all or none of its land to freehold, and therefore simplify the tenure mix in Aboriginal towns. CYROs consider that it is preferable that all township land tenure is converted to freehold to create one level playing field that is equivalent to the mainstream situation.	DNRM notes CYLCAC's support for the provisions in the Bill that allow an Aboriginal corporation land trust to decide to convert the land it holds to freehold
				CYROs have previously expressed concern about the lack of agreed process and compensation to incentivise the surrender of native title to enable tenure conversion to freehold. They argued that the State has a	While under the *Native Title Act 1993* (Cth) the State must be a party to any ILUA involving the surrender of native title, the State is not contributing compensation of native title for third parties to obtain freehold.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				responsibility to ensure that the freehold model proposed in its Bill is viable. *Recommendation: The compensation formula must be incorporated into a township wide ILUA and the source of native title compensation identified by the state and as a precondition for the adoption/commencement of the freehold scheme process.*	ILUAs are voluntary agreements between the native title party and the proponent. Compensation is a matter for the proponent to address - just as it is for any other ILUA. The State will require that compensation is dealt with in any ILUA consenting to the grant of freehold. Where the State is preparing an ILUA attempts will be made to include leasing and freehold consent into the ILUA, however this is subject to the other parties' consent. Native title holders will decide whether or not to consent to the grant of freehold and the amount of compensation, knowing that the land will go to an Indigenous person. This should be a factor in their decision. Ultimately, if the native title holders value native title over freehold title then that is their value judgement, or perhaps more appropriately, a cultural judgement, which should be respected. That is their choice. Any reasonable costs can be recovered through the purchase price set by the trustee. The State is making the option of freehold available - it is up to the community, including the native title holders, to take up the option, and if so, how they take up the option.
				CYLCAC supported restricting the freehold option to town areas only. However in order to provide for stable/secure home ownership and economic development in areas outside of the township, leasing regime must be strengthened.	DNRM acknowledges CYLCAC's support for restricting the grant of freehold to town areas only. The Bill includes amendments to simplify the leasing regime so that communities do not feel they have no choice other than to take up freehold to be able to develop their community. Communities will have a significantly more flexible and efficient leasing process with which to support development of their community.
		Cl. 4/Cl.34 Amendments of s10/s9 (Lands that	Ordinary freehold land tenure	Where land tenure is not converted to freehold, leasing options for home ownership and economic development under the ALA will remain available. However Aboriginal land ceases to be transferable land when the subject of	The Bill provides in Clause 4 that the land is not transferable whilst the offer is in force. That is, once the offer ceases (withdrawn, not taken up) then the land is transferable again.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
		are transferable lands)		an allocation offer to an interest holder or an allocation notice where no interest holder. The Bill must be amended or clarified to provide that the land becomes transferrable again if the allocation offer or notice is not taken up. This issue would be resolved by transferring all transferrable land prior to the freehold option being applied	
		Cl. 5/Cl.35 Insertion of new part 2A – 32I Trustee to consult	Ordinary freehold land tenure	The Bill does not require communal land owners and native title parties to support tenure conversion to freehold. The Bill must be amended to provide a much more prescribed process for community consultation when deciding whether to freehold land. This issue would be resolved by transferring all transferrable land prior to the freehold option being applied.	Taking up the freehold option is entirely voluntary – it is up to each community and their trustee. Further, consultation with the native title holders is mandatory under the Bill and the consent of the native title holders is required for the grant of freehold, where native title continues.
4	North Queensland Land Council (NQLC)	Cl. 5/Cl.35 Insertion of new part 2A – 32B Definitions for pt 2A – freehold option land; urban area; and urban purposes	Ordinary freehold land tenure	NQLC supports the approach that limits the freehold option to township areas as this will avoid large tracts of land being permanently alienated from aboriginal community ownership. This is also important given land once converted to freehold can be sold to non- aboriginal people which has the potential to fracture aboriginal communities over time	DNRM thanks NQLC's for their support for this component of the freehold model.
