Parliamentary Committees

Aboriginal and Torres Strait Islander Land Holding Bill 2012

Report No. 10

Agriculture, Resources and Environment Committee

October 2012

Agriculture, Resources and Environment Committee

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Acknowledgements

The committee thanks departmental officers who briefed the committee and those who provided submissions and contributed their views at the public meetings with stakeholders held in Cairns, Thursday Island and Brisbane, or otherwise contributed to the inquiry.

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Abbreviations

ALA	*Aboriginal Land Act 1991*
AREC	Agriculture, Resources and Environment Committee
CDEP	Community Development Employment Projects
CRP	Community Reference Panel
DATSIMA	Department of Aboriginal and Torres Strait Islander and Multicultural Affairs
DNRM	Department of Natural Resources and Mines
DOGIT	Deed of Grant in Trust
DSD	Department of State Development
IAUA	Indigenous Access and Use Agreement
ILUA	Indigenous Land Use Agreement
JLOMA	*Aboriginal and Torres Strait Island Communities (Justice, Land and Other Matters) Act 1984*
LGAQ	Local Government Association of Queensland
LSA	*Legislative Standards Act 1992*
LUA	Land Use Agreement
MP	Member of Parliament
OQPC	*Office of the Queensland Parliamentary Counsel*
PEPA	previous exclusive possession act (or activity)
TSC	Torres Shire Council
TSILA	*Torres Strait Islander Land Act 1991*
TSIRC	Torres Strait Island Regional Council
TSRA	Torres Strait Regional Authority

Chair's foreword

This report presents a summary of the committee's examination of the Aboriginal and Torres Strait Islander Land Holding Bill 2012.

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

Public examination of a Bill allows the Parliament to hear views from the public and stakeholders they may not have otherwise heard from, which should result in better policy and legislation in Queensland.

On behalf of the committee I thank those organisations that made written submissions on this Bill, and others who have informed the committee's deliberations.

I commend the report to the House.

Mr Ian Rickuss MP
Chair

October 2012

Executive summary

This Report presents the findings of the Agriculture, Resources and Environment Committee's examination of the Aboriginal and Torres Strait Islander Land Holding Bill 2012. The Legislative Assembly referred the Bill to the committee on 21 August 2012 for examination and report by 29 October 2012.

The Bill seeks to provide the legislative changes necessary to:

- resolve leasing issues arising from the implementation and operation of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*;
- ensure Indigenous local governments have continued statutory access to those improvements from which they provide municipal services once the land is transferred under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*; and
- provide a statutory framework for Indigenous land access on State rural leasehold land leased for agriculture or grazing by setting out in the *Land Act 1994* requirements for Indigenous Access and Use Agreements and Indigenous Land Use Agreements.

The Department of Natural Resources and Mines and the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs assisted the committee in its work.

After considering the views of participants in the examination of the Bill, and the advice provided, the committee recommends the Bill be passed.

The committee further recommends that the Bill be amended:

- to change the name of the 'Community Reference Panel' to 'Stakeholders' Reference Panel'.

The committee also recommends that the Minister:

- liaise with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs to produce and disseminate information about the Bill in languages other than English;
- that the Minister provide Parliament with an interim report on the operation and effectiveness of the Act after three years from the date of commencement;
- that the Minister provide a report to Parliament on the progress and efforts made in relation to fixing invalid applications within a year of the Bill commencing; and
- that the Minister establish a working group comprised of representatives of the Department of Natural Resources and Mines, Indigenous local and regional Councils affected by DOGIT land, and representatives from the peak surveying body in Queensland to consider how to best resolve the issues in relation to surveying DOGIT land.

The committee invites the Minister to clarify a number of other points noted in the report during the Second Reading debate of the Bill. These relate to:

- Indigenous law and custom and succession law,
- costs associated with surveying,
- the Land Court, and
- fees under the Bill.

Recommendations

1 Introduction

Role of the committee

The Agriculture, Resources and Environment Committee (the 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 the fundamental legislative principles.[2]

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

Fundamental legislative principles are defined in Section 4 of the *Legislative Standards Act 1992* (LSA) 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 21 August 2012, the Legislative Assembly referred the Aboriginal and Torres Strait Islander Land Holding Bill 2012 (the Bill) to the committee for examination and report. The Committee of the Legislative Assembly subsequently amended the reporting date to 29 October 2012 in accordance with Standing Order 136(1).

The committee's processes

The referral from the Legislative Assembly and the amendment to the reporting date by the Committee of the Legislative Assembly allowed the committee ten weeks to conduct its work. In the time available, the committee:

- identified and consulted with likely stakeholders on the Bill
- received private briefings on the Bill and its genesis from officers of the Department of Natural Resources and Mines (DNRM, or the department)
- sought advice from the department on its consultation with stakeholders during the Bill's development, the views raised by submitters on the Bill and potential fundamental legislative principle issues and other technical aspects of the Bill
- examined key clauses of the Bill identified by submitters, and the Explanatory Notes
- organised public briefings by DNRM officers in Cairns, Brisbane and on Thursday Island
- held public meetings with stakeholders in Cairns, Brisbane and on Thursday Island to give stakeholders opportunities to raise their concerns
- considered all the evidence gathered, and
- formulated conclusions and recommendations, and compiled these into a report for the Legislative Assembly.

[1] Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland as at 14 September 2012.

[2] Section 93 of the *Parliament of Queensland Act 2001*.

The committee's consultation for its inquiry

The committee sought to notify likely stakeholders of its inquiry and to invite comment at public meetings and in written submissions on the Bill. Given the importance of the Bill to Aboriginal and Torres Strait Islanders, the Parliament's Indigenous Liaison Officer, Mr Brett Nutley, acted as liaison for the committee with Indigenous groups. The committee:

- published departmental summaries, fact sheets and guides to the Bill to accompany the Explanatory Notes to the Bill
- wrote to stakeholders whom the department consulted during the Bill's development
- notified all Queensland Aboriginal and Torres Strait Islander Councils
- notified other peak bodies representing Aboriginal and Torres Strait Islander communities and interests
- notified peak bodies representing pastoralists
- notified all Queensland Members of Parliament (MPs) of the inquiry
- notified subscribers to the committee's email updates
- wrote directly to approximately 1,600 Torres Strait residents enclosing a short summary of key provisions of the Bill,
- provided a 1800 number for callers outside of Brisbane to make inquiries about the Bill, for the cost of a local phone call, and
- met with stakeholders in Cairns, Brisbane and on Thursday Island.

On 21 August 2012, the Bill was referred to the committee for examination, the committee sought advice from DNRM on the stakeholders it consulted during the Bill's development, and the outcomes of those consultations. The committee identified a wider pool of possible stakeholders through its own research. At this stage it became clear that the department had consulted with some stakeholders during the Bill's development, though there had been limited public consultation. The department did not consult with members of Aboriginal and Torres Strait Islander communities who would be directly affected by the Bill.

The committee notified stakeholders nominated by DNRM and other interested parties of the referral, and invited written submissions by 10 October 2012. The committee received seven written submissions on the Bill. The submitters are listed at Appendix A. The department's response to the submissions is contained at Appendix C.[3]

The committee held public meetings in Cairns on 18 September 2012, in Thursday Island on 19 September 2012 and in Brisbane on 18 October 2012. The officers who provided the briefings and the witnesses at the meetings with stakeholders are listed at Appendix B. Transcripts are available from all public briefings and meeting with stakeholders from the committee's website.[4]

[3] The committee continued to accept late submissions until Monday 22 October 2012. As a result the department has not commented on those submissions.

[4] Please note that at the time of writing the Brisbane public hearing transcript was a proof transcript.

2 Examination of the Aboriginal and Torres Strait Islander Land Holding Bill 2012

Policy objectives

The purpose of the Bill is to provide the legislative changes necessary to:

1. resolve long standing uncertainties involving leases on Deed of Grant in Trust (DOGIT) land by repealing and replacing the *Aborigines and Torres Strait Islander (Land Holding) Act 1985* (the 1985 Act or the Land Holding Act);
2. to provide local governments with continued access to and use of their facilities on land that is transferred under the *Aboriginal Land Act 1991 (ALA)* or the *Torres Strait Islander Land Act 1991* (TSILA);
3. to allow the subdivision of DOGIT land by amending the *Land Act 1994*; and
4. to define the requirements for Indigenous Access and Use Agreements (IAUAs) under the *Land Act 1994*.

