



Natural Resources and Other Legislation (GDA2020) Amendment Bill 2019

Report No. 44, 56th Parliament
State Development, Natural Resources and
Agricultural Industry Development Committee
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State Development, Natural Resources and Agricultural Industry Development Committee

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Abbreviations

AGD66	Australian Geodetic Datum 1966
Bill	Natural Resources and Other Legislation (GDA2020) Amendment Bill 2019
CYP	Cape York Peninsula
committee	State Development, Natural Resources and Agricultural Industry Development Committee
DATSIP	Department of Aboriginal and Torres Strait Islander Partnerships
DNRME	Department of Natural Resources, Mines and Energy
GDA2020	Geocentric Datum Australia 2020
GDA94	Geocentric Datum Australia 1994
Geothermal Energy Act	<i>Geothermal Energy Act 2010</i>
Gold Coast Waterways Authority Act	<i>Gold Coast Waterways Authority Act 2012</i>
Greenhouse Gas Storage Act	<i>Greenhouse Gas Storage Act 2009</i>
ICSM	Intergovernmental Committee on Surveying and Mapping
ILUA	Indigenous Land Use Agreement
Land Act	<i>Land Act 1994</i>
Land Title Act	<i>Land Title Act 1994</i>
LSA	<i>Legislative Standards Act 1992</i>
MGA2020	Map Grid of Australia 2020
Mineral Resources Act	<i>Mineral Resources Act 1989</i>
Minerals and Energy Resources (Common Provisions) Act	<i>Minerals and Energy Resources (Common Provisions) Act 2014</i>
National Measurement Act	<i>National Measurement Act 1960 (Cth)</i>
POQA	<i>Parliament of Queensland Act 2001</i>
Petroleum Act	<i>Petroleum Act 1923</i>
Petroleum and Gas (Production and Safety) Act	<i>Petroleum and Gas (Production and Safety) Act 2004</i>

QLS	Queensland Law Society
QML	Queensland Motorways Limited
Resource Acts	<i>Geothermal Energy Act 2010, Greenhouse Storage Act 2009, Mineral Resources Act 1989, Petroleum Act 1923, Petroleum and Gas (Production Safety) Act 2004</i>
Survey and Mapping Infrastructure Regulation	Survey and Mapping Infrastructure Regulation 2014
Transport Infrastructure Act	<i>Transport Infrastructure Act 1994</i>

Note: All Acts are Queensland Acts unless otherwise specified.

Chair's foreword

This report presents a summary of the State Development, Natural Resources and Agricultural Industry Development Committee's examination of the Natural Resources and Other Legislation (GDA2020) Amendment Bill 2019.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank the individuals and organisations who made written submissions on the Bill. I would like to thank my fellow committee members for their contributions to this inquiry. I also thank our Parliamentary Service staff, the Department of Natural Resources, Mines and Energy, and the Department of Aboriginal and Torres Strait Islander Partnerships.

I commend this report to the House.



Chris Whiting MP
Chair

Recommendations

Recommendation 1

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The committee recommends the Natural Resources and Other Legislation (GDA2020) Amendment Bill 2019 be passed.

1 Introduction

1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's areas of portfolio responsibility are:

- State Development, Manufacturing, Infrastructure and Planning
- Natural Resources, Mines and Energy, and
- Agricultural Industry Development and Fisheries.

Section 93(1) of the POQA provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLPs), and
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

The Natural Resources and Other Legislation (GDA2020) Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 23 October 2019. The committee was required to report to the Legislative Assembly by 6 December 2019.

On 25 October 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Three submissions were received (a list of submitters is provided at Appendix A).

The committee received a written briefing on the Bill from the Department of Natural Resources, Mines and Energy (DNRME) prior to a public briefing on the Bill from DNRME and the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) on 6 November 2019 (a list of officers who appeared at the briefing is provided at Appendix B).

The committee received written advice from DNRME in response to matters raised in submissions.

Copies of the material published in relation to the committee's inquiry, including the submissions, transcript and written advice, are available on the committee's inquiry webpage.²

1.3 Policy objectives of the Bill

The explanatory notes state that the policy objectives of the Bill are to:

- implement the new national standard of measurement of position, Geocentric Datum Australia 2020 (GDA2020), for the future collection and provision of location data
- clarify the historical datum for position references or upgrade position references to GDA2020 (where appropriate)
- ensure that Queensland legislation is responsive to national measurement standards as they evolve or new ones are adopted

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² <https://www.parliament.qld.gov.au/work-of-committees/committees/SDNRAIDC/inquiries/current-inquiries/GDA2020>

- improve the effectiveness of processes for renewing term leases, land title registration, making model by-laws for trust land, and for conducting ballots for interests in state land
- enhance and clarify land titling processes
- enable the Queensland Government to give effect to commitments given as part of an Indigenous Land Use Agreement to grant unallocated state land (USL) as freehold, without competition, to the Traditional Owners of the land
- extend the boundary of the Cape York Peninsula region to include additional land parcels that are either properties added to the Daintree National Park or state land adjacent to the park.³

1.4 Government consultation on the Bill

The explanatory notes state that consultation about the technical and operational aspects of the transition to GDA2020 has occurred since 2017 with surveying, engineering, and spatial professionals in Queensland and data custodians within state and local government.⁴

Mr Peter Jamieson from DNRME also advised the committee that:

Consultation about the Land Act [Land Act 1994] amendments for the renewal of term leases, model by-laws and the ballot process and the granting of unallocated state land under an Indigenous land use agreement has included interagency discussions and discussions with native title representative bodies such as the Queensland South Native Title Services. They all support the amendments. The changes to titling provisions in the Land Act and the Land Title Act [Land Title Act 1994] were discussed with the Queensland Law Society, and no concerns were raised.⁵

In relation to the amendments to the *Cape York Peninsula Heritage Act 2007*, the explanatory notes state that the Eastern Kuku Yalanji people, the Wet Tropics Management Authority, Cape York Land Council Aboriginal Corporation and the North Queensland Land Council were consulted and ‘all stakeholders consulted supported the amendment of the Cape York Peninsula Region boundary’.⁶

According to the explanatory notes there was no consultation on the provisions relating to renewal of term leases owing to the minor nature the amendments; amendments to the Land Title Act to provide consistency in electronic conveyancing processes were informed by previous consultations; and preliminary consultation with the surveying industry had occurred regarding the proposed introduction of building lease plan under the Land Act and the Land Title Act.⁷

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill and its policy objectives and consideration of the information provided by DNRME and DATSIP, and submitters, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Natural Resources and Other Legislation (GDA2020) Amendment Bill 2019 be passed.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 11.

⁵ Public briefing transcript, Brisbane, 6 November 2019, p 3.

⁶ Explanatory notes, p 12.

⁷ Explanatory notes, p 11.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Geocentric Datum Australia 2020

The explanatory notes state that the Bill proposes to:

- implement the new national standard of measurement of position, Geocentric Datum Australia 2020 (GDA2020), for the future collection and provision of location data
- clarify the historical datum for position references or upgrade position references to GDA2020 (where appropriate)
- ensure that Queensland legislation is responsive to national measurement standards as they evolve or new ones are adopted.⁸

Changes are being made to the system that underlies Australia's location information, to bring Australia's national latitude and longitude coordinates into line with global satellite positioning systems. These changes will enable smartphones and other positioning technologies to accurately locate features marked on Australian maps.⁹

The explanatory notes state:

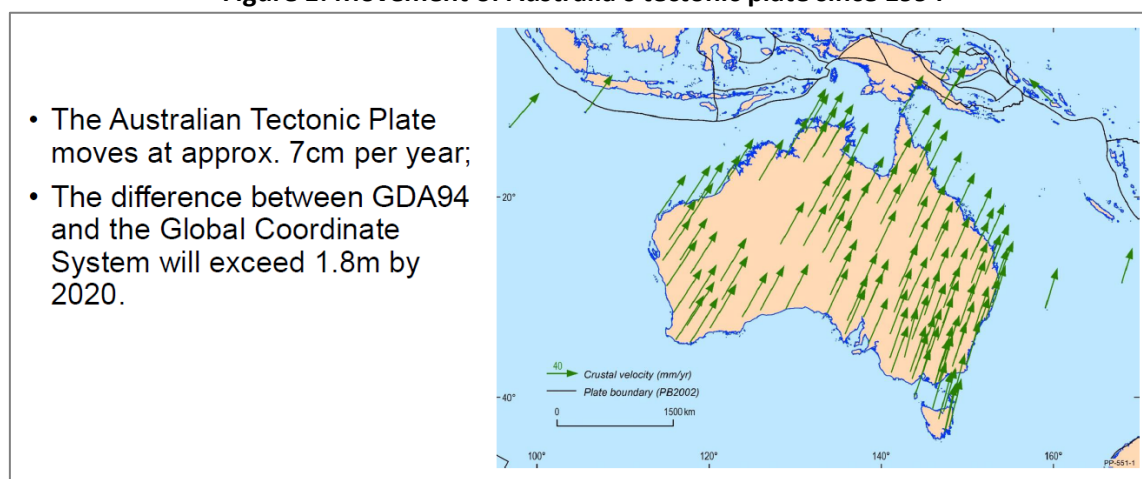
In Australia, coordinates for features on our maps (e.g. roads and buildings) most commonly use the Geocentric Datum Australia 1994 (GDA94). GDA94 is 'static' meaning that coordinates for features are fixed in relation to Australia's continental plate and do not change over time.

In contrast, global satellite positioning system coordinates for features on the earth's surface will change over time, as these systems take into account the movement of tectonic plates.

By 2020, Australia will have moved about 1.8 metres in a north easterly direction since the adoption of GDA94. With increased use of devices that provide precise satellite positioning (e.g. smartphones), people will notice discrepancies between the satellite position and GDA94-mapped features.¹⁰

Figure 1 illustrates the movement of Australia's tectonic plate by approximately seven centimetres each year since GDA94 was defined.

Figure 1: Movement of Australia's tectonic plate since 1994



Source: Department of Natural Resources Mines and Energy, 2019.

⁸ Explanatory notes, p 1.

⁹ The Intergovernmental Committee on Surveying and Mapping (ICSM) <https://www.icsm.gov.au/gda2020/what-changing-and-why>

¹⁰ Explanatory notes, p 2.

Changes are needed to upgrade Australia's static 'plate fixed' datum, GDA94, to GDA2020 to account for the movement of Australia's continental plate and to better align Australia's national datum and satellite positioning measurements.