10	Ngurupai Kaurareg Aboriginal Land Trust (KALT)	No specific clause	Ordinary freehold land tenure	The Kaurareg people are concerned that the proposed amendments will further complicate the existing complex land tenure arrangements on their traditional lands. The tenure system on Hammond Island and surrounding islands has been affected by policy and legal changes made by government over a long period. Land on Hammond Island is subject to native title rights and interests (with a registered native title claim currently in place over the island). Non native-title tenure	Transferring Hammond Island DOGIT would not simplify the land tenure arrangements as the DOGIT would simply be replaced by ALA freehold (a similar form of inalienable freehold also held on trust). Under the freehold model taking up freehold is optional - the Bill simply provides the mechanism for communities to take up freehold. How freehold is made available and the timing of implementing the freehold option is up to each community. They can wait until

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				arrangements on Hammond Island, and surrounding islands, include holdings under the Aboriginal Land Act 1991, the Aboriginal and Torres Strait Islander Land Holding Act 2013 and the Land Act 1994. The introduction of the Freeholding Scheme in this area will further complicate the above tenure arrangements. They submit that land tenure on Hammond Island must first be transferred to Aboriginal freehold (under the ALA) in the trusteeship of the Native title holders/claimants.	an ILUA or transfer is in place before they commence on their community's freehold instrument or proceed in advance of them – the decision is theirs.
		Cl. 5/Cl.35 Insertion of new part 2A – 32C Approval for grant of available land	Ordinary freehold land tenure	The explanatory material accompanying the Bill states that "in order to grant freehold native title must be extinguished or surrendered under an Indigenous Land Use Agreement'. The Bill as currently drafted does not specifically require entry into an Indigenous Land Use Agreement ('ILUA'). Subsection (3) of s32C sets out criteria for approval by the Chief Executive of a grant, which include that "agreements or arrangements appropriate to granting the available land as freehold have been entered into or are in place, including . .. in relation to ... native title" . The Bill does not specify that native title must be extinguished or surrendered by way of an ILUA before a grant is made. In light of the permanent and serious consequences of the grant of freehold over traditional lands, it is essential that the Bill make clear that an ILUA is the sole means by which native title may be surrendered or extinguished for the purposes of the Freeholding Scheme. *Recommendation: Section 32C(3) should be re-drafted to provide that an ILUA is a necessary precondition for the grant of freehold title under the Scheme.*	When doing acts that affect native title, it is the Commonwealth *Native Title Act 1993* (NTA) that sets out the requirements for addressing native title, the effect on native title, the relevant procedural rights and compensation for the effect on native title. It is the NTA which allows the States and Territories to validly proceed with land and resource dealings subject to the requirements of that Act. It is not necessary to repeat the requirements of the NTA in the Bill as the NTA applies irrespective of the provisions in the Bill, or any other state legislation. In relation to surrender of native title, the NTA sets out the process for surrendering native title through an ILUA. The State cannot cause extinguishment of native title, or otherwise affect native title, unless that is the outcome provided under the NTA. In relation to compensation for the effect on native title, it is a matter for the native title party to bring a compensation application forward in the Federal Court unless agreement is otherwise reached in the form of a registered Indigenous Land Use Agreement (ILUA). The State will require that compensation is dealt within any ILUA consenting to the grant of freehold.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
		Cl. 5/Cl.35 Insertion of new part 2A – 32D Trustee may make freehold instrument	Ordinary freehold land tenure	The KALT also expressed concern that there is no requirement for public consultation in the development of the Freehold Policy associated with the Model Freehold Schedule. The terms of the Freehold Policy will have significant implications on the eventual grant of property, including in particular in relation to eligibility. This is particularly important in the case of Hammond Island as the trustee for the DOGIT which applies to Hammond Island is not a body controlled by the traditional owners of that Island. Recommendation: The consultation requirements in s32D should apply to the development of a Freehold Policy under Subdivision 2. Compliance with these consultation requirements should be a condition of Ministerial approval.	DNRM has addressed this issue in its response above. New section 32D does apply to a model freehold instrument, as does new section 32I which contains the consultation requirements.