The Bill addresses a series of longstanding issues arising from the 1985 Act which have included complicated tenure and application anomalies, and seeks to achieve sustainable home ownership on Indigenous land in Queensland.

The Land Holding Act was established to enable residents of the Aboriginal and Torres Strait Islander DOGIT and reserve communities (i.e. trust areas) to obtain perpetual leases for residential purposes, and term leases for other purposes. In 1991, the ALA and TSILA were introduced as the new principal pieces of legislation applying to Indigenous land. The introduction of the ALA and TSILA created issues for existing lease applications and also meant that no new applications could be made.

Granted leases under the 1985 Act are in the Aboriginal communities of Doomadgee, Kowanyama, Napranum, New Mapoon, Pormpuraaw, Yarrabah and Woorabinda and the Torres Strait communities of Badu, Bamaga, Hammond, Kubin (Moa), Mabuiag, Masig, Poruma, St Pauls (Moa) and Warraber. The majority of outstanding applications are within the Aboriginal communities of Doomadgee, Kowanyama, Lockhart River and Pormpuraaw and the Torres Strait communities of Badu, Boigu, Hammond, Kubin (Moa), Mabuiag, Masig, Poruma, Saibai, St Pauls (Moa), Ugar and Warraber. There are no known 1985 Act leases or entitlements in Hopevale, Aurukun, Mornington Island, Palm Island or Mer.[5]

A summary of the numbers of granted leases, lease entitlements and invalid applications made under the 1985 Land Holding Act is contained at Appendix D.

The Government conducted a review of the Land Holding Act in 2010. That review sought to address and resolve a number of tenure issues arising from the interaction of the various pieces of legislation. The current Bill was developed and introduced as a result of the review.

A chronology of legislation introduced is provided in Appendix E. Comprehensive information papers on the Bill developed by the Department of Natural Resources and Mines and the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs are available from the committee's website.

[5] Information provided by Department of Natural Resources and Mines.

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. The committee wishes to draw the House's attention to the following issues arising from its examination and seeks amendment or clarification of the Bill as outlined below.

Recommendation 1

The committee recommends that the Aboriginal and Torres Strait Islander Land Holding Bill 2012 be passed.

Consultation

The Explanatory Notes outline the consultation undertaken by the department in relation to the Bill.[6] The department advised that public consultation occurred between 8 December 2010 and 28 February 2011 based on a discussion paper for the current *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. The discussion paper was provided to key stakeholders and released on the then Department of Environment and Resource Management's website and on the Government's 'Get Involved' website.

The department provided the committee with a number of documents containing information on the Bill including the following:

- a plain-English guide to the Bill,
- Introduction of the Bill,
- Overview of the Bill,
- Frequently Asked Questions about the Bill, and
- a Summary of granted leases, lease entitlements and invalid applications made under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. All of these documents were published on the committee's website.

The department also advised that it consulted with key stakeholders between March and October 2011, including the then Mayors of all the Aboriginal and Torres Strait Islander Councils and Cape York Regional Organisations.[7]

As part of its examination of the Bill, the committee held a series of meetings with the department and interested stakeholders in Cairns on 18 September 2012, Thursday Island on 19 September 2012 and in Brisbane on 18 October 2012.

In particular, the committee sought input from Torres Strait councils whose constituents are directly affected by the Bill namely, the Torres Shire Council (TSC) and the Torres Strait Island Regional Council (TSIRC). Both Councils made submissions to the committee in relation to the Bill and Mayor Napau Pedro Stephen, of the TSC, participated by phone in the committee's Brisbane meeting with stakeholders. Despite several requests from the committee, a representative of the TSIRC did not participate in the committee's meetings with stakeholders.

The committee repeatedly heard evidence at the meetings with stakeholders and from the submissions that the public consultation process with those persons directly affected by the Bill was poor.

At the Thursday Island meeting with stakeholders the issues of communication and consultation were commented on by Ms Susan Hamilton:

[6] Explanatory Notes, Aboriginal and Torres Strait Islander Land Holding Bill 2012, p.21
[7] Explanatory Notes, Aboriginal and Torres Strait Islander Land Holding Bill 2012, p.21

> *One, there is no transportation. There is no public transportation; there are no private charters available. There is nothing available to bring anybody here for you. Two, there is a lack of knowledge. Nobody knows about it so nobody can come. Three, as for the timing, we have a cultural festival, so nobody will come. Four, English is not our first or second language. It is our third, fourth or fifth language. I appreciate that when you send this bill out for discussion it is a legal document. I appreciate that, yes, there will be some difficulties with people on the mainland having access to someone who will interpret this form. However, given it is our fourth, fifth and sixth language, some consideration needs to be given as to breaking down this legislation, putting it in a form that we can understand in simple English.* [8]

Mr Pearson Wigness, Elder also commented on the issue of consultation at the Thursday Island meeting with stakeholders:

> *I was just going to talk about communication. When the (inaudible), they do not have a first or second degree at university. Legal jargon needs to be in native language. They go to a forum and listen to conversation like this and then go back to their communities. The community asks what happened. They say, 'It was just government talk.' Do you understand what I am saying? No-one understands what is going on with the Katter leases. What Susan is trying to say is that, when you come up here to get us to acknowledge this, you need to break it down. There is legal jargon, doctor jargon, medical jargon—all kinds of jargon. We have one talk—pidgin. That is the only talk that our people will understand.* [9]

In their submission to the committee, Chalk and Fitzgerald Lawyers, on behalf of the Kaurareg people, expressed concern in relation to the consultation process:

> *The Kaurareg people are concerned by the lack of consultation by DNRM in respect of the detailed changes proposed. There is a sense among the Kaurareg people that the Bill is being implemented in a rushed manner and that resources have not been made available to facilitate proper discussion amongst the Kaurareg people as a group, nor has any funding been made available by DNRM for the purpose of allowing the Kaurareg people to obtain legal advice on the ramifications of the Bill.* [10]

The TSC also expressed concern in their submission regarding the consultation process:

> *The limited and minimal communication about the Aboriginal and Torres Strait Islander Land Holding Bill 2012 by the Department of Natural Resources and Mining (DNRM) gives Council cause for concern about how well the implementation process will be managed after the Bill has been enacted.*
>
> *It is essential that all stakeholders are identified and included in any communication process. The stakeholders include the Torres Shire Council and many of its residents.*
>
> *Effective communication must take into account the time needed for people to understand the process and consideration given to the constraints for people living in remote areas such as the Torres Strait Islands.*
>
> *The process must be clearly articulated so that ordinary people are able to understand what their rights and responsibilities are when applying for leases, resolving issues about existing leases or other related matters.* [11]

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8 Hamilton, S. 2012, *Hearing Transcript*, 19 September 2012, p.9.
9 Wigness, P. 2012, *Hearing Transcript*, 19 September 2012, p.12.
10 Chalk and Fitzgerald Lawyers, *Submission No.3*, p.3.
11 Torres Shire Council, *Submission No.7*, p.3.