All Australian jurisdictions have agreed to adopt GDA2020 by 30 June 2020. The Bill makes the necessary legislative amendments to support the adoption of GDA2020.¹¹

The Bill makes technical amendments to the following Acts to support the adoption of GDA2020 in Queensland:

- *Geothermal Energy Act 2010* (Geothermal Energy Act)
- *Gold Coast Waterways Authority Act 2012* (Gold Coast Waterways Authority Act)
- *Greenhouse Gas Storage Act 2009* (Greenhouse Gas Storage Act)
- Land Act
- *Mineral Resources Act 1989* (Mineral Resources Act)
- *Minerals and Energy Resources (Common Provisions) Act 2014* (Minerals and Energy Resources (Common Provisions) Act)
- *Petroleum Act 1923* (Petroleum Act)
- *Petroleum and Gas (Production and Safety) Act 2004* (Petroleum and Gas (Production and Safety) Act)
- Survey and Mapping Infrastructure Regulation 2014 (Survey and Mapping Infrastructure Regulation) under the *Survey and Mapping Infrastructure Act 2003*
- *Transport Infrastructure Act 1994* (Transport Infrastructure Act).¹²

The explanatory notes state that the amendments either:

- require the definition of position information in a particular format using the latest standard for position (i.e. GDA2020), or
- ensure that historical position descriptions that regulate activities at a specific location/position or within an administrative area are referenced correctly and, where appropriate, updated to GDA2020.¹³

Mr Peter Jamieson of DNRME advised the committee that:

*The bill ensures our legislation is flexible and responsive to the evolution of positioning technology and future modernisation of Australia's datum. It does this by establishing a single point of truth for datum under the Survey and Mapping Infrastructure Act 2003 to define the datum used across Queensland legislation for the future collection and sharing of spatial information.*¹⁴

Submitters supported the reference where possible to the Survey and Mapping Infrastructure Regulation to define the datum used in legislation in Queensland.¹⁵

¹¹ Explanatory notes, p 2.

¹² Explanatory notes, pp 2-3.

¹³ Explanatory notes, p 3.

¹⁴ Public briefing transcript, 6 November 2019, p 2.

¹⁵ Robert Heron, submission 1; Surveying and Spatial Sciences Institute, submission 2

In relation to future updates to the datum, DNRME advised that ‘it may have to be done again. If there is another point in time, there could be a GDA2025 or 2030. It is really is dependent on technology’.¹⁶ In addition, Mr Matt Higgins of DNRME advised:

*Where we are trying to get to is that the software, the hardware et cetera have ways that better handle it than just these static snapshots. That would be a much better way in the long term. Nationally, we made the decision that it was unlikely that that sort of technology would be ready by 2020 so we decided to do a two-step process: have another static one that at least takes out that 1.8 metres and then work on the technology being able to handle it better in the future.*¹⁷

DNRME advised that it had been ‘working with major software providers to ensure a smooth transition for users’ as many of the practical aspects of the update to GDA2020 would be ‘managed in software’.¹⁸ DNRME was also undertaking a program within the department to ensure all data would be available in both datums, GDA94 and GDA2020, for a transition period.¹⁹

2.1.1 Graticulation of earth’s surface into blocks and sub-blocks

The Bill omits the definition of graticulation of earth’s surface into ‘blocks’ and ‘sub-blocks’ from the Geothermal Energy Act, Greenhouse Gas Storage Act, Mineral Resources Act, Petroleum and Gas (Production and Safety) Act, to place the definition of *block* and *sub-block* within the Minerals and Energy Resources (Common Provisions) Act. This amendment inserts a new s 11A to consolidate the definition of ‘blocks’ and ‘sub-blocks’ used across Resource Acts. The explanatory notes state:

*The division of ‘blocks and sub-blocks’ within section 26 of the Geothermal Energy Act, and similar definitions across other Resource Acts, will be replaced by a common definition inserted into the Mineral and Energy Resources (Common Provisions) Act 2014 (Mineral and Energy Resources (Common Provisions) Act). This new common definition provides the same meaning as section 26 of the Geothermal Energy Act, but clarifies the historical geodetic reference frame (AGD66) in which the division of the earth’s surface has been devised.*²⁰

Additionally the Bill inserts a new s 11A into the Minerals and Energy Resources (Common Provisions) Act to clarify *block* and *sub-block* defined by reference to the Australian Geodetic Datum 1966 (AGD66).²¹ The explanatory notes state that:

*The Bill also amends the Mineral and Energy Resources (Common Provisions) Act and Resource Acts to clarify the historical datum (AGD66) used to define blocks and sub-blocks. Resource Acts include the Geothermal Energy Act, Greenhouse Storage Act, Mineral Resources Act, Petroleum Act, Petroleum and Gas (Production Safety) Act. The provision also clarifies that while the original graticulation into blocks and sub-blocks was undertaken in AGD66, the chief executive also has the ability to display the blocks and sub-blocks in a spatial database that uses the current datum.*²²

¹⁶ Mr Peter Jamieson, Department of Natural Resources, Mines and Energy, public briefing transcript, 6 November 2019, p 5.

¹⁷ Public briefing transcript, 6 November 2019, p 5.

¹⁸ Department of Natural Resources, Mines and Energy, correspondence dated 15 November 2019, p 1.

¹⁹ Mr Matt Higgins, Department of Natural Resources, Mines and Energy, public briefing transcript, 6 November 2019, p 5.

²⁰ Explanatory notes, p 14.