		Cl. 5/Cl.35 Insertion of new part 2A – 32I Trustee to consult	Ordinary freehold land tenure	Section 32I of the Bill require the trustee to consult as to whether it is appropriate for "freehold option land" to be granted as freehold. The trustee is required to develop a means of consultation which requires it to consult with the "native title holders" for the freehold option land. The term "native title holders" is defined in the Bill with reference to s 224 of the Native Title Act. Section 224 of the Native Title Act defines the term as follows: "*The expression native title holder, in relation to native title, means:* *(a) if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interests on trust--the prescribed body corporate; or (b) in any other case--the person or persons who hold the native title."* Use of this definition may create some uncertainty to the status of traditional owners with a registered native title claim, which has not progressed to determination. The	DNRM acknowledges KALT's submission but considers that the term native title holder is the broader term and includes native title claimants.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				Native Title Act confers the same procedural and negotiation rights on registered native title claimants as those afforded to traditional owners with a determined native title claim, by making specific mention of registered native title claimants. The same approach should be applied in the Bill. *Recommendation: The consultation requirements in ss32L and 32G of the Bill should be redrafted to refer to both native title holders and registered native title claimants as those terms are defined in the Native Title Act.*	
13	Mr Foord (Injinoo Resident)	Cl. 5/Cl.35 Insertion of new part 2A – Cl.32B Definitions for pt 2A – eligible person; and interest holder	Ordinary freehold land tenure	Mr Foord raised concern that the bill excludes corporations from expressing an interest in the freehold land option. He noted that in communities such as the NPA, community owned indigenous corporations (not council) are driving community and economic development. *Recommendation: The Bill should allow such corporations to own freehold land otherwise severe restrictions will be placed on community owned enterprises as regards future economic development.*	The option of allowing corporations to be granted freehold was considered in the discussion paper titled "Providing freehold title in Aboriginal and Torres Strait Islander communities" released on 15 November 2012. A number of stakeholders rejected any entities other than individuals as being entitled to obtain freehold. As a result the Bill does not provide the ability to grant freehold to corporations or any level of government. Additionally, the Bill does not preclude Indigenous people from applying for freehold and then entering joint ventures to develop the land or selling it to corporations.
		Cl. 5/Cl.35 Insertion of new part 2A – Cl.32B Definitions for pt 2A – eligible person; and	Ordinary freehold land tenure	Mr Foord also believed that denying indigenous owned corporations the right to own freehold land was discriminatory and did not afford aboriginals people the same legal rights as main stream Australians '*If an indigenous business person wishes to own a freehold property in a Corporation owned by them for tax or other purposes they are not allowed to do so. They cannot therefore protect the family house, for example, by having it owned by a corporation should they personally*	The option of allowing corporations to be granted freehold was considered in the discussion paper titled "Providing freehold title in Aboriginal and Torres Strait Islander communities" released on 15 November 2012. A number of stakeholders rejected any entities other than individuals as being entitled to obtain freehold. As a result the Bill does not provide the ability to grant freehold to corporations or

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
		interest holder		*be beset by financial difficulties.'* *Recommendation: The definition of an indigenous person could be amended to include "Community based indigenous corporations". In other various Government legislation a person can be a corporation and there is no reason why this legislation should not mirror such legislation.*	any level of government. Additionally, the Bill does not preclude Indigenous people from applying for freehold and then transferring or selling their land to a corporation owned by them as suggested.
		Cl. 5/Cl.35 Insertion of new part 2A – Cl.32B Definitions for pt 2A – eligible person; and interest holder	Ordinary freehold land tenure	Mr Foord noted that the two issues raised above regarding the ability for indigenous corporations to be eligible to apply for and own freehold land was important as it would allow the community to deal with the significant issue of critical staff housing shortages present in this and other indigenous communities. Such housing shortages made it very difficult to attract and retain health, education and community services staff – essential to providing much needed services to the community. Land tenure is a major problem that is restricting economic development in the NPA especially. Without secure tenure BEL cannot obtain loan funding from banks or funding organisations such as TSRA. It is not enough to say that the Trustee of the DOGIT (i.e. Council) can offer leases to community based indigenous corporations. In the six years since amalgamation of the NPA Councils, BEL has not been able to secure one lease from Council. Also the NPARC, for example, has a massive budget deficit and its major focus is revenue raising and this it is trying to be achieved by levying excessive lease rental fees that are not commercially sustainable and are going to ruin many locally based businesses. These leases also require that the assets constructed on the land be handed back on expiry of the	The department notes Mr Foord's comments. Please refer to the above comments.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				lease. Indigenous Council do not necessarily have the community interests at heart but only their own interests Community based indigenous corporations need freehold housing for their staff just as much as individuals need social housing. Corporations are going to have to invest heavily in staff housing in the very immediate future and this is not going to happen with excessive lease fees and leasehold tenure rather than freehold.	
Simplified leasing framework					
3	Cape York Land Council Aboriginal Corporation (CYLCAC)	Cl. 6-12/ Cl. 36-41		The proposal for a townsite lease is irrational and not supported. Instead, the capacity of the trustees of Aboriginal freehold to administer their land must be better supported, through for example, the proposal to establish a Services Hub, and build the capability of land trustees in this way.	DNRM notes CYLCAC's submission on this component of the Bill.
				The proposals in the Bill to strengthen the leasing provisions for all lease types except home ownership by removing time limits and the need for Ministerial consent are supported. However, these amendments should also be extended to home ownership leasing provisions, particularly to remove the criteria that only an Aboriginal person is eligible for a home ownership lease. The Bill should provide that the trustee may grant a home ownership lease to any person but the trustee may set local eligibility criteria according to community desires.	DNRM thanks CYLCAC for their support of this component of the Bill and notes that this matter was not specifically consulted upon and a number of communities have expressed strong support for retaining the restricted leasing arrangements.