The committee addressed the issue of consultation with the department during the Thursday Island meeting with stakeholders:

> *… we have been working on this for a number of years. I will quickly outline that briefly. I guess it might also reflect, then, on how even this information has been communicated within the island communities. It is clearly an issue. Back in December 2010, we prepared what we called a discussion paper on just how we may proceed to deal with these Katter leases, because we knew that there are, as per this information, significant numbers that still had some status or were invalid but we needed to resolve what to do with them. We could not let them continue to sit unattended. So we put out a public discussion paper in 2010 and we asked for comments by the end of February 2011 and took on later comments. We sent that out to basically all the councils, as in the trustees. We sent it out to all the representative bodies, so that would have included TSRA. We sent that to a number of other groups who were involved, government agencies, and Commonwealth and state members of parliament. We also put it on websites and the like. I appreciate that websites in Torres Strait communities might not be so accessible, but it was put there.*
>
> *CHAIR: Did you get many responses?*
>
> *Mr Robson: We did, but it was more through a couple of rep bodies and through the councils. We got one or two individuals—not many. Because this issue is very specific to individual people and communities, it was feedback we picked up but then we also kept going. That was not the end of it. We had quite a lot of meetings. This is all over Queensland in Indigenous communities, not just Torres Strait but also Aboriginal, as you appreciate. But in the Torres Strait we had meetings with the Torres Strait Islands Regional Council in March 2011. We had a presentation to all the mayors of both Aboriginal and Torres Strait Islander councils in, again, March in Cairns. We did send a survey to all councils in April seeking their input, advice and information on who held or did not hold such leases or had applications that they had not dealt with. We also gave a further presentation to all council representatives—Aboriginal and Torres Strait Islander councils—in September 2011. There has been a number of times. We have talked more to the trustees, to the councils, because ultimately they are the ones, in their previous forms, that granted and dealt with the applications.* [12]

The committee also asked the department at the Brisbane meeting with stakeholders whether it felt it had consulted enough. The department advised:

> *…. we believe we have done a fairly extensive job in consulting on the bill. An exposure draft was circulated last year. Certainly we have worked pretty heavily with particularly the trustees and the local governments to get the information that they hold in the way of lease entitlements and therefore coming up with the list you see before you in terms of what are recent entitlements and invalid applications. In terms of the knowledge individually in the community, that is probably low. We accept that. The bill designs a process to draw that out through the notification process that exists in the bill.*[13]

The committee notes that the department focused on consultation with the Councils, as the trustees and those granting and dealing with the applications. However, the committee felt that in response to the concerns raised in the submissions and during meetings with stakeholders in relation to the consultation, the committee needed to contact the residents that may be directly affected by the Bill.

The committee sent correspondence to every resident on the electoral role in the Torres Strait as well as to community groups and the Councillors of the Torres Strait Council and the Torres Strait

[12] Rickuss, I. and Robson, C. *Hearing Transcript*, 19 September 2012, p.10.

[13] Robson, C. 2012. *Proof Hearing Transcript*, 18 October 2012, p.11.

Island Regional Council. This correspondence also contained an information sheet explaining to residents what the Bill was about and the effect it may have on them. The information contained in the mail out provided contact numbers for the committee secretariat and DATSIMA if residents had any specific questions about the Bill.

The Chair of the committee, Mr Ian Rickuss MP, appeared on Bumma Bippera Radio 4CIM and Torres Strait Radio (twice) to explain and answer questions in relation to the Bill. The committee also placed an advertisement in the *Torres News* on 1 October 2012 explaining the Bill and how interested parties could provide feedback (Appendix F). The committee received numerous phone calls from individuals and representative groups in relation to the Bill.

The committee notes the challenge of consulting with remote communities and appreciates the length of time it takes to adequately consult. However, the committee heard at the public meetings in Cairns and Thursday Island that, despite the consultation process beginning in late 2010 by way of the department's discussion paper and the department's best efforts to publicise the Bill, the vast majority of people directly affected by the Bill were not fully informed as to its implications. The department conceded at the Brisbane meeting with stakeholders that knowledge was low amongst individual's directly affected by the Bill. The committee sought to rectify this by writing to residents as outlined above. The committee also notes that people in affected communities need ample time to respond and that this was inhibited by the committee's reporting timeframe.

The committee also considers that information in relation to the Bill should have been produced in languages other than English, for example Creole. DATSIMA advised the committee secretariat that it can assist in this process. The committee recommends that communication in relation to a Bill such as this should be in language familiar to Aboriginal and Torres Strait Islander communities such as, but not limited to, Creole.

Recommendation 2

The committee recommends that the House note that when setting reporting timeframes for Bills that the maximum time allowable under the Standing Orders should be given where consultation with Aboriginal and Torres Strait Island communities and other communities that are isolated is required.

Recommendation 3

The committee recommends that the Minister liaise with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs to produce and disseminate information in relation to the Bill in languages familiar to Aboriginal and Torres Strait Islander communities, such as, but not limited to, Creole.

Review of the Act

Clause 91 of the Bill provides that the Minister must, within five years commence a review of the operation and effectiveness of the Act. The committee requests the Minister provide an interim report to the Parliament after three years from the date of commencement.

Recommendation 4

The committee recommends that the Minister provide the Parliament with an interim report on the operation and effectiveness of the Act after three years from the date of commencement.

Native Title

Concerns raised by Stakeholders in relation to Native Title

Several stakeholders queried whether the Bill has sufficient regard to Native Title and whether lease applications approved before the introduction of Native Title could now be contested by the traditional owners of the land.

At the meeting with stakeholders at Thursday Island, Ms Susan Hamilton argued that the recognition of Katter leases had a detrimental effect on Native Title:

> *On all of the islands that have their native title determinations; hence the concern in our community, with the effect of these leases and the effect of this act, is that the Katter leases effectively extinguish native title. The concern we have in our communities is that if those Katter leases that were currently on hold, that had not been granted, are now granted you are effectively extinguishing native title. The other concern is if you state that the equitable interest in land was created at the time of application, which was in the eighties, which was pre native title determination, what you are doing is effectively saying that the equitable interest was created there. We are deciding here and now to effect it.* [14]

In their submission to the committee, Chalk and Fitzgerald Lawyers, on behalf of the Kaurareg people also expressed a concern as to the affect the Bill would have on Native Title:

> *We are advised that the government takes the view that the granting of a 'lease entitlement' is a 'pre-existing right-based act' under the Native Title Act 1993 (Cth). In our view, the 'lease entitlements' described by the Bill do not comprise "pre-existing right based acts" under s241B of the Native Title Act 1993 (Cth). To qualify as a pre-existing right based act an entitlement must be either "a legally enforceable right created by any act done on or before 23 December 1996" or in good faith the giving effect of "an offer, commitment, arrangement or undertaking made or given in good faith before 23 December 1996". The entitlements contemplated by the Bill are neither. The proposed 'lease entitlements' are not "grants" under the Native Title Act 1993 (Cth).*[15]

The committee sought the department's response in relation to the concerns raised. The department advised that the Bill does not provide for the extinguishment, or diminishment, of Native Title and complies with the *Native Title Act 1993*. The Bill provides tools to be able to meet people's legal rights to a lease. The aims of the Bill with respect to Native Title are:

- to not diminish Native Title rights and interests;
- to be consistent with both Native Title case law and the provisions of the *Native Title Act 1993*; including respecting the relationship between the lessee's and Native Title party's particular rights; and
- to be consistent with the provisions of the *Land Act 1994*, in particular with regards to the purpose for which a lease for rural leasehold land is issued and processes under this Act.

The department advised that the Bill complies with the provisions of the *Native Title Act 1993,*[16] which confers a right of exclusive possession as a result of a pre-existing right based Act which 'extinguishes any Native Title in relation to the land or water'.

The department confirmed that the processes in the Bill regarding lease entitlements are wholly consistent with the decision made in the case of *Murgha v State of Queensland,* which concerned the

[14] Hamilton, S. 2012. *Hearing Transcript*, 19 September, p.3.
[15] Chalk and Fitzgerald Lawyers, 2012, *Submission No.3*, p.3.
[16] *Native Title Act 1993*, S24IB.

Aborigines and Torres Strait Islanders (Land Holding) Act 1985, and confirmed that, once determined, a person became entitled to a lease in perpetuity.

At the meeting with stakeholders on Thursday Island, the department further explained the Bill's interaction with Native Title:

> *What we are saying is that there is a legal entitlement created when the application was approved. There is a legal entitlement and that gets converted into the lease. So we are acting on a legal entitlement. The lease is granted. That does extinguish native title. You have to go back and look at the wording of each native title determination to see whether it did include these blocks there. Often they exclude those PEPAs (Previous Exclusive Possession Act) and other things without actually defining them on the determinations. These have come up since. Maybe those areas were included but, as you said, the effect will be to extinguish native title but because of the legal entitlement that was made when the trustee approved them back in the eighties before the Native Title Act.*[17]

However, the situation is different if a lease is granted on an invalid application. In this instance Native Title is not extinguished because the granting of a lease would be a future act.

