AGRICULTURE AND ENVIRONMENT COMMITTEE

Members present:

Mr DA Pegg MP (Chair)
Mr AJ Perrett MP
Mrs J Gilbert MP
Mr JE Madden MP
Mr EJ Sorensen MP

Staff present:

Mr R Hansen (Research Director)
Mr P Douglas (Principal Research Officer)

PUBLIC BRIEFING—EXAMINATION OF THE LAND AND OTHER LEGISLATION AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

MONDAY, 12 DECEMBER 2016

Brisbane

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Committee met at 8.59 am

CHAIR: Welcome, ladies and gentlemen. I would like to start by acknowledging the traditional owners of the land on which we are meeting today. I am Duncan Pegg, the committee's chair and member for Stretton. With me today are Tony Perrett, the member for Gympie and our deputy chair; Julieanne Gilbert, the member for Mackay; Jim Madden, the member for Ipswich West; and Ted Sorensen, the member for Hervey Bay. The other member of the committee is Robbie Katter, the member for Mount Isa, who will not be with us for this briefing.

The purpose of this meeting is to assist the committee in its examination of the Land and Other Legislation Amendment Bill 2016. The bill was referred to the committee on 19 April for examination. I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may not participate in proceedings and may be admitted to, or excluded from, the briefing at the discretion of the committee.

Hansard is making a transcript of the proceedings which we intend to make available on our website. Those here today should note that the media might be present, so it is possible that you might be filmed or photographed.

BARKER, Ms Mirranie, Manager, Land Policy, Department of Natural Resources and Mines

DANN, Ms Liz, Queensland Registrar of Titles, and Executive Director, Titles Registry, Department of Natural Resources and Mines

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

SPENCER, Ms Helen, Acting Director, Land Policy, Department of Natural Resources and Mines

VIDAS, Ms Marie, Manager, Titles Practices and Standards, Department of Natural Resources and Mines

WARNEKE, Mr Brad, Director, Titles Operations, Department of Natural Resources and Mines

CHAIR: I invite you to make a brief opening statement.

Ms Spencer: Good morning, committee chair and members. I am Helen Spencer, the Acting Director of Land Policy in the Department of Natural Resources and Mines. With me today is Liz Dann, Queensland Registrar of Titles and Executive Director of Titles Registry in the Department of Natural Resources and Mines.

I would like to thank the committee for the invitation to provide this briefing on the Land and Other Legislation Amendment Bill 2016. The purpose of the bill is to progress a number of minor amendments to the Land Act 1994 and the Land Title Act 1994. I will explain the amendments pertaining to Land Act administration and Ms Dann will explain the amendments regarding land titling in Queensland.

The Land Act provides the framework for the administration, allocation and management of non-freehold land and deeds of grant in trust for the benefit of the people of Queensland. These minor Land Act amendments will clarify provisions, streamline processes to reduce red tape and improve the day-to-day administration of state land for greater customer benefit. A number of amendments will provide clarity to existing provisions.

In relation to rolling term leases, the bill clarifies when an application for extension may be made and the maximum length of the extension that may be granted. Rolling term leases are pastoral holdings or tourism leases on regulated islands which have had generally an original term of 30 or more years. It is proposed to clarify that a rolling term lease cannot be extended more than once in the current term where the lease is in its last 20 years of its term. The current drafting of these provisions may give rise to an interpretation that a short-term lease may be increased to 20 years or longer. This was not the original intent of the legislation.

In addition, it is not clear that the extension granted cannot be greater than the original term. Extensions longer than the original term would be inconsistent with native title requirements and the proposed amendment confirms the maximum extension possible. To be clear, the proposed changes mean that a rolling term lease may be extended by the example as follows: when a 30-year lease is granted, after 10 years a lessee can apply to extend the lease on expiry for another 30 years. If that extension is granted, the lease will be rolled over. The lessee can apply again 10 years into the second 30-year term with the next extension commencing on the expiry of that second 30-year term.

Currently, the Land Act is not clear regarding the ability of the state and local governments to lodge covenants over unallocated state land, reserves or land held under an occupation licence, as it can with state leases and road licences. The bill will clarify that covenants can be registered over this land to provide for more effective and comprehensive management of areas including those with high environmental, cultural and Indigenous value on this non-freehold land.