				It is important that a viable leasing regime exists for home ownership and economic development since freehold is only an option in township areas, but may not be viable in many instances because of compensation or community aspiration being prohibitive. So although the CYRO/CYLCAC preference is for the freehold option to	The Bill achieves this through amendments to simplify the leasing regime. These amendments were included so that communities don't feel they have no choice other than to take up freehold to be able to develop their community. Communities, whether they take up the option of freehold or not,

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				be restricted to the township, the Bill must ensure that the ALA leasing provisions will also be a viable pathway to home ownership and economic development for land inside and outside of town areas.	will have a significantly more flexible and efficient leasing process with which to control development of their community.
4	North Queensland Land Council (NQLC)	Cl. 6-12/ Cl. 36-41		NQLC supports the provisions in the Bill for lease simplification, noting that this should provide for flexibility and greater pursuit of social and economic development for aboriginal persons.	DNRM thanks NQLC for their support of the leasing simplification provisions of the Bill.
5	Local Government Association of Queensland (LGAQ)	Cl. 6-12/ Cl. 36-41		The LGAQ supports the simplification of the leasing framework in Aboriginal and Torres Strait Islander communities.	DNRM thanks LGAQ for their support for simplification of the leasing framework in these communities.
				The LGAQ suggests that either during the negotiation of an ILUA for a township area or as part of establishing a freehold instrument, all land that a relevant local government has an interest in (e.g. land containing local government infrastructure) be systematically identified and made subject to a townsite lease.	DNRM considers this a matter for each community to consider as part of their ILUA negotiations.
				Further, the LGAQ understands that the objectives of the *Land Holding Act 2013* were intended to resolve some of the outstanding issues of land tenure in Aboriginal and Torres Strait Islander communities. Based on feedback from our Aboriginal and Torres Strait Islander council members, the LGAQ emphasises that there continues to be limited understanding of the holistic land tenure framework in Aboriginal and Torres Strait Islander communities. There is also limited capacity to effectively utilise the provisions of the *Land Holding Act 2013* to resolve outstanding lease issues.	As the coordinated land tenure reform projects commence in each community, engagement with the relevant council and the community occurs prior to commencement.
8	Bwgaman Aboriginal Land Trust of Palm Island (BALT)	Cl. 6-12/ Cl. 36-41		The Bwgaman Aboriginal Land Trust of Palm Island support the simplification of leasing frameworks as 'it will assist in helping lease commercial and other properties on the development, which will reduce waiting time and pressure on the Honourable Minister's office to execute. The provision to allow BALT to sign off on leasing	DNRM thanks BALT for their support for the simplification of leasing frameworks and note that the benefits BALT describe strongly align with the intended purpose of the amendments. Could the department please clarify if the simplified leasing arrangements will apply to DOGIT lands situated within non-

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				themselves will support a far greater avenue of uptake and management by BALT'.	indigenous local government areas and outside of the ATSI local government areas/shires? *Response* *The leasing simplification amendments in the Bill applies to all leasing under the Aboriginal Land Act 1991 (ALA) and the Torres Strait Islander Land Act 1991 (TSILA). To be clear it applies to all Indigenous DOGITs and all ALA and TSILA freehold including the Bwgaman Aboriginal Land Trust.*
Chapter 3: Amendment of the *Land Act 1994* (Right of beach access declaration)					
4	North Queensland Land Council (NQLC)	Cl. 59-62	General	NQLC is of the view that right of public access is best achieved through the creation of a formal easement for public access and compensation should be paid to the freehold owner as is the case/practice for the creation of intertidal zones (ITZ) in other areas of the state.	The declaration of a right of access is just one of a suite of measures that can be used to deal with situations where public access to a beach is impeded. Amendments to the Acquisition of Land Act 1967 contained in the Land and Other Legislation Amendment Bill 2014, which was introduced into Parliament on 19 March 2014, will enable a strip of private land to be acquired for a beach. Acquisition would be a more appropriate solution in a situation where, for example, it was proposed to construct infrastructure on the beach, such as a toilet block or camping ground. Where a right of public access is used, the owner retains the opportunity to regain the entire parcel of land if accretion results in the beach moving further seaward. This opportunity would not exist where the land has been acquired. The Bill does not provide for compensation because it is the general policy in Queensland that land should not extend to the high water mark. The land over which it is proposed to declare a right of access is, in the majority of cases, not land originally surveyed with beach frontage. Rather, the land had been separated from the sea by an esplanade or reserve. It is a windfall to the owners that the esplanades or reserves in front of

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					their properties have completely eroded away. The State never granted owners exclusive beach access and should not therefore be required to compensate them for their good fortune. It is in the public interest for the public to have reasonably unrestricted access to the seashore, including for travelling from one place to another. Further, the value of the rights being affected, is highly questionable since the area where the access right is granted is a sandy strip on which cultivation or construction is impracticable.