²¹ Bill, cl 36.

²² Explanatory notes, p 3.

2.1.2 Amendment of *Land Act 1994*

Clause 26 amends s 167 of the Land Act to ensure that position information provided by the chief executive administering the *Nature Conservation Act 1992* during a lease conversion is consistent with the datum prescribed in the Survey and Mapping Infrastructure Regulation, which will be GDA2020.²³

Clause 27 inserts a new part 5, 'Transitional provision for Natural Resources and Other Legislation (GDA2020) Amendment Act 2019', in chapter 9 of the Land Act. New s 540 provides for potential situations where a conversion application is in progress but not yet decided and position information for a nature conservation area (consistent with the requirements of s 167(3)(b)(ii)) was received prior to amendments to s 167 under this Bill being commenced. The explanatory notes state that in these circumstances, the position information as provided prior to commencement amendments to s 167 made under this Bill may be used in the decision about whether to convert a lease.²⁴

Clause 28 amends schedule 6 of the Land Act to omit definitions of 'Map Grid of Australia 1994' as the datum definition in s 167 was updated to a 'prescribed datum' under the *Survey Mapping and Infrastructure Act 2003*, which is GDA2020. The new definition for 'prescribed datum' is incorporated directly into s 167 instead of schedule 6.²⁵

2.1.3 Amendment of *Gold Coast Waterways Authority Act 2012*

The Bill amends ss 1, 2 and 3 in schedule 1 of the Gold Coast Waterways Authority Act to update location information used to define the Gold Coast waterway boundaries of areas near the mouth of Currumbin Creek, the Gold Coast Seaway and the mouth of Tallebudgera Creek. The amendment adopts boundary coordinates worked out using the GDA2020 datum. The effect of the amendment is to describe the location of these boundaries in the most up to date datum (GDA2020), but it does not alter the location of the existing waterway boundaries on the ground.²⁶

The Bill also inserts a new definition of 'position' as defined by reference to GDA2020 to ensure that positioning information can be used correctly and consistently.²⁷

2.1.4 Amendment of *Petroleum Act 1923*

Clause 42 replaces s 143 of the Petroleum Act to ensure position descriptions will be determined using the datum prescribed under the *Survey and Mapping Infrastructure Act 2003*, which will be GDA2020. The replaced section will use the datum prescribed in the Survey and Mapping Infrastructure Regulation. This will provide for a consistent point of truth for datum and ensure requirements of the Petroleum Act related to the collection or provision of position information remain contemporary and consistently apply the latest standard.²⁸

2.1.5 Amendment of *Petroleum and Gas (Production and Safety) Act 2004*

Clause 45 amends s 298 of the Petroleum and Gas (Production and Safety) Act, which allows for a petroleum lease applied for or granted under chapter 3 to be described using 'metes and bounds', despite other requirements for geo-resource areas to be described by the method of 'blocks' and 'sub-blocks'.²⁹

²³ Explanatory notes, p 20.

²⁴ Explanatory notes, p 20.

²⁵ Explanatory notes, p 21.

²⁶ Explanatory notes, p 14.

²⁷ Bill, cl 9.

²⁸ Explanatory notes, p 24.

²⁹ Explanatory notes, p 25.

2.1.6 Amendment of Survey and Mapping Infrastructure Regulation 2014

Clause 52 replaces s 12 of the Survey and Mapping Infrastructure Regulation, which prescribes the geodetic reference framework and mapping projection that has been approved for Queensland.

The replaced s 12 of the Survey and Mapping Infrastructure Regulation will prescribe a new geodetic reference framework, to adopt the latest national standard for position under the *National Measurement Act 1960* (Cth) (National Measurement Act). The reference framework prescribed for latitude and longitude will be GDA2020, and for mapping projection, it will be MGA2020.³⁰

2.1.7 Amendment of Transport Infrastructure Act 1994

Clause 54 amends s 93AA of the Transport Infrastructure Act, which allows the Minister to make a tolling declaration over the Queensland Motorways Limited (QML) Network. The section provides position information to describe administrative bounds of the Gateway Motorway Facility and the Logan Motorway Facility as parts of the QML network. This section also relates to a map of the QML network made by the chief executive.

Section 93AA will be amended to clarify that GDA94 is the datum used in the Transport Infrastructure Act to identify the Gateway Motorway Facility and the Logan Motorway Facility. This amendment will ensure that the position descriptions that regulate activities are correctly referenced.³¹

2.2 Granting of freehold land within Indigenous Land Use Agreements

Division 2 of the Land Act allows for deeds of grant of unallocated state land without competition in some circumstances³² according to the following priority criteria:

- (a) the applicant is an adjoining registered owner or lessee, and selling or leasing to anyone else would be considered inequitable, or
- (b) no other persons are likely to be interested in obtaining the land, or
- (c) the applicant held a significant interest in the land before it became unallocated State land, or
Example of significant interest—
 - a deed of grant in trust or a long term lease
- (d) there is no dedicated access and the only practical access is through the applicant's land.³³

Clause 14 of the Bill, to insert a proposed new s 123A into the Land Act, would allow the state to grant unallocated state land where the state is party to an Indigenous Land Use Agreement (ILUA)³⁴ where the native title party to the ILUA holds, claims to hold or would have held native title over the land. Proposed s 123A(1)(b) requires that the ILUA must provide for a grant of unallocated state land to a trustee for identified Aboriginal or Torres Strait Islander peoples who are party to the ILUA. The provisions allow for the deed of grant of the land to be granted without competition at a purchase price provided for under the ILUA or as determined by the Minister and prescribed by regulation.³⁵

³⁰ Explanatory notes, p 27.