Next, the Land Act is not clear regarding the granting of unallocated state land to the Commonwealth. It is proposed to clearly prescribe for the power of the Governor in Council to grant freehold land and the minister to grant a lease to the Commonwealth under the Land Act. A number of amendments streamline existing state land administration processes and reduce red tape. Firstly, it is proposed that the requirement to seek ministerial approval to subdivide Indigenous deeds of grant in trust, or DOGIT, land under the Land Act be removed. This will remove an unnecessary administrative step, reducing processing times for Indigenous people on DOGIT land. This will facilitate the 54 Indigenous community subdivision plans expected to be lodged in the coming months.

Secondly, a number of marina or infrastructure leases which are integral to some island tourism resorts currently must be renewed separately to the main tourism enterprise. To provide tenure security and greater administrative efficiency for particular island tourism enterprises, the bill proposes to enable term leases on tidal water land tied by covenant to an adjoining major tourism resort to become rolling term leases and allow aligned renewal.

Thirdly, where a landholder is licensed to use part of an adjacent road reserve—for example, to graze cattle or grow cane—both the freehold land and the road licensed land are tied together by covenant to ensure consistent ownership. If a landholder seeks to sell their land and the road licence, they currently need ministerial approval to transfer the licence. It is proposed to remove this requirement for ministerial approval for the transfer of road licences tied to freehold land, which will streamline the process and reduce processing time.

Lastly, public utility easements for powerlines that are attached to a state lease over a reserve currently terminate when a lease expires. Easements for long-lived critical public infrastructure should be enduring. An amendment will provide for the continuation of a public utility easement on a reserve if the lease ends, providing security to public utility owners.

The bill will improve the day-to-day administration of state land for greater customer benefit. It is proposed to regulate the process by which a trustee of state land may relinquish trusteeship to ensure appropriate transition to another trustee. Situations have arisen where the trustee of a reserve has resigned, resulting in highly valued community reserves not having the required level of management to meet community needs. For example, where a trustee of a cemetery resigns without an appropriate replacement, the state assumes management of the cemetery without the local expertise needed until a replacement can be found. This amendment will ensure continuity of management of highly valued community reserves such as these cemeteries and camping reserves.

The bill also replaces mandatory standard terms documents with transparent prescribed terms for land dealings such as trustee leases, subleases, permits, covenants, easements and licences. Presently, when a leaseholder or a reserve trustee facilitates an agreement to enable their state land to be used by a third party, they are required to attach a mandatory standard terms documents to the sublease dealing in the Titles Registry. This document stipulates the state's requirements on matters such as indemnity, public liability insurance and land use in relation to the new interest to be created. Replacing this document with prescribed terms in the Land Regulation will ensure that the state's mandatory conditions will be clearly described, considered by parliament and are transparent.

Finally, it is proposed that the Land Act be amended to provide for the establishment of a reserve for community purposes on land in a non-tidal boundary watercourse or lake. At present, reserves cannot be placed over the bed and banks of an inland watercourse or lake, making it difficult to manage uses such as camping and recreation, and protection of cultural values in these areas. This amendment will provide for a community purpose reserve within a non-tidal watercourse subject to approval from the chief executive of the Water Act and consent of the adjoining landowners. This will provide greater consistency between tenure provisions relating to tidal and non-tidal watercourses and, more importantly, rectify the current inability of the state to authorise local governments to manage public use of these areas appropriately. Ms Dann will now explain the Land Title Act amendments.

Ms Dann: Good morning, committee chair and members. I am the Queensland Registrar of Titles and the Executive Director of the Titles Registry in the Department of Natural Resources and Mines. I would also like to thank the committee for the invitation to speak to you today about the Land Title Act amendments within the Land and Other Legislation Amendment Bill 2016.

The proposed Land Title Act amendments are primarily focused on the ongoing implementation of the 2011 COAG agreement to introduce a national electronic conveyancing hub and, where appropriate, to make conveyancing processes consistent across jurisdictions. The implementation of a national priority notice in Queensland is a part of the rollout of that work.

As a signatory of the COAG agreement, Queensland has agreed to work towards national consistency in conveyancing processes to support the uptake of electronic conveyancing, or e-conveyancing as we generally call it. E-conveyancing enables the digital creation and lodgement of land dealings such as mortgages and transfers directly into the land registers of the participating jurisdictions via an online national hub.