The department advised as follows:

> *On the invalid ones, even if a lease is granted native title would not be extinguished. If a lease is granted—and it will be by the trustee, not by the state in those cases because it will go back to DOGIT— that would be a future act and they will have to deal with native title. The non-extinguishment principle would apply so they will need to get the trustee's approval and they will need to have an ILUA to get a lease for those invalid ones, so they may not get a lease depending on what the trustee and the native title holders say. Even if one was agreed, the non-extinguishment principle would apply. For the invalid ones, native title would not be extinguished.*[18]

Native Title and Indigenous land access initiatives

Clause 129 of the Bill amends the *Land Act 1994* in relation to Indigenous Access and Use Agreements (IAUAs).

The current statutory term 'Indigenous access and use agreement' as set out in the *Land Act 1994*[19] - defines two different types of agreements, namely, the Indigenous Access and Use Agreement (IAUA) and Indigenous Land Use Agreement (ILUA). As a result of the complexities associated with ILUAs in terms of the time and costs of negotiations, the *Land Act 1994* provided for IAUAs as a simpler alternative agreement-making process.

However, the current definition of these agreements has caused confusion. An ILUA is made under the *Native Title Act 1993* (Cth) and specifically deals with Native Title rights and interests while not conferring access and use rights to Indigenous people for traditional purposes, while an IAUA is made pursuant to Queensland's *Land Act 1994*, but does not deal with Native Title interests.

The intent of these agreements is to recognise access and use rights for Indigenous people for traditional purposes on State rural leasehold land and provide a faster resolution of Native Title claims given that:

[17] Carse, K. 2012, *Hearing Transcript*, 19 September, p.5.
[18] Carse, K. 2012, *Hearing Transcript*, 19 September, p.6.
[19] Schedule 6. *Land Act 1994*,

- Approximately 70 per cent of state rural leasehold land leases are within Native Title claim areas; and
- Approximately 60 per cent of the more than 100 Native Title claims which are outstanding include pastoralists as respondents.

The *Land Act 1994* does not currently define the precise requirements for IAUAs and the effect IAUAs have on Native Title rights and interests. In addition, the *Land Act 1994* does not state that ILUAs used for the purposes of accessing the maximum lease term or lease extension must allow access to and use of State rural leasehold land for traditional activities.

The department advised that as ILUAs are generally well understood, the amendments will exclude an ILUA from the current definition so that the term *Indigenous access and use agreement* will describe only one type of agreement. Therefore in future, any reference to an Indigenous access and use agreement or IAUA will be to the negotiated contract made under the *Land Act 1994*.

When an ILUA is being used in place of IAUA, the Bill provides that only an ILUA which includes specific access and use arrangements may be used for the purposes of seeking maximum term or extension benefits for State rural leasehold land.

The Bill also clarifies that while an ILUA may be an IAUA (if it satisfies access and use provisions for traditional purposes), an IAUA cannot become an ILUA. This is because an IAUA is not compliant with the *Native Title Act 1993* and *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).[20] The amendments seek to provide clarity and avoid misinterpretations between ILUAs and IAUAs. Clause 129 also inserts a new division 8D into chapter 6, part 4 of the Act. Division 8D creates a new type of registered interest under the *Land Act 1994*, the 'Indigenous cultural interest'. This is to ensure security and longevity of Indigenous access and use agreements and Indigenous land use agreements under the *Land Act 1994,* and provide lessees and Indigenous parties with greater certainty. The registration of an Indigenous cultural interest:

- applies to certain term leases affected by the State Rural Leasehold Land Strategy, namely leases issued for agriculture, grazing or pastoral purposes with a term of 20 years or more and whose area is 100 hectares or more; and
- is specific to the purposes of the *Land Act 1994* and has no 'life' under other legislation.

The department also addressed the issue of whether the Bill could diminish Native Title rights by giving Ministers the power of veto over indigenous land use. The department advised:

> *Under the proposed amendments, the registration of an Indigenous cultural interest on title will hinge on an application being made by the lease and the Minister approving the lodged Indigenous Land Use Agreement (ILUA) or Indigenous Access and Use Agreement (IAUA) for the interest and lease.*
>
> *Native Title cannot be affected by an Indigenous Access and Use Agreement, as that is an agreement under the Land Act 1994 and native title can only be affected pursuant to the Native Title Act 1993.*
>
> *Indigenous rights and interests will be established by a Federal Court native title determination. The registration of an Indigenous cultural interest is about how these native title rights and interests interact with a pastoral lessee's rights under their lease.*
>
> *If the Minister does not approve the registration of an Indigenous cultural interest then the native title rights, as found by the Federal Court are not affected.*

[20] Explanatory Notes, p. 14.

In their submission to the committee, the Cape York Regional Organisations were critical of the use of ILUAs and submitted that they permitted a very low level of Native Title rights on pastoral leases and create the potential for inconsistencies between agreements and Native Title determinations.[21]

At the Brisbane meeting with stakeholders, the department advised that these concerns were also raised by organisations such as North Queensland Land Council and the Queensland South Native Title Service. However, upon discussion and negotiation with representative bodies a number have agreed to the template ILUA in principle and will use it if the Bill is passed.[22]

The committee notes that the intention of the Bill's provisions relating to ILUAs is to achieve agreement between the interests of pastoralists and Aboriginal and Torres Strait Islander groups in a considered and timely fashion and considers this will be beneficial to both groups.

The committee also notes the concerns raised by submitters in relation to Native Title but is satisfied that the Bill does not diminish Native Title rights and interests and complies with the *Native Title Act 1993*.

Traditional succession law in Indigenous communities

As part of the process of resolving outstanding applications made under the 1985 Act, the Bill seeks to put in place a clear legal process pursuant to the succession laws of Queensland in order to determine succession arrangements in circumstances where a person who made an original lease application is deceased. It is anticipated that this process will have to be applied to over 50 per cent of outstanding applications.[23]

If a deceased person has not left a will, the Bill allows the Minister to rely on a certificate identifying beneficiaries under section 60 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOMA) by the chief executive administering the Act.

The definition of 'interested person' as contained in the schedule to the Bill (having regard to the laws of succession) is as follows:

> ***interested person**, in the estate of a deceased person (the **identified person**), means a person who has an interest in the estate, or in the administration of the estate, of the identified person, and who is 1 or more of the following, having regard to the laws of succession—*
>
> *(a) a beneficiary of the identified person;*
>
> *(b) a personal representative of the identified person or of any other person who is deceased, as provided for in a will or in a grant of probate or letters of administration;*
>
> *(c) a person identified in a JLOMA section 60 certificate.*

The committee received feedback from stakeholders that the way in which Aboriginal and Torres Strait Islander people allocate land is very different to the laws of succession which operate pursuant Queensland's *Succession Act 1981*.

At the Thursday Island meeting with stakeholders, Ms Hamilton questioned the definition of 'interested person' as contained in the Schedule to the Bill and explained to the committee how the laws of succession operate differently in Indigenous communities:

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21 Cape York Regional Organisations, 2012, *Submission No.5*, p.3.

22 Robson, C. 2012, *Proof Hearing Transcript*, 18 October, p.33.

23 Explanatory Notes, Aboriginal and Torres Strait Islander Land Holding Bill 2012, p.5.

> *As for people who are deceased, your laws of succession do not apply to us. They apply to us legally in your western system. When you are talking about a lease being handed down from father to son or to the person who is the next of kin, you have to be aware that when we hand down landownership, we do not hand it down to the next person in line. The grandmother can bypass all her children and say, 'That granddaughter there.' The grandfather can say, 'Only that grandson and that grandson to hold it.' He will not give it to the eldest two because they drink or he does not like what they do. He will give it to the youngest son because he is the churchgoer and he is the one the grandfather thinks is responsible.*
>
> *So our land is handed down at the decision of the traditional owner. Nobody has the right to tell the traditional owner, 'You can't give it to him. It has to go to your oldest son.' Nobody. The traditional owner has first, last and final say in our hereditary succession of land. So your bill here is saying that, for the people who have applied for Katter leases, the normal succession laws will apply. That is not our traditional law. Fine, that is your law, but those people have died and did not know they had Katter leases. Your issue is privacy; our issue is on that island nobody knows.*[24]

At the Brisbane meeting with stakeholders, the committee also discussed this issue with Mr Vince Mundraby and the representatives of the Cape York Regional Organisations (CYRO). Mr Mundraby confirmed that Queensland's succession laws do not reflect what occurs in indigenous culture. Ms Marita Stinton of the CYRO submitted that it would be appropriate for the provisions of the *Succession Act 1981* to be reviewed in order for these differences to be considered.