³¹ Explanatory notes, p 27.

³² *Land Act 1994*, s 122. A deed of grant of unallocated land may also be granted to the Minister for Economic Development Queensland or to a constructing authority where the land is needed for a public purpose.

³³ *Land Act 1994*, s 123.

³⁴ An indigenous land use agreement (ILUA) is 'a voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners, pastoralists or governments)', National Native Title Tribunal, <http://www.nntt.gov.au/ILUAs/Pages/default.aspx>.

³⁵ Bill, cl 14.

The explanatory notes state that ‘this additional provision does not affect existing competitive or non-competitive allocation provisions; it is in addition to these. Any person who wishes to apply for unallocated state land will not be prevented from doing so, or otherwise be disadvantaged’.³⁶

In his introductory speech, the Minister described the intention of the amendment as enabling the state ‘to grant unallocated state land without competition where native title exists or otherwise would have existed, but for historical extinguishment’³⁷ noting that ‘the amendment eliminates unnecessary cost and time outlaid by native title holders to lodge a native title claim over the unallocated state land to have the prior extinguishment disregarded, so that they can meet the priority criteria’.³⁸

Mr Jamieson from DNRME further advised the committee:

*Indigenous land use agreements are common in Queensland, with the grant of unallocated state land to the native title party often a key component of those agreements. This can be achieved where native title has not been extinguished. If native title is extinguished or unable to be determined, a competitive process is required and can prevent the terms of the Indigenous land use agreement from being met. This bill amends the Land Act to provide for unallocated state land within an Indigenous land use agreement to be granted, without competition, to an entity representative of the people who would have otherwise held native title, except for historical extinguishment of their native title rights. The amendment does not affect existing land allocation processes or rights of people to apply for the land.*³⁹

DNRME confirmed that certainty about the traditional owners of the land is established through the process of registration of an ILUA by the National Native Title Tribunal, and that ‘the purchase price, or consideration, for the land (if any) will specified in the relevant Indigenous Land Use Agreement with the State of Queensland’.⁴⁰

While an ILUA does not necessarily require the surrender of native title, DNRME advised that at this time it is Queensland Government policy to require that for a grant of freehold such as proposed under the new s 123A ‘the Indigenous Land Use Agreement must provide for the surrender of native title rights and interests, if any. As a consequence upon the grant of the freehold, any native title rights and interests will be extinguished’.⁴¹

2.2.1 Stakeholders’ views

The Surveying and Spatial Sciences Institute (SSSI) expressed concerns that the state government may have already committed to grants of unallocated state land under an ILUA in the way that would be allowed under the proposed new s 123A amending the Land Act.⁴² In addition SSSI submitted that proposed s 123A(1)(c), regarding the native title rights and interests of the native title party to an ILUA, be amended to remove ‘claims to hold’ and ‘would have held’ native title rights and interests in the land from applying under the provision.⁴³

The Queensland Law Society (QLS) submitted that it supported the intention of cl 14 of the Bill to ‘minimise the delay and cost for Traditional Owner groups in navigating the process towards real

³⁶ Explanatory notes, p 10.

³⁷ Hon Dr A J Lynham, Minister for Natural Resources, Mines and Energy, Queensland Parliament, Record of proceedings, 23 October 2019, p 3536.

³⁸ Hon Dr A J Lynham, Minister for Natural Resources, Mines and Energy, Queensland Parliament, Record of proceedings, 23 October 2019, p 3536.

³⁹ Public briefing transcript, 6 November 2019, p 2.

⁴⁰ Department of Natural Resources, Mines and Energy, correspondence dated 1 November 2019, p 3.

⁴¹ Department of Natural Resources, Mines and Energy, correspondence dated 15 November 2019, p 2.

⁴² Submission 2, p 1.

⁴³ Submission 2, pp 1-2.

tenure outcomes in the native title landscape⁴⁴ but that it was concerned that proposed s 123A(3)(b), regarding the purchase price of the land granted being as provided for under the ILUA or otherwise as decided by the Minister, would impact the right to negotiate.⁴⁵ QLS suggested that ‘any additional process for the grant of land should be carefully considered to avoid any risk of unfairness to Traditional Owner groups in negotiated settlements’.⁴⁶

2.2.2 Departmental response

DNRME advised in response to the concern that the state government may have committed to freehold grants of unallocated state land without competition under an ILUA that:

*The new section 123A is intended to provide the State with an additional tenure option when negotiating current and future Indigenous land Use Agreements. The department has not pre-empted the proposed provision and has not committed to this tenure outcome in any existing Indigenous Land Use Agreements.*⁴⁷

In response to the concern of the QLS about the potential for proposed s 123A(3)(b) to impact on right to negotiate, DNRME advised:

*The right to negotiate will be maintained through the Indigenous Land Use Agreement process where the parties are expected to document their agreement to the consideration payable for the grant of the freehold. Proposed Section 123A(3)(b) in the Land Act 1994 is provided to ensure that there is a default/fall-back position should the parties not decide to document their agreement to the consideration payable in the Agreement.*⁴⁸

2.3 Processes under the *Land Act 1994* and the *Land Title Act 1994*

2.3.1 Term lease renewal processes

Under the Land Act, a lessee may apply for an offer of a term lease after 80 per cent of the existing term of the lease has expired (unless there are special circumstances), and this renewal application for a new term lease is then decided by the chief executive.⁴⁹ The Bill would amend the Land Act to enable the chief executive to make a decision on the offer of a new term lease before the lessee lodges an application.⁵⁰ The amendments would not remove the existing right of lessee to make an application for an offer of a new lease.⁵¹

The amendments are also intended to clarify that a new term lease must be issued for the same purpose of the lease being renewed⁵² and that where the chief executive considers that a term lease is no longer appropriate the offer for a renewal application would be taken as a conversion application for another form of tenure.⁵³

⁴⁴ Submission 3, p 1.