For a number of years now Queensland has had in place a settlement notice process. These notices are used by incoming purchasers to protect their interest in the land until a sale is finalised and the new ownership is registered with the Titles Registry. They can also be used by incoming mortgagees to protect their interest until a new mortgage is registered. As a part of the work under the COAG agreement, the Queensland `Settlement Notice' is being renamed as a `Priority Notice' with some additional features so as to align it with priority notices used or being introduced across other jurisdictions. This change will represent a nationally consistent process across jurisdictions and that supports the further uptake of e-conveyancing, but these notices will also be able to be lodged through Queensland's existing e-lodgement process as well as being able to be lodged in paper.

Some of the new features of the priority notice include the ability to extend the notice by 30 days and the application of the notice to a wider range of transactions than currently exist for settlement notices including, for example, leases. E-conveyancing will be further facilitated through these amendments by providing the registrar with the ability to allow a lawyer holding a paper certificate of title to not be required to physically return the paper title to the Titles Registry for cancellation before a land dealing can occur. Such a provision is already in place for registered mortgagees, such as banks, holding a paper certificate of title and so extending it to lawyers will further improve the efficiency and operation of electronic land dealings for our customers.

The other Land Title Act amendments which also have mirror provisions in the Land Act allow for a range of minor streamlining or clarification issues in the legislation. I will briefly touch on these. The current wording regarding compensation for an improper caveat appears to make a solicitor liable for compensation where it properly is the solicitor's client who should be liable for the compensation. This amendment simply clarifies that wording. A second caveat amendment addresses the occasional situation where a mortgagee—for example, a bank—is seeking to sell a property due to non-payment of the mortgage repayments and the mortgagor—that is, the owner—places a caveat over their property claiming some sort of irregularity in the process undertaken by the mortgagee. Such a caveat does not lapse.

While it is important that a person is able to put a caveat over their property claiming some sort of irregularity, the only way to sort out such a claim is through the courts. As the caveat does not lapse, the owner is not forced to take the issue to court. Consequently, mortgagors with no substantive claim of irregularity on the part of the mortgagee can delay and frustrate a mortgagee from taking legitimate action. This amendment will make those types of caveats lapse after three months unless one of the parties has commenced action in the court. A three-month lapsing time and the requirement to take court action is consistent with the majority of other types of caveat. Where a mortgagor has a potentially legitimate claim about an irregularity in the process, it has to go to the court to be resolved. This means that the proposed amendment is not disadvantaging a mortgagor with a legitimate claim.

A further amendment improves how an interest as a trustee may be registered. Where a court order appoints a person as a trustee for sale—for example, as part of a Family Court settlement—but does not also vest the property in the trustee's name, the intended trustee has to return to court to have the property vested in their name so that the registrar can give effect to that order. This wastes time and money for both the intended trustee and the court. Amendments will provide for a person appointed as a trustee for sale by a court order to be recorded on title regardless of whether or not the court has also made that additional order specifically vesting the property in the trustee. Mirror amendments will be made in the Land Act.

Currently the registrar is able to recognise a grant of probate in a will in Queensland where an executor applies to be registered on title. In 2014, amendments enabled the registrar to also recognise a grant of a will from other Australian jurisdictions as well as the UK and New Zealand so that an executor of a will does not need to have what is called a resealing of the will in Queensland. This saves all parties time and money. An amendment in this bill will ensure that this recognition also applies to beneficiaries of a will applying for ownership with the executor's consent. This will save time and the cost of having to have a grant of probate of a will resealed in Queensland. Again, mirror amendments will be made to the Land Act.

In a further amendment, we have cases that have emerged where a person lodges a document with the Titles Registry that cannot be given legal effect—for example, some sort of pseudo legal document where a power of attorney is attempting to be transferred from and to the same person but potentially with the name written in different fonts. Amendments in the bill will provide the registrar with the power to withdraw such documents where currently they must be attended to and cannot simply be rejected. This will save everyone time and resources. Again, mirror amendments will be made in the Land Act.

In terms of the implementation of the bill, it is intended that 31 of the 41 provisions will commence on assent. The provisions intended to commence on proclamation are those associated with the priority notices; amending a regulation, such as the provision that Helen Spencer mentioned on prescribed terms; those that require further discussion with stakeholders to optimise their implementation, such as the resignation of a trustee; or those that are transitional provisions.

With regard to the Land Act amendments, the department will ensure that the Land Regulation 2009 and associated guidelines are updated, that guidance material is developed and that amendments are communicated effectively to stakeholders and to customers. Further consultation will occur with the LGAQ and with local governments on the implementation of a number of the Land Act amendments.