The committee received strong feedback that the laws of succession in Aboriginal and Torres Strait Islander communities are significantly different from the laws as set out in the *Succession Act 1981*. The situation may exist that a person residing on a property, who is not the original lease applicant, has taken up residence on the property through traditional succession law as practised in that community. The committee seeks the Minister's clarification as to how he proposes to take into account traditional Indigenous law and custom when determining the owner of a lease where the original applicant is deceased.

Point of clarification

The committee invites the Minister to clarify how he proposes to take into account traditional Indigenous law and custom when determining the owner of a lease in circumstances where the original applicant is deceased.

Community Reference Panel

The Bill places an obligation on the Minister to identify and document in a statement of reasons any practical obstacles that exist to the granting of a lease to satisfy a lease entitlement. To assist the Minister in preparing the statement of reasons, advice will be sought from a 'Community Reference Panel' (CRP) established pursuant to clause 13 of the Bill. The panel will be responsible for providing advice and recommendations to the Minister and working with affected parties to resolve issues with lease entitlements and lease boundaries of granted leases.

The panel may include the chief executive of the department, any other chief executives having responsibilities in relation to the trust area, and the trustee. The panel may invite other persons, or their representatives likely to be impacted by matters to be considered by the panel to participate in the panel's considerations.

[24] Hamilton, S. 2012. *Hearing Transcript*, 19 September, p.10.

The department provided the committee with further information in relation to the CRP at the public meeting with stakeholders in Cairns:

> *One of the steps that the bill provides for is for the minister to be able to establish a community reference panel for each trust area. This panel will include the trustee, which is generally the council in the case of the DOGITs, and the relevant directors-general of the departments. For example, our department, perhaps DATSIMA—the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs—and the Department of Housing and Public Works may be relevant agencies, and we may need to bring others in. That panel advises the minister on any of the issues regarding the entitlements and that panel can bring others on board—relevant local people and anybody else the panel believes can provide assistance. The minister does not have to form a panel. There may be a community where there is just one outstanding entitlement and it is quite simple. So the department may just deal with the trustee and that person and not form a panel. In many cases I assume there will be a panel formed.*[25]

In their submission to the committee, Chalk and Fitzgerald supported the establishment of a Community Reference Panel. However, they took the view that:

- there ought to be a mandatory obligation on the Minister to establish a CRP for each affected location; and
- each CRP must include any registered Native Title parties or Native Title holders with respect to the land.[26]

The committee sought advice from the department in relation to the concerns raised. The department advised:

> *The role of the Community Reference Panel includes advising the Minister about any practical obstacles to granting the lease entitlements. It may be the case that a particular community only has few lease entitlements and there are no practical obstacles to granting them. In this case nothing is likely to be gained by establishing a Community Reference Panel for that community. It would simply increase the burden on the members and delay the grant of the leases with no change in the practical outcome.*
>
> *Where a lease entitlement requires amendment of its boundaries (due to practical obstacles) over land where native title continues to survive, then the involvement of the native title party in the resolution of the lease entitlement is a necessity. This is accommodated in the Bill by a Community Reference Panel inviting persons likely to be affected by an issue to participate in the panel's consideration of the matter.*

At the meeting with stakeholders in Brisbane, the committee questioned the use of the word 'Community' in the title of the 'Community Reference Panel'. Mr Gibson MP noted that:

> *I think the challenge, certainly from my perspective, is when you hear the term 'community reference panel', by its very nature you are thinking of a much broader panel that is going to represent the community and not just have that narrow focus. So there may be some challenges. Should the bill pass, there may be a view that if a community reference panel is being established it should represent the whole community.*[27]

The committee considers that the name of the panel be amended to more accurately capture the composition of a panel at any given time and remove any potential misconceptions about the representation on, or the functions of, the panel.

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[25] Carse, K. 2012, *Hearing Transcript*, 18 September, p.3.
[26] Chalk and Fitzgerald Lawyers, 2012, *Submission No.3*, p.4.
[27] Gibson, D. 2012, *Proof Hearing Transcript*, 18 October 2012, p.10.

Recommendation 5

The committee recommends that clause 13 of the Bill be amended to change the name of 'Community Reference Panel' to 'Stakeholders' Reference Panel' to more accurately capture the composition of the panel and remove any potential misconceptions about the representation on the panel or the functions of the panel.

Hardship Certificates

In some instances it is possible that a lease application was not lawfully approved by the trustee according to the requirements of the Land Holding Act. However, the applicant may have relied upon a mistaken belief that the application was approved lawfully and therefore subsequently built on the land based on that belief.

To ensure that these applicants are not unduly impacted, clause 26 of the Bill provides that where a person demonstrates this 'hardship' case, the chief executive must decide that the value or cost of the land for the purposes of a lease under the ALA and the TSILA is nil.

The department expanded upon this at the Thursday Island meeting with stakeholders:

> *In the case of the 131,[28] in the Torres Strait—and we have one invalid application at Bamaga as well—and all the others on Aboriginal communities elsewhere, if a person comes forward and identifies that in their view they believed they always had an approved entitlement and they acted as if they had an approved entitlement, they have to demonstrate a case to the minister in the context of administering the new act, if it comes into being, that is accepted in order to receive what we call a hardship certificate. It simply means that the benefit that is given to that person is that they could then apply to the trustee of the DOGIT to say, 'On the basis of this certificate, I would like to get a 99-year homeownership lease.' That would still be subject to a native title assessment and agreement so it is subject to native title. It has not fallen out of the DOGIT. It is not a perpetual lease. It is subject to those laws.[29]*

One of the requirements that needs to be satisfied for the chief executive as set out in proposed section 26(1)(c), is that there is evidence that the person acted in reliance on the advice from the trustee council, or acted on reliance on what the person understood from the trustee council to be the case and that the trustee council had approved the granting of the lease.

In their submission to the committee, Chalk and Fitzgerald Lawyers raised a concern that the hardship provisions contained in clause 26 of the Bill will allow for situations where unauthorised buildings erected in unsuitable locations will be validated despite the non-existence of a lease or lease entitlement.[30]

In their submission, the Torres Strait Island Regional Council (TSIRC) raised concern that 'reliance' is not sufficiently defined in terms of the information required to enable a hardship claim. For instance, the TSIRC asked whether the construction of a dwelling, construction of a temporary home, the planting of a garden or advising others would suffice. The department responded to the issued raised and stated that the circumstances outlined by TSIRC may, where all the other conditions of clause 26 are satisfied, go to establishing the required reliance in a particular case.

The department advised that the hardship provision at clause 26 of the Bill is effectively designed to allow a trustee to offer a 99 year lease at zero cost in circumstances where a person has relied on

[28] The Department has subsequently advised that the total number of invalid applications is 133.
[29] Robson, C. 2012, *Hearing Transcript*, 19 September 2012, p.6.
[30] Chalk and Fitzgerald Lawyers, 2012, *revised Submission No.3*, p.4.

incorrect information that they were granted a lease or that they were the holder of a lease entitlement.

The provision of a hardship certificate does not mean that the lease will automatically be granted by the trustee. It will be at the trustee's discretion and in circumstances where Native Title survives, the Native Title holders will be required to approve the granting of any lease.

The committee notes that one of the key objectives of the Bill is to deal with the long standing invalid applications and notes that the Community Reference Panel and/or a hardship certificate as contained in the Bill are two fundamental mechanisms of the Bill to assist with resolving invalid applications.

Recommendation 6

The committee recommends that the Minister provide a report to Parliament in relation to the progress and efforts made to resolve the invalid applications within a year of the Bill commencing.

Surveying of DOGIT communities

The department advised that one of the problems of the 1985 Act was that it did not require that applications made to be based on a survey of the land. Applications could be done on description. While in some cases the description was very good, in others it was poor. The problem that has eventuated is that people have built their properties based upon where they thought they had described, however when they have revisited the property with a surveyor it has been discovered that they built their property off alignment.