		Cl. 61 Insertion of new ch 7, Part 3B Making land available - for public use as beach	431S	NQLC dispute that significant rights will not be lost to the freehold owner, including the highest right of all, which is the right to exclude others; the declaration of beach access removes from the freehold owner the ability/right to use their property for sport, recreation, and private development. Accordingly compensation should need to be paid to the owner.	DNRM acknowledges NQLC's concerns. In general, the public has a perceived right to access beach areas throughout Queensland. This is also articulated in policy outcome six of the State Policy for Coastal Management which states that 'public access and use of the coast is maintained and enhanced for current and future generations.' In particular, policy outcome 6.2 states that 'exclusive private access to the foreshore and exclusive private use of beaches is to be avoided'. The land over which it is proposed to declare a right of access is, in the majority of cases, not land originally surveyed with beach frontage. Rather, the land had been separated from the sea by an esplanade or reserve. It is a windfall to the owners that the esplanades or reserves in front of their properties have completely eroded away. The State never granted owners exclusive beach access and should not therefore be required to compensate them for their good fortune. It is in the public interest for the public to have reasonably unrestricted access to the seashore, including for travelling from one place to another. Further, the value of the rights being affected, is highly questionable since the area where the access right is granted is a sandy strip on which cultivation or construction is impracticable.
		Cl. 61 Insertion of	431W (4)(a)-(b)	The NQLC also considered that occupier and public liability over the public access area remains an issue not	DNRM acknowledges NQLC's concerns regarding occupier and public liability matters.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
		new ch 7, Part 3B Making land available - for public use as beach		appropriately dealt with by the bill. NQLC is of the view that there would need to be full indemnification provided by the state to the freehold owner pursuant to an agreement as the ownership of the land will remain in the freehold owner. It is NQLCs view that in the event of a case of personal injury and other court actions the freehold owner may still be liable.	Section 431W(4)(b) provides that the owner of a lot of which a declared beach area forms part is not and cannot be made civilly liable for an act done, or omission made, honestly and without negligence in relation to the declared beach area. Further, 431W(5) provides that if subsection (4)(b) prevents civil liability attaching to a person, the liability attaches instead to the State. The State will take over the landowner's occupier's liability for the area over which the right of access is created while conditions will also be applied to the right of access to alleviate the burden on the owner.
5	Local Government Association of Queensland (LGAQ)	Cl. 59-62	General	The LGAQ supports the policy intent underpinning the Beach access reform provisions under the Bill.	DNRM thanks LGAQ for their support of the policy intent of the beach access reforms.
				Some resources will be required to implement the reforms proposed under the Bill. For example, signage and enforcement of local laws and State legislation will be necessary. The LGAQ is of the view that due to the inherently overlapping State and local government responsibilities upon commencement of these proposed reforms, the State should provide resources to assist with the initial implementation of the reforms	The right of access is designed to be used on a case by case basis and would only be used where there is significant public agitation for its use. At this time the only place in which the public are being denied access and where the proposed right of access is intended to be used is at Rules Beach. The department estimates that there are only approximately 250 lots in Queensland where this power could be used. Given that this measure is only one of a suite of other possible measures and that there are no other known areas where the public is being denied access along the beach, the potential use of the power to declare a right of access is unlikely to be used often. The cost of survey and any other administrative requirements of the imposition of a right to access will be met by the state. It is anticipated that these costs will not be significant.
		Cl. 61 Insertion of new ch 7, Part 3B Making land available - for public	431T	The LGAQ seeks clarity on the roles and responsibilities where local government does not want to be the manager but where the State Government proceeds to require local government to be the manager. This question is particularly pertinent in relation to	The Bill does not provide that the State Government may require a local government to be the manager of a declared beach access area. Rather, the Bill provides that a declared beach access area be placed under the management of either the relevant local

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
		use as beach		maintenance and compliance etc.	government or the State. The relevant local government will be given the choice to take control of the declared beach access area. If the local government does not wish to take control of the area, the State assumes control and is recorded as the manager.