⁴⁵ Submission 3, p 1. Procedural rights, such as the right to negotiate, are specified in the *Native Title Act 1993* (Cth), s 24. Establishing a right to negotiate for people with a registered native title claim or determination enables them to be involved in discussions about certain future acts (a grant of an exploration or mining tenement and some compulsory acquisitions) on land and waters which affect native title rights and interests, see National Native Title Tribunal, <http://www.nntt.gov.au/futureacts/Pages/default.aspx>.

⁴⁶ Submission 3, p 1.

⁴⁷ Department of Natural Resources, Mines and Energy, correspondence dated 15 November 2019, p 2.

⁴⁸ Department of Natural Resources, Mines and Energy, correspondence dated 15 November 2019, p 3.

⁴⁹ *Land Act 1994*, Part 3, Division 2, Subdivision 2.

⁵⁰ Bill, cls 15-19.

⁵¹ *Land Act 1994*, s 158.

⁵² Bill, cl 19.

⁵³ Bill, cl 17.

The explanatory notes state that the amendment will provide efficiencies in the renewal process for government and lessees, allowing ‘the chief executive to proactively make an offer to renew a lease where the department has assessed that renewal of the lease is appropriate and consistent with the objectives of the Land Act’.⁵⁴

2.3.2 Processes for making model by-laws for trust land

Model by-laws for trust land are made by regulation by the Governor in Council.⁵⁵ The Bill amends the Land Act to allow the Minister to make model by-laws for trust land and to publish them on a government website.⁵⁶ The amendment does not affect that the adoption of the model by-laws is optional.⁵⁷

2.3.3 Ballot process for competitive state land allocation

Under the Land Act, competitive allocation of state land may be by auction, tender or ballot.⁵⁸ The Land Regulation 2009 prescribes the ballot process which is outdated and has not been used for several decades.⁵⁹ The Bill removes the requirement to conduct a ballot according to the process described in the Land Regulation 2009 and allows the chief executive to determine the method for conducting a ballot, considering ‘the importance of fairness, transparency and equity’.⁶⁰

2.3.4 Land titling processes

The Bill proposes to amend the Land Title Act to ‘enhance and clarify land titling processes’⁶¹ by:

- clarifying that for the purposes of registering an electronic conveyancing document, the registrar may rely on certifications that supporting evidence has been retained and steps taken to ensure the accuracy and legal compliance of the document by the person who digitally signs an electronic conveyancing document⁶²
- allowing an additional type of plan, a building lease plan, to be used to identify part of a lot which is being leased which will assist future digital processing of leases.⁶³

2.4 Cape York Peninsula Region

The *Cape York Peninsula Heritage Act 2007*, provides for the declaration of areas of international conservation and indigenous cultural significance of Cape York Peninsula (CYP) and for the cooperative and ecologically sustainable management of the region. The boundary of the CYP Region is prescribed in s 7 of the *Cape York Peninsula Heritage Act 2007*.⁶⁴ The CYP Region map was ‘last updated in 2013 to include lands in the suite of 2007 Eastern Kuku Yalanji Indigenous Land Use Agreements’⁶⁵ including Daintree National Park.

⁵⁴ Explanatory notes, p 17.

⁵⁵ *Land Act 1994*, s 56.

⁵⁶ Bill, cl 24.

⁵⁷ Explanatory notes, p 19.

⁵⁸ *Land Act 1994*, s 112.

⁵⁹ Hon Dr A J Lynham, Minister for Natural Resources, Mines and Energy, Queensland Parliament, Record of proceedings, 23 October 2019, p 3536.

⁶⁰ Bill, cl 33.

⁶¹ Explanatory notes. p 1.

⁶² Bill, cl 30; explanatory notes, p 21.

⁶³ Bill cl 31, explanatory notes, pp 22, 31.

⁶⁴ *Cape York Peninsula Heritage Act 2007*, s 7(4)(a).

⁶⁵ Explanatory notes, p 6.

The Bill amends s 7 of the *Cape York Peninsula Heritage Act 2007* to update the CYP Region map to include four parcels of land which have been added to the Daintree National Park since 2007, two parcels of unallocated state land, and one road adjacent to the Daintree National Park.⁶⁶ Details of land area, tenure type and status of the land parcels included in the amendment are shown in Table 1 below. Figure 2 below shows the areas proposed to be included in CYP Region.