In some situations, councils have built roads (for example) not knowing where the application boundaries were. Roads have been built according to where it is believed they should be built, which have inadvertently crossed application boundaries.

At the meeting with stakeholders in Cairns, the Cape York Land Council expressed concern as to the cost for land owners in having a property surveyed:

> *Our position is that, if the government is doing survey work, it should be comprehensive and the whole town should be surveyed and all the allotments should be put on the cadastre. Then we have a good base to start from. The alternative is—and the question was asked of Chris Robson earlier—who is going to pay for the survey of the land tenure leases? Answer: the holder of the lease. The holder of the lease, quite simply, ladies and gentlemen, cannot afford it. How much money did it cost to get a surveyor to go to a remote community and survey one block? The average Aboriginal person has not got the funds to do that. The government created the mess; the government should fix it.*[31]

During the meeting with stakeholders, Ms Trad asked the department to provide further details on the costs associated with surveying the DOGIT communities*:*

> *Ms TRAD: In relation to that, has there been any modelling done on how much it would cost to survey all the DOGIT communities?*
>
> *Mr Robson: As a reference point to start with, my memory is telling me that the cost that has been incurred to date—and John Reeve referred to this—which is the work done by the program office, which has been done on the Indigenous communities in which they are working, is in the order of $10 million, roughly, across all those communities—sorry, $6 million. As John Reeve identifies, there is basically what we call backbone infrastructure plus, where they need to—properly aligning reserves, properly aligning the social housing*

[31] Reeve, J. 2012. *Hearing Transcript*, 18 September, p.12.

> *allotments. Also, as part of that process, the program office has actually identified quite a few of the areas of Katter lease lots that we are looking at. I am not saying that they have done it all; I am saying it is a very expensive business at the same time. In terms of what has been done—and that is across the whole community. Previously, as has been said, there was very little, if any, of that survey infrastructure in place. Compared to where we were maybe four or five years ago, we have come a long way.*[32]

In their submission to the committee, the TSC also expressed a concern in relation to the costs of resolving boundary issues:

> *Some of the affected residents in the Torres Shire Council area require more information about how the amendments will impact on them. Their issues include, for example, the need to resolve the location of boundaries in relation to roads and encroachments. Council is concerned that the costs involved in the process of negotiating, defining and applying for leases or resolving boundary issues may be prohibitive to some residents.*[33]

The department provided an example of the Hope Vale community in relation to the costs associated with surveying:

> *We are talking about approximately 30-odd block holders, as they were called, in that community. It did take the department and a number of officers—I would have to say two or three officers—a period over several years and considerable survey costs. I can quote the survey costs. They were in the order of $1½ million to resolve those 38 to 39 blocks, and that involved obviously consultation with the native title parties in terms of those agreements as well. So it takes time. It just takes time. That was difficult, but that is because the community actually wanted to have their say and make sure where those blocks got surveyed were where they should be and all those things.*[34]

In the document provided by DNRM titled, *Frequently Asked Questions*, the department advises that it will seek to limit the costs that individual lease entitlement holders or individual lease holders may incur under the Bill.

The department also advises that the costs of implementing the proposed amendments in the Bill will be through government agencies who will bear the costs of determining beneficiaries, negotiating agreements or surrenders, and survey work for lease applications and entitlements.

Point of clarification

The committee seeks the Minister's clarification in relation to the costs associated with the surveying of DOGIT communities and if possible, the likely timeframes for completing the surveying of these communities.

Recommendation 7

The committee recommends that the Minister establish a working group comprised of representatives from the Department of Natural Resources and Mines, Indigenous local and regional Councils dealing with DOGIT land, and a representative from the peak surveying body in Queensland to consider how to best resolve issues in relation to surveying DOGIT land.

[32] Trad, J and Robson, C. 2012, *Hearing Transcript*, 18 September, p.6.
[33] Torres Shire Council, 2012, *Submission No.7*, p.2-3.
[34] Robson, C. 2012, *Hearing Transcript*, 18 September, p.18.

Land Court

Clause 38 of the Bill allows for the Minister to apply to the Land Court to seek a decision about whether the lease can be granted if the parties fail to reach agreement. The Bill's Explanatory Notes provide that there are:

> *… a number of matters that will still require dispute resolution, and decisions that will require review. Therefore, the Bill gives the Land Court, because of its specialist knowledge relating to Aboriginal and Torres Strait Islander matters and land administration, jurisdiction to resolve disputes in the future.* [35]

At the meeting with stakeholders in Cairns the Local Government Association of Queensland (LGAQ) raised the issue of the costs associated with having disputes decided by the Land Court and in particular, the fees and costs that would apply to the parties.

It may be the case that the individuals who are affected by the Bill will have limited funds to seek redress through the Land Court. The committee recognises that the department has been in consultation with the Land Court, and seeks clarification from the Minister as to the cost burden on individuals whose matter are referred to the Land Court and whether the Land Court has the capacity to deal with matters in a timely fashion.

Point of clarification

The committee seeks clarification from the Minister as to the cost burden on individuals whose matters are dealt with by the Land Court, and the capacity of the Land Court to hear and deal with matters referred in a timely fashion.

Social Housing

The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* separated the ownership of a lease from the ownership of a dwelling until it was paid for under an instalment contract approved by the Governor. The Bill aims to remove this barrier and provide sustainable home ownership on Indigenous land by merging the ownership of the lease and the dwelling.

The department provided further background to the issue at the Cairns meeting with stakeholders:

> *Unlike most other legislation regarding land, this 1985 act actually provided for a different ownership of the land through the lease and the actual house, which is quite unusual. Normally with any lease or freehold, whatever is on it, unless otherwise stated in the document, belongs to that lessee. This actually specifically provided for a different process. So you could have the lease with social housing on it. The intent was that people, by paying the rent for that, would enter into agreement to actually buy the house. We were going through that to check all those records and, in many cases, people actually have done that and own the house but are not aware of it. We are going through that with the department of housing, going through their records and identifying as many of those as we can. We are trying to get the property and the housing together, which is the normal situation.*[36]

At the Thursday Island meeting with stakeholders the committee sought further information from the department as to whether people residing on a property in Aboriginal and Torres Strait Islander communities were unaware that they now owned the property as a result of payments made pursuant to the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

[35] Explanatory Notes, Aboriginal and Torres Strait Islander Land Holding Bill 2012, p.9.
[36] Carse, K. 2012, *Hearing Transcript*, 18 September, p.5.

Mr GIBSON: There could be situations where people own the house but they do not know it?

Mr Carse: Yes.

CHAIR: Through the rent they have paid for it.

Mr GIBSON: Has the department identified how many that would be, particularly here in the Torres Strait?

Mr Carse: That is another department, the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs. I think they are going through that, but it is the same sort of record process to find out who is the applicant et cetera. They have to look for records and I think there even has to be a Governor in Council decision. There is not a lot, but they have to find the financial records and try to match it up. They are doing that process now. I do not think it will be a high number, but there are records in various places that we are going back over 30 years to see whether they have made payments, whether that was recorded and whether they made an application to own the house. During that time, even if they did own it theoretically, the state has been maintaining it for them since then.[37]

Subleases

The sublease clause contained in the Bill allows the lessee to enter into a sublease with the State, trustee or any other person. A sublease needs the consent of the trustee (Council) who cannot unreasonably withhold consent. The Bill seeks to put into place a mechanism similar to the 40 year social housing leases where the department undertakes maintenance on the property.

At the Thursday Island meeting with stakeholders, Ms Susan Hamilton submitted that the Bill imposed a significant financial burden on lease holders:

What happens if there is a Katter lease there and the bathroom falls through next week? We know that the department has put it there at a cost. It is very nice to say that I would like to invite the committee to go out to Boigu—in fact to any of the outer islands—and have a look at the condition of the house and ask anybody out there if they can give you a quote on the cost of replacing a bathroom. First, you have to fly a qualified plumber from somewhere into that island to give you a quote and fly them back. Then you have to purchase all of the equipment and have it shipped out there. And then you have to fly the plumber back out there to do the job with a builder. So a bathroom can cost you well over $50,000, and don't forget the air fares and the accommodation for the plumber while he is out there and everything else.