		Cl. 61 Insertion of new ch 7, Part 3B Making land available - for public use as beach	431T (10)(a)-(e)	The Bill seems to treat the existence of private structures within the declared area as a matter for conditions regarding the use of the beach access way. While this is a suitable matter for conditions of use, that is not the end of the matter. The impact of these structures on potential liability for local government arising from a local government's obligation to maintain the declared area appears to be a significant feature of the proposal and needs to be taken into account when imposing the maintenance obligation upon councils.	Consultation with local government will be undertaken. There will be no imposition of obligations on councils. Any declaration would be made having regarding to the particular circumstances of the relevant land including any existing infrastructure. Negotiations between the landholder and the manager of the land would address such matters. For example particular land with infrastructure may be excluded from the declaration area or conditions included in the declaration to ensure the infrastructure could be appropriately maintained by the landholder.. Additionally, the conditions of use would, where practical, prohibit the public's use of private structures.
		Cl. 61 Insertion of new ch 7, Part 3B Making land available - for public use as beach	431W (2)(b)	The LGAQ seeks clarity on what local government must "maintain" access means when it is also proposed that local governments are not obliged to undertake any works to protect boundaries in practice. For example, if the access area is eroded would a local government need to undertake State Government approved protection works to ensure beach access rather than protect boundaries? The LGAQ suggests that to avoid ambiguity it should be clarified that the creation of a statutory right of access will not oblige the State or local government to undertake any work to protect or maintain structures or landscaping works located on, above or below the declared beach area.	As the land subject of a declared beach area is beach and by its very nature subject to change, the obligation to maintain the area in a safe condition extends only as far as practicable and reasonable. It is not anticipated that Council would be responsible for maintaining any existing infrastructure.
				An increased risk associated with maintenance activities where private infrastructure may be present has been	The Bill does not provide that the State Government may require a local government to be the manager of a declared beach

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				identified. To address this, it may be appropriate for the local government be granted a right to decline the maintenance obligations for a declared area, or veto a proposed declaration, if council considers that the maintenance obligation will be unduly onerous, taking into account the quantity and position of private infrastructure or improvements within the proposed declared area. Alternatively, a statutory indemnity for local governments relating to claims for personal injury or property damage within the declared beach area, arising from local government obligations to maintain oceanfront private land, which may contain private infrastructure and improvements, should be considered.	access area. Rather, the Bill provides that a declared beach access area be placed under the management of either the relevant local government or the State. The relevant local government will be given the choice to take control of the declared beach access area. If the local government does not wish to take control of the area, the State assumes control and is recorded as the manager
				The LGAQ acknowledges that the new obligation for councils to maintain a beach access way over private land is consistent with local government currently undertaking responsibility for beach maintenance, or maintenance of public areas, such as an unformed esplanade traversed by the public. However, while in some instances this might be the case, the proposal needs to consider the potential for increased risks to local government posed by the uncontrolled existence of privately owned improvements and existing infrastructure within the declared beach area.	The Bill does not provide that the State Government may require a local government to be the manager of a declared beach access area. Rather, the Bill provides that a declared beach access area be placed under the management of either the relevant local government or the State. The relevant local government will be given the choice to take control of the declared beach access area. If the local government does not wish to take control of the area, the State assumes control and is recorded as the manager.
		Cl. 61 Insertion of new ch 7, Part 3B Making land available - for public use as beach	431W (4)(a)-(b)	While councils are at liberty to bring a local law into existence to govern access, this will not in itself address liability issues. There are significant differences between the potential risk of legal claims arising from the maintenance of a public beach, and the maintenance of private land on the foreshore. The LGAQ seeks clarity on how this distinction will work in practice and would appreciate further information on this matter.	431W(4)(b) provides that the owner of a lot of which a declared beach area forms part is not and cannot be made civilly liable for an act done, or omission made, honestly and without negligence in relation to the declared beach area. Further, 431W(5) provides that if subsection (4)(b) prevents civil liability attaching to a person, the liability attaches instead to the State. The State will take over the landowner's occupier's liability for the area over which the right of access is created and conditions will also be applied to the right of access to alleviate the burden on

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					the owner.