The explanatory notes state that ‘the amendment supports negotiations underway with the Eastern Kuku Yalanji people (represented by Jabalbina Yalanji Aboriginal Corporation) about the transfer of land to Aboriginal ownership in the CYP Region’⁶⁷ The amendment would enable the land to be transferred to Aboriginal ownership and parts of it dedicated as national park (Cape York Peninsula Aboriginal Land),⁶⁸ to be jointly managed by the traditional owners, the Eastern Kuku Yalanji people, and the Department of Environment and Science.⁶⁹

⁶⁶ Explanatory notes, p 6.

⁶⁷ Explanatory notes, p 6.

⁶⁸ The *Nature Conservation Act 1992* allows for the creation protected areas (Aboriginal land and Torres Strait Islander land) and indigenous joint management areas, including national parks (Cape York Peninsula Aboriginal land).

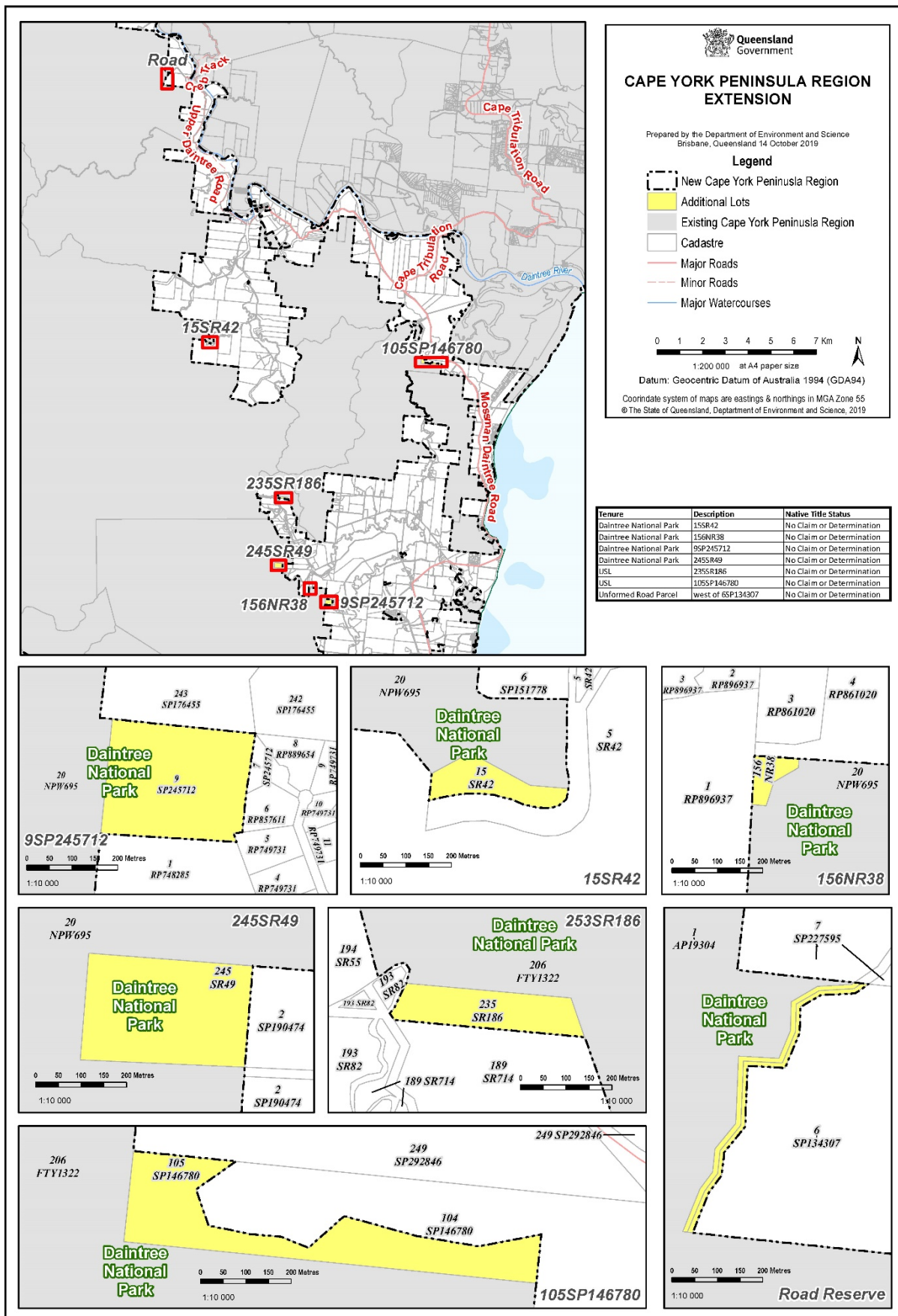
⁶⁹ Explanatory notes, p 6.

Table 1 Additional parcels of land proposed for inclusion in Cape York Peninsula Region map

Tenure	Description	Area (Ha)	Subtotal tenure type (Ha)	Native Title Status	Past ILUA status
Daintree National Park	lot 15SR42	1.62	18.2805	No claim or determination	Not in the state's ILUA, but is included in an ILUA between the Douglas Shire and Eastern Kuku Yalanji people
Daintree National Park	lot 156NR38	0.9105		No claim or determination	Not in the state's ILUA, but is included in an ILUA between the Douglas Shire and Eastern Kuku Yalanji people
Daintree National Park	lot 245SR49	8.09		No claim or determination	Not in the state's ILUA, but is included in an ILUA between the Douglas Shire and Eastern Kuku Yalanji people, and between the Telstra and Eastern Kuku Yalanji people
Daintree National Park	lot 9SP245712	7.66		No claim or determination	Not included in previous ILUAs
Unallocated State Land	lot 235SR186	3.263	11.933	No claim or determination	Immediately adjacent to existing Eastern Kuku Yalanji ILUA
Unallocated State Land	lot 105SP146780	8.67		No claim or determination	Immediately adjacent to existing Eastern Kuku Yalanji ILUA
Road	west of lot 6 SP134307	1.65	1.65	No claim or determination	Immediately adjacent to existing Eastern Kuku Yalanji ILUA
TOTAL			31.8635		
Estimated size of CYP (Ha)					22,000,000
Area proposed for inclusion (Ha)					31.8635
% increase					0.000144834