… You are creating a financial obligation on the people who are living on CDEP money to pay to fix up a bathroom and transport the supplies out there, plus pay for the insurance on that home.[38]

In relation to Ms Hamilton's concern, the department advised that no obligation is placed on a person to purchase the house they live in. The Bill permits the lessee to enter into a sub-lease with the State, trustee or any other person. The department advised:

That is only if they choose to purchase the house. It can remain social housing. We have built in there that there can be a sublease. So for most of those houses where the person with the land holding act lease does not own the house the house is social housing, which is maintained either through the council or through the state. What we are trying to do and

[37] Gibson, D. Carse, K. Rickuss, I. 2012, *Hearing Transcript*, 19 September, p.14-15.
[38] Hamilton, S. 2012, *Hearing Transcript*, 19 September, p.14.

> *put in place is the same as with the 40-year social housing leases where the department does the maintenance. In this case here, if the person does not want to surrender the lease but does not want to purchase the house, they can sublease to the department and the department will maintain that as social housing. That person will need to pay rent for it—the same as any other social housing in the state—but the state does the maintenance.*
>
> *If they choose to take on homeownership, they choose to take on the costs of maintenance and repair, but that is something that those people need to carefully go into and consider, because I agree with you that homeownership in some remote communities is far more expensive than living in Cairns next to the hardware store. We are not forcing them into homeownership through this. We are trying to rectify those leases and provide that opportunity that they can still have social housing. So they can go into a sublease. There is rent paid for that. It is the same as with the 40-year social housing: the tenant pays the rent; the state does the maintenance.* [39]

The committee notes that the department has identified that the costs associated with home ownership in the Torres Strait make it difficult for people in Torres Strait Islander communities to own a property outright without the support that social housing provides. The sub-lease provision contained in the Bill provides people with the choice to either own their home or keep their property as social housing.

[39] Carse, K. 2012, *Hearing Transcript*, 19 September, p.14.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) 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 DNRM in relation to a number of possible fundamental legislative principles issues. For the benefit of the House, the following sections discuss the issues raised by the committee and the subsequent advice provided by the Director-General of DNRM on 17 October 2012.

Rights and liberties of individuals

Abrogation of established statute law rights

Clauses 6, 12 and 66

Section 4(2)(a) of the LSA provides that legislation have sufficient regard to the rights and liberties of individuals. Specifically, any abrogation of established statute law rights and liberties must be justified and legislation should not unduly restrict ordinary activities without sufficient justification.

Clause 6 'All rights under 1985 Land Holding Act to be dealt with under this Act' has the effect that rights to be granted a lease under the 1985 Land Holding Act are abrogated and may only be satisfied under this Bill.

As with any legislative repeal, there is the risk that abrogation of a right held under the previous Act will inadvertently result in detriment to an individual. The explanatory notes provide that lease entitlements and leases granted under the 1985 Act are protected by the Bill.

Clause 12 'Continuation of 1985 Act granted leases' has the effect of continuing in force a 1985 Act granted lease. As a continuing lease, this lease is subject to the conditions provided for under part 8 of the Bill. That is, an additional requirement is imposed on a 1985 Act granted lease if there are no private residential premises on land leased primarily for residential purposes, for the lessee to ensure that private residential premises are built on the land within 8 years (clause 66(2)).

The combined practical effect of clauses 12 and 66(2) is to create a duty on the part of a lessee to ensure that private residential premises are built on the land. These clauses remove the lessee's liberty to choose whether or not to build on the leased land. Ordinarily, legislation should not, without sufficient justification, unduly restrict ordinary activities.

One of the policy drivers for the Bill is to remove barriers to sustainable home ownership. The committee sought the department's assurance that the legislation proposed is reasonable, appropriate and proportional to removing barriers to sustainable home ownership.

The committee also sought the department's advice in relation to clauses 6, 12 and 66 of the Bill and requested advice regarding examples of what would constitute 'private residential premises' for the purpose of meeting the proposed requirement on lessees under clause 66(2), and the basis for the 8 year timeframe.

The department advised the committee that it considered the legislation to be reasonable, appropriate and proportional.

The department further advised that clause 66(2) is precisely the same requirement as set out in section 142(1)(b) of the *Aboriginal Land Act 1991* and section 107(1)(b) of the *Torres Strait Islander Land Act 1991* which imposes this requirement as a condition of a lease granted for private residential purposes.

The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* do not contain a definition of a private residential premise. The phrase is also used in a number of other pieces of Queensland legislation without being specifically defined. Accordingly, the meaning of the phrase would be determined by the common law.

Administrative Power

Clause 93

Section 4(3)(a) of the LSA provides that whether the legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation—

Makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 93(2) of the Bill provides that a regulation may provide for fees payable under this Act and for matters for which they are payable.

By stating that a regulation may provide for matters for which fees are payable, it is possible that regulations made under this clause may exceed the powers conferred by the Act.

This is because when the subject matters for which fees may be set are not specified in the Act, it confers a very broad discretion on the Executive to impose fees by regulation for any function performed or service rendered under authority of the legislative scheme. Conversely, proponents of a general regulation making power will argue that it allows, by not 'fettering' administrative discretion (as would occur if the Act listed appropriate matters for regulation) for regulations to be made as and when needed and as necessary to cover matters and issues as they arise.

The department advised that while clause 93 is a wide regulation-making power, the power would still be limited to matters appropriately authorised by the Act, such as applications made under the Act. A regulation is also subject to disallowance by the Parliament and can only impose an appropriate level of fee and not a tax.

Whilst it may be preferable for the department to be able to specify which matters may attract fees under a regulation, it is not possible to do so at this time.

Point of clarification

The committee asks the Minister to clarify what services may attract a fee under this Bill and that the Minister ensures that all efforts are made to provide information in relation to fees as early as possible.

Clauses 73(7) and 80(7)

The committee questioned why the value of the land is to be determined by the discretion of the chief executive rather than the methodology set out in the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

If not for this provision, the value would be determined by a methodology in accordance with section 142(1)(a)(iii) *Aboriginal Land Act 1991* or section 107(1)(a)(iii) of the *Torres Strait Islander Land Act 1991*.

The department advised that this mechanism was used to ensure that the purchase price of the lease land for a lease entitlement could be the same as that provided for under *Aborigines and Torres Strait Islander (Land Holding) Act 1985;* that is, nil.

Clear and precise drafting

The committee noted and raised with the department that this is a highly complex legislative scheme and consists of provisions contained in four different Acts. The level of complexity is so high that the

comprehension and certainty of some of the provisions are unclear. The committee also raised that a number of terms are defined in terms of definitions contained in other Acts.

The department advised that it consulted with the Office of the Queensland Parliamentary Council (OQPC) on the committee's concern about the clarity of the drafting based on the complexity of the provisions connecting the Bill to the *Aboriginal Land Act 1991 (ALA)* and the *Torres Strait Islander Land Act 1991 (TSILA)*.

OQPC acknowledged that the provisions are complex but considered that, given the legislative context and the complicated policy, sufficient clarity was achieved and increased clarity was not practicable.

The department also advised in relation to definitions being signposted in other Acts as opposed to being replicated in the Bill, that whilst it is not generally preferred practice, it is inappropriate in this case because:

- the text of those definitions incorporate meanings from the *Land Act* and use words that are only defined in the ALA or TSILA;
- the definitions sit within the context of the ALA and TSILA and the processes under that Act which give them a fuller meaning; and
- the definitions are only used in the Bill to connect processes under the Act with existing processes or land status under the ALA and TSILA.

Sufficient regard to Aboriginal tradition and Island custom

Consultation on the Bill

The committee noted on page 22 of the Explanatory Notes to the Bill that no consultation was undertaken on the initiative designed to provide Indigenous Local Government continued access and use of municipal services on transferred land or on the initiative to provide the power to subdivide a Deed of Grant in Trust (DOGIT) to facilitate development on DOGIT land. The committee requested further information in relation to the justification for not undertaking consultation in relation to those provisions in the Bill.