11	Queensland Law Society	Cl. 59-62	General	The QLS acknowledge the intent of the amendments but note that the amendment lead to a number of consequences including: - That the owner of the declared beach area loses their rights to exclusive use and quiet enjoyment of that part of the lot; - That no compensation is payable to the owners of the declared beach area for the change of use or loss of rights That it is proposed to be an offence to obstruct the public right of use of a declared beach area.	The Department of Natural Resources and Mines thanks the Queensland Law Society for its submission and acknowledges its concerns. It is important to note that the land over which it is proposed to declare a right of access is, in the majority of cases, not land originally surveyed with beach frontage. Rather, the land had been separated from the sea by an esplanade or reserve. Of all the approximately 250 blocks identified in Queensland to which this power of public access could be used, there is only one instance where an owner has sought to prevent public access. In other words, the vast majority of affected landowners have not made any moves to exercise a right of exclusive access. The public has a perceived right to access beach areas throughout Queensland. This is also articulated in policy outcome six of the State Policy for Coastal Management which states that 'public access and use of the coast is maintained and enhanced for current and future generations.' In particular, policy outcome 6.2 states that 'exclusive private access to the foreshore and exclusive private use of beaches is to be avoided'. It is a windfall to the owners that the esplanades or reserves in front of their properties have completely eroded away. The State never granted owners exclusive beach access and should not therefore be required to compensate them for their good fortune. It is in the public interest for the public to have reasonably unrestricted access to the seashore, including for travelling from one place to another.
		Cl. 61 Insertion of new ch 7, Part 3B Making land available	*431S*	The QLS note that it is a fundamental legislative principle that proposed new laws have sufficient regard to rights and liberties of individuals by providing for the compulsory acquisition of property only with fair compensation.	As noted above, the vast majority of land owners in the State who have a right of exclusive access to the beach have taken no steps to exercise that right and rather have continued to allow public access. This is in accord with general public perception and Queensland

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
		- for public use as beach		The QLS believe that the proposed amendments (at s431S) denies an owner of a declared beach area any kind of 'relief or compensation' for 'deprivation of an interest of any type in land, or for loss or damage of any kind, arising out of a part of a lot becoming a declared beach area'. (Sub 11 pg. 2) They further explain that 'the rights to exclusive use and quiet enjoyment of the parts of the lot which will form a declared beach area are valuable personal property and accordingly deserve fair compensation. As the use of the land in a declared beach area is effectively acquired by the state in the proposed provisions, the partial abolition of civil liability cannot be said to be a fair exchange'. (Sub 11 pg. 2)	Government policy. Secondly, the declaration of a right of public access is not 'effectively acquired by the State'. By creating a right of access rather than acquiring the land, the owner of the lot may regain full control of the entire lot if accretion occurs and the beach moves seaward. Additionally, conditions will be applied to the public access to the beach to minimise inconvenience to the owner of the lot. In contrast, if the land is acquired the public are still accessing the same area but such conditions would not be imposed. Also, the declaration of a right of access is just one of a suite of measures that can be used to deal with situations where public access to a beach is impeded. Amendments to the *Acquisition of Land Act 1967* contained in the *Land and Other Legislation Amendment Act 2014* will enable a strip of private land to be acquired for a beach.
		Cl. 61 Insertion of new ch 7, Part 3B Making land available - for public use as beach	*431W (4)(a)-(b)*	The partial civil liability immunity proposed in s431W (4)(b) appears less effective than is warranted given the loss of the owners control of the declared beach area. They argue that 'the retention of civil liability for any negligent acts by an owner of the declared beach area continues to potentially expose the owner to a level of risk with respect to the part of the lot over which they no longer have control'. (Sub 11 pg.2) QLS offer an example scenario where, given the current wording, an owner may be found liable in circumstances where they are aware of potential hazards and/or reasonably foreseeable risks and fail to take any action. QLS suggest that proposed s431W (4)(b) is reworded to only retain civil liability for the lot owner for 'wilful or	There are several points to note in relation to an owner's potential liability in relation to a beach access area. Firstly, the Law Society has assumed, as already noted above, that the declaration of beach access is the equivalent of the State acquiring the land. That is not the case. The beach strip continues to be part of the property of the land owner. Subject to a limitation that public access must not be impeded, the land can continue to be used by the land owner. The conditions of public access will be prescribed on a case by case basis, which could depend on the purpose to which the owner wishes to utilise the land. Given the landowner's continued ownership and right to use the beach strip, it seems only reasonable, and in the public interest, appropriate liability attach to such use. Secondly, the intention of section 431W is to only attribute liability to an owner in relation to direct actions. The Queensland

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				intentional acts which cause injury or loss (as opposed to acts or omissions made honestly and without negligence). Such a change would ensure that the state is not liable for intentional or wilful acts of the lot owner.	Law Society appears to be reading section s431W (4)(b) in isolation rather than reading section 431W in its entirety. Section 431W(4) provides: 'The owner of a lot of which a declared beach area forms a part, and any other person having an interest in the lot— (a) is not required, and can not be required, to maintain, or to contribute to the maintenance of, any part of the declared beach area; and (b) is not, and can not be made, civilly liable for an act done, or omission made, honestly and without negligence in relation to the declared beach area.' Given subsection 431W(4), the Department considers that the owner would not be obliged to maintain the beach area by attending to a fire that the owner did not initiate. However, the Department notes that section 13(6C) of the *Countryside and Rights of Way Act 2000* (UK) provides that the creation of a right of way does not prevent an occupier from owing a duty of care in respect of any risk where the danger concerned is due to anything done by the occupier— '(a) with the intention of creating that risk, or (b) being reckless as to whether that risk is created." The UK wording is consistent with the intent of section 431W and the Department undertakes to consult with the Office of the Queensland Parliamentary Counsel as to whether the UK wording provides more certainty to landowners.