With regard to the Land Title Act amendments, minor amendments will be made to the Land Title Regulation 2015 regarding the introduction of the priority notices and new forms will be approved and published online. Information about priority notices and other changes affecting Titles Registry customers will be made available through a number of existing communication channels including email alerts and the online *Land Title Practice Manual*.

In terms of consultation on the bill, the proposed amendments were identified through feedback received from stakeholders and customers, as well as through ongoing departmental review of legislation. Consultation has occurred with the Local Government Association of Queensland, the Queensland Law Society, the Office of Best Practice Regulation, the Queensland Productivity Commission and Queensland government agencies. Ms Spencer and I are now happy to take questions from the committee about the bill.

CHAIR: Thank you very much, Ms Dann. We will now proceed to questions. I have a question regarding the leases of trans-tidal land. Clauses 9 to 11 of the bill add provisions for rolling term leases of tidal water land where the lease is tied by covenant to a rolling term lease of land on an island for tourism purposes. The way this works seems pretty clear. How would this work once a facility or service goes beyond the low-tide mark?

Ms Spencer: At the moment there are leases on islands that are a tidal lease—usually a marina or a jetty or some kind of infrastructure like that. I do not believe there are any leases that would be non-tidal in nature that would be tied to a major tourism facility like a hotel or other marina facility.

Mr PERRETT: I have some general queries. I think you have explained it quite well, particularly the administrative changes. How many rolling term leases do we have across the state?

Ms Spencer: There are about 2,500 rolling term leases for pastoral purposes and for tourism purposes on regulated islands. I think about 1,800 of those rolling term leases have actually rolled and the outstanding number are still yet to roll because they have not reached their last 20 years of their terms.

Mr PERRETT: These amendments just give more certainty or better clarity to the process?

Ms Spencer: That is right, yes.

Mr PERRETT: Currently, road licences attached to freehold land require ministerial approval.

Ms Spencer: That is right, yes.

Mr PERRETT: This will remove that provision. Who grants that? Is it the chief executive?

Ms Spencer: It is a ministerial approval at the moment. Essentially, you do not need ministerial approval to transfer your freehold land. Because it is tied with a covenant—the road licence and the freehold land—having that ministerial approval is just redundant, so we are removing that provision.

Mr PERRETT: Presumably, you have bumped into a few issues in and around this across the state.

Ms Spencer: Yes. There have been a couple of hundred, I believe, that have been done in the last couple of years. It is just a minor amendment just to clarify that that ministerial approval is no longer required.

Mr PERRETT: The only other question I have is in regard to community purpose reserves. In relation to the consultation with local government, what are they actually saying? Did they raise any issues or is this something that local government have come forward with in respect of the trusteeships?

Ms Spencer: Is that in the non-tidal watercourse amendment?

Mr PERRETT: That is it.

Ms Spencer: There have been a number of areas—more in the northern areas of the state—where there has been land that is used for park land or camping and the like that looks like any other park or camping area but it is actually within the bed and banks of a watercourse. The Land Act makes it clear that you can have tenure within the tidal boundaries of a watercourse but not the non-tidal. This clarifies that process that local governments can have community purpose reserves within the bed and banks of a non-tidal watercourse.

Mr PERRETT: Presumably local government have not raised any issues.

Ms Spencer: There have been a couple of local governments that have raised management issues. There is one area in particular where the local government would like to manage the area more appropriately by putting up signs or providing infrastructure and they have not been able to do so technically because they do not have tenure over that land.

Mr PERRETT: Presumably that would extend to the likes of management including weed control and those sorts of things on those areas as well?

Ms Spencer: Yes.

Mr SORENSEN: Liz, you were talking about the caveats that people put on properties to stop the mortgagees from selling. A three-month period to take anyone to court is a bit short.

Ms Dann: They do not actually have to be in court in three months. All they have to do is initiate the action.

Mr SORENSEN: They have to initiate the action, so it would continue?

Ms Dann: If they have initiated action, yes.

Mr MADDEN: I have a query with regard to clause 7 of the bill that amends section 17 of the Land Act to allow the granting or leasing of land to the Commonwealth. I understand that this has not previously been dealt with in our law. I am curious as to how common it is that we lease or grant unallocated land to the Commonwealth. Also, are there any significant areas of land that have been granted to the Commonwealth or leased to the Commonwealth? I am thinking about the Amberley RAAF base or the Great Barrier Reef. What are the big ticket items that we have transferred to the Commonwealth?