The department advised that it did not agree with the committee's characterisation of these initiatives not having sufficient regard to Aboriginal tradition and Island custom on the basis of this lack of consultation. Subdivision of a Deed of Grant in Trust has no effect on Aboriginal tradition or Island custom. Currently the land can be leased, surrendered, or compulsorily acquired. Subdivision simply provides a better means of describing the land. It should be noted that Aboriginal freehold and Torres Strait Islander freehold are already capable of being subdivided.

The provision to enable the continuation of municipal services from existing facilities only continues what is already occurring on the land. There is no additional impact on Aboriginal tradition or Island custom created by this provision. This amendment arose from the department's work in communities when consulting on particular land transfer proposals and a local government was seeking confidence that the land transfer would not affect their continuation of existing municipal services. It is likely that, without this amendment, local governments would object to the transfer of the land to the relevant Aboriginal people or Torres Strait Islanders under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991.*

Clause 72 and 79

Section 98 of the *Aboriginal Land Act 1991,* and section 65 of the *Torres Strait Islander Land Act 1991,* respectively limit the trustee's abilities to "deal with the land" unless the trustee has explained to the Aboriginal people or Torres Strait Islanders particularly concerned with the land the nature, purpose and effect of the proposed dealing (the consultation requirement). The Aboriginal people or Torres Strait Islanders particularly concerned with the land must also be given a suitable opportunity

to express their views on, and are generally in agreement with the dealing. "Deal with the land" includes grant a lease.

Clause 72 and clause 79 specifically declare that section 98 of the *Aboriginal Land Act 1991* and section 65 of the *Torres Strait Islander Land Act 1991* do not apply to a 1985 Act granted lease. This provision has been included as there is no relevant dealing to apply the consultation requirement to under the 1985 Act. To be a 1985 Act granted lease means the lease has already been granted. Therefore the trustee is not "dealing with the land".

Clause 72 and clause 79 also do not see this consultation requirement apply to a new Act granted lease (where there is an existing lease entitlement) under Part 9, Division 2 and Division 3. This is because the lease is granted by the Minister and not the trustee, and the community was provided with an objection process under section 6 of the *Aborigines and Torres Strait Islander (Land Holding) Act 1985* when the trustee approved the application which consequently resulted in the current lease entitlement.

Clause 129 - Indigenous Land Use Agreements and Indigenous Access and Use Agreements

The committee sought clarification of the decision making process the Minister will follow in deciding how to exercise the broad discretion in deciding matters that involve Indigenous Land Use Agreements and Indigenous Access and Use Agreements, and whether the Minister will undertake consultation during the decision making process.

The department advised that:

> *Under the proposed arrangements, the registration of an Indigenous cultural interest on title will hinge on an application being made by the lessee and the Minister approving the lodged Indigenous Land Use Agreement (ILUA) or Indigenous Access and Use Agreement (IAUA) for the interest and lease [clause 129 of the Bill).*
>
> *The basis for the Minister's decision on whether to approve the lodged ILUA or IAUA, including its terms and conditions, will be largely statutory. The decision will be based on the compliance of the ILUA or IAUA with the following:*
>
> *(a) the appropriateness of the agreement relative to the type of agreement prescribed for the benefit being sought-*
>
> - *for lease terms, clause 133 of the Bill - specifically Schedule 3, part 1 item 1(b) and part 2 item 1(b) which link agreement types to provisions governing the length of term leases and the grant of lease extensions;*
> - *for a five-year 25 per cent rental reduction, clause 125 of the Bill; and*
>
> *(b) the remainder of that part of Schedule 3 that is relevant to the type of agreement lodged and which deals with the scope of the agreement as well as the rights and obligations under an acceptable agreement [clause 133 of the Bill - Schedule 3; part 1 for an IAUA and part 2 for an ILUA]; and*
>
> *(c) one of three relevant template agreements (and associated guides) to be gazetted under the new section 373ZC as the standard/norm for the terms and conditions of acceptable agreements (i.e. 'fixed mandatory terms' and 'set formats' under clause 129 of the Bill). The first of these standards will be the existing Pastoral LUA template which contains provisions relating to resolving native title and public liability insurance. Two other template agreements (one ILUA and one IAUA) are under development in which addressing native title and public liability insurance will be optional.*
>
> *The three template agreements have been designed to be fully compliant with the requirements proposed under new section 373ZC, Schedule 3 and/or new section 188A*

[clauses 129, 133 and 125 of the Bill respectively]. Therefore, where lessees and Indigenous parties use any one of the three template agreements with no or very minor variations, the lodged agreements will be deemed to be compliant and be approved by the Minister without the need for further consultation. (Refer to additional notes below for more information.)

If a non-standard agreement is submitted for approval, or one of the gazetted agreement templates is used but is substantially altered, the Minister will assess the lodged agreement for compliance with both Schedule 3 and new section 373ZC and if applicable, new section 188A [clauses 133, 129 and 125 of the Bill respectively] using a relevant gazetted template agreement as the benchmark for the reasonableness of the terms and conditions of the lodged agreement for the purposes of new section 373ZC.

Under this particular process, it is not envisaged that consultation will be required with stakeholders other than with the lessee (and possibly the concerned Indigenous party through the lessee). Consultation will be for the purpose of seeking clarification or providing further advice before a decision is made by the Minister on whether to approve the lodged non-standard agreement for registration on title as an Indigenous cultural interest. However, the Minister may decide to consult the State Rural Leasehold Land Ministerial Advisory Committee and/or a relevant native title representative body for advice should the need arise during the decision-making process.

Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. Subsection (22)(1) states that when introducing a bill in the Legislative Assembly, a member must circulate to members an explanatory note for the bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information.

The committee notes that explanatory notes were tabled with the introduction of the bill. The notes are fairly detailed and contain the information required by s.23 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins. A number of issues in relation to fundamental legislative principles that have not been explained or justified by the explanatory notes are outlined above.

Appendix A – Written Submissions

1 AgForce

2 Vince Mundraby

3 Chalk and Fitzgerald

Chalk and Fitzgerald - revised

4 Torres Strait Island Regional Council

5 Cape York Regional Organisations

6 Local Government Association of Queensland

7 Torres Shire Council

Appendix B – Participants in the inquiry

Departmental briefing officers - Department of Natural Resources and Mines

Mr Chris Robson, Assistant Director-General

Mr Andrew Luttrell, Director, Whole of Government Policy, Aboriginal and Torres Strait Islander Land Services

Mr Ken Carse, Principal Policy Officer, Aboriginal and Torres Strait Islander Land Services

Ms Meg Smith-Roberts, Principal Advisor, Land and Indigenous Services

Witnesses appearing at meetings with stakeholders

Mr Kenneth Bone, Mayor, Cherbourg Aboriginal Shire Council

Mr Shannon Burns, Land Reform Policy Leader, Cape York Institute

Cr Wayne Butcher, Mayor, Lockhart River Aboriginal Shire Council

Mr Warren Collins, Chief Executive Officer, Cherbourg Aboriginal Shire Council

Ms Grace Fischer-Ware, Traditional Land Owner, St Paul's Community, Moa Island

Mr Bruce Gibson, West Cape Group

Mr Tony Goode, Workforce Strategy Executive, Local Government Association of Queensland

Ms Garagu Kanai, Director, Kaurareg Native Title Aboriginal Corporation (RNTBC) (and Kaurareg Traditional Owner & Italgal [Moa Island] Traditional Owner)

Mr Steve Mam (Baidam), Elder, Murray Island / Merriam Council of Elders

Mr Vince Mundraby, Mandingalbay Yidinji, Yarrabah

Ms Jessica Naimo, Senior Lawyer, Chalk & Fitzgerald

Cr Paul Piva, Councillor, Lockhart River Aboriginal Shire Council

Mr John Reeve, Senior Legal Officer, Native Title Unit Cape York Land Council

Mr Don Sailor, Darnley Island

Mr Robbie Salee, Deputy Chair, Cape York Land Council

Dr John Stewart AM, Senior Native Title Officer, Agforce Qld

Ms Marita Stinton, Senior Legal Officer, Cape York Land Council

Mr Elizah Wasaga, Trustee, Kaurareg Aboriginal Land Trust

Elder Pearson Wigness, Member, Kaurareg Aboriginal Land Trust