Chapter 4: Amendment of Land Valuation Act 2010					
1	Torres Strait Island Regional Council (TSIRC)	Cl. 63-65	General	Council is supportive of rendering Ordinary Freehold land rateable for the purposes of the LGA. This, and many other implications of Ordinary Freehold grant, shall however be the subject of full and frank consultations	DNRM acknowledges TSIRC's support for rendering ordinary freehold land rateable for the purposes of the LGA and notes their concerns.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
				with community by Trustees upon appropriate financial support of the State. We consider that this is a matter upon which applicants must make a fully informed decision prior to applying for such grant.	
				The prospect of land becoming rateable prior to the grant of Ordinary Freehold however, is not supported by Council for the following reasons, namely: - 1. owners of land are responsible for the payment of general rates and charges; and 2. Trustees (whether Local Government or otherwise), are the owners of land in Indigenous Communities; and 3. Trustees do not have financial capacity to pay general rates; and 4. Trustees have limited revenue opportunities. For these reasons the TSIRC argue that Trust Land should remain exempt from rating under the LGA, notwithstanding the applicability of statutory valuation under the LVA. Land should become rateable only after Ordinary Freehold is granted. *Recommendation: The State exempt, under the Local Government Act 2009 (Qld), Trust Land as rateable land.*	The amendments will provide local governments for Aboriginal and Torres Strait Island communities with the same rating powers available to all other Queensland local governments. The Department of Local Government, Community Recovery and Resilience will work with each local government to determine which land is rateable and therefore, requires valuation. In broad terms this will be restricted to land which is used for residential or commercial purposes. Rather than introduce further broad exemptions, such as suggested by TSIRC, once valuations have been determined, local governments have considerable flexibility in adopting a rating policy, including differential rating based on categories, discounts and rebates and remissions that can take account of specific community circumstances.
4	North Queensland Land Council (NQLC)	Cl. 63-65	General	NQLC disputes the statement made in the Explanatory Notes that suggests there is broad support for the change to provide for statutory valuations, arguing that no consultation has been conducted to ascertain if all indigenous local governments and their community support the approach proposed in the bill.	The Department of Local Government, Community Recovery and Resilience has engaged with Aboriginal and Torres Strait Islander local governments over a number of years in relation to revenue raising powers. Those local governments have consistently expressed a desire to align their powers to levy rates and charges, consistent with the powers available to all other Queensland local governments. Mayors for Aboriginal and Torres Strait islander communities also directly approached the Minister for Local Government, Community Recovery and Resilience in relation to the need for these powers at the North Queensland Local Government

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
					Association meeting held in Cooktown in October 2013.
5	Local Government Association of Queensland (LGAQ)	Cl. 63-65	General	It is entirely feasible, if not necessary, to legislatively enable the relevant local governments to set rates when introducing freehold land tenure as an option in Aboriginal and Torres Strait Islander communities. The LGAQ is supportive of this policy objective that creates greater equity between the role and responsibilities of Aboriginal and Torres Strait Islander local governments and other local governments throughout Queensland.	DNRM thanks LGAQ for their support of the Bill's proposal to enable Indigenous local governments to set rates.
				The expectation of a relatively small initial uptake of the freehold land tenure option will not produce revenue that will sustainably fund the establishment of the administrative and supporting systems and the human capacity to maintain such systems. The LGAQ recommends that the State Government establish a funding and support program in order for Aboriginal and Torres Strait Islander local governments to implement a suitable rating system.	The Department of Local Government, Community Recovery and Resilience agrees with the LGAQ submission that the initial uptake will likely be small. Consequentially, the systems required to administer the implementation of rating will be relatively simple. The Department does not propose to establish a program to support implementation however will work with each local government to identify rateable land and to implement an appropriate administration system.