Source: Department of Natural Resources, Mines and Energy, response to question taken on notice at public briefing, 6 November 2019.

Figure 2 Map of proposed amendment to boundary of Cape York Peninsula Region



Source: Department of Natural Resources, Mines and Energy, response to question taken on notice at public briefing, 6 November 2019.

2.4.1 Stakeholders' views

The QLS stated that it welcomed the provisions of the Bill concerning amendments to *Cape York Peninsula Heritage Act 2007* as well as the amendments to the Land Act (see section 2.2 of this report) as they both 'allow the provision of unallocated state land (USL) as freehold grants under an Indigenous Land Use Agreement, notwithstanding prior extinguishment of native title or where there is an approved determination of native title'.⁷⁰

2.5 Other administrative amendments

The Bill includes minor amendments of various Acts to provide clarity and consistency and to avoid confusion including:

- amending the Land Act to omit some provisions relating to records of easements which have now expired⁷¹
- amending some provisions of the Land Title Act to avoid confusion of terms⁷²
- providing for consistency in documents required to register a transfer of a deed of grant or lease to a trustee under the Land Act with documents required for recording an interest the name of the trustee under the Land Title Act⁷³
- amending the *South Bank Corporation Act 1989* to align with previous amendments to remove references to certificates of title, which were discontinued and ceased to have any legal status from 1 October 2019.⁷⁴

⁷⁰ Submission 3, p 1.

⁷¹ *Land Act 1994*, ss 358A, 358B

⁷² Bill cl 32, 33, 34; explanatory notes, p 22.

⁷³ Bill, cl 23.

⁷⁴ Bill cls 47-50, explanatory notes, pp 25-26.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs 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 has examined the application of the FLPs to the Bill. It is considered that cl 52 could be regarded as raising potential issues of FLP. The Bill contains no penalty provisions.

The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

3.1.1.1 *Clause 52 Replacement of geodetic reference framework*

Clause 52 amends the using the Survey and Mapping Infrastructure Regulation by providing for a definition of GDA2020 in the following terms:

GDA2020 means the Reference Frame under the National Measurement (Recognized-Value Standard of Measurement of Position) Determination 2017 (Cwlth) as in force on the commencement.

Section 4(2)(b) of the LSA requires that legislation have sufficient regard for the institution of Parliament and s 4(4)(c) of the LSA requires that in having sufficient regard for the institution of Parliament, legislation allow or authorise the amendment of an Act only by another Act. It might be argued that in providing for a definition to be set by reference to a determination made under a Commonwealth Act, the clause does not have sufficient regard to the sovereignty of, and the institution of, the Queensland Parliament. Further, the use of this definition could arguably raise the potential that an Act is amended by a regulation, rather than by an Act.

The explanatory notes set out how these concerns might arise:

*A potential FLP breach is that a regulation potentially changes an Act. For example, a change to the datum reference in the Survey and Mapping Infrastructure Regulation would change the position information requirement under section 167 of the [Land Act 1994] and section 143 of the [Petroleum Act 1923] to require the information to be provided in the latest national standard for position.*⁷⁵

However as the explanatory notes state:

*This amendment of datum requires the position information to be provided in the latest national datum, but it does not change the physical location or the boundary of the point, line or area over which the information is to be provided.*⁷⁶

In relation to any possible undermining of the sovereignty of the Queensland Parliament (and as mentioned in the explanatory notes), the definition is set by reference to the GDA2020 determination as it stands at a specific date - the date when the proposed amendments in the Bill commence. Further as stated in the explanatory notes:

⁷⁵ Explanatory notes, p 9.

⁷⁶ Explanatory notes, p 9.

Should there be a change to the GDA2020 determination ... this will have no effect on Queensland's legislation. Queensland will need to amend the Survey and Mapping Infrastructure Regulation to adopt future changes to datum under the National Measurement Act.⁷⁷

Committee comment

The committee notes the utility of Cl 52 and is satisfied in the circumstances that the Bill has sufficient regard to the institution of Parliament.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are quite detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins, as well as its content.

⁷⁷ Explanatory notes, p 10.

Appendix A – Submitters

Sub #	Submitter
001	Robert Heron
002	Surveying and Spatial Sciences Institute
003	Queensland Law Society

Appendix B – Officials at public briefing

Department of Natural Resources, Mines and Energy

- Mr Peter Jamieson, Director, Land Policy
- Mr Matt Higgins, Manager, Geodesy and Positioning, Land and Spatial Information
- Mr Peter Hutchison, Acting Director, Native Title Claims Resolution

Department of Aboriginal and Torres Strait Islander Partnerships

- Ms Kathy Parton, Deputy Director-General, Policy and Corporate Services