Ms Spencer: There really has not been a great deal of applications for unallocated state land to the Commonwealth. This is merely just a deficiency in the Land Act that does not clearly prescribe that the Commonwealth can have a deed issued to it for unallocated state land. There has not been any transfer applications for a number of years. This is merely a fix-up in the law.

Mr MADDEN: What about Amberley RAAF base and our bigger Defence Force bases? Are they freehold or leasehold?

Ms Spencer: I am not sure what the tenure is. It is likely to be freehold.

Ms Dann: We do not know.

Ms Spencer: Can I take that on notice? I am happy to find out for you.

Mr MADDEN: I would appreciate that.

Mrs GILBERT: There are several clauses in the bill which have the effect of harmonising provisions in the Land Act and the Land Title Act 1994. There is consistency being built into those two acts. Why have we ended up with two acts from the same year covering similar areas? Are you able to explain the background of the two acts for us?

Ms Dann: As it happens, I was there in 1994. They were just done independently, and that was a fluke, if you like. There was a lot of reform going on in that year. That is why they both happened to be in 1994. Basically, the Land Title Act deals with the Torrens system and Torrens registration of title. It deals with freehold and what can happen on freehold. The Land Act deals with unallocated state land. There are significant differences in terms of the Torrens guarantee versus state leasehold. There are some fundamental differences. However, for all the general day-to-day processes—for instance, the forms that you fill in to do a transfer, the ability to mortgage, the way we register them—there are only benefits in having consistent processes across the two.

Whenever we make a change to the Land Title Act that is about process, we try to make a mirror provision in the Land Act so that the processes are as much the same as possible. That is for red-tape reduction and good streamlining processes. The harmonisation that is going on with respect to the priority notice is actually harmonisation across jurisdictions. It is harmonised with New South Wales, Victoria, South Australia and others. The majority of the jurisdictions are introducing a priority notice with pretty much the same terms and conditions. That is where the harmonisation comes in.

CHAIR: I had a question about unallocated state land. Section 13AA of the Land Act states that non-tidal watercourse land and non-tidal lake land are not unallocated state land. Clause 5 of the bill provides for them to be dedicated as reserves as if they were. What is the practical effect of watercourse land and lake land continuing to not be considered unallocated state land?

Ms Spencer: Essentially watercourse land is called just that. It is called watercourse land. The jurisdiction of that watercourse land is generally the Water Act 2000, and the management of that body of land with the water is under that jurisdiction. When we have made these amendments to allow a lease or a reserve within this watercourse land, it is not making this land unallocated state land but just deeming it to be unallocated state land for the purposes of that reserve.

CHAIR: Thank you.

Mr MADDEN: I have a question about old-fashioned certificates of title—this is probably a question for you, Ms Dann—where they pencilled in in information. If a purchaser wanted to retain that, where it would be sent back in and it would be destroyed but they could pay $30 to retain that—

Ms Dann: Yes.

Mr MADDEN: Did you say that, under the proposed amendments, that certificate would not have to go back?

Ms Dann: Yes. In certain circumstances, for instance, at the moment we are negotiating with the Commonwealth Bank with regard to the paper certificates of title that they hold in their vaults, or wherever they hold them, to basically cancel them en masse so they do not have to bring them back in. It facilitates electronic dealing with the title through e-conveyancing.

Mr MADDEN: When I have done that as a solicitor and they have come back with holes in them, if they are going to be retained is that not now required that the certificate has holes put in it?

Ms Dann: We will have an expectation that the banks or the lawyers will destroy them. As the long as they have destroyed them properly, yes, that is fine. Holes is fine.

Mr MADDEN: So it is an honour system now.

Ms Dann: To a great degree, yes.

Mr MADDEN: Thank very much. I appreciate that.

CHAIR: Any further questions, committee members? No further questions. Ms Spencer, Ms Dann, or anyone else, do you have anything further that you would like to add?

Ms Dann: Thank you for your time.

CHAIR: Thank you very much and I thank all the officers who have appeared before the committee today. The committee would appreciate it if answers to questions taken on notice could be provided by close of business on Friday, 16 December 2016. That brings our public proceedings today to a close. Thank you very much again.

Ms Spencer: Thank you.

Committee adjourned at 9.33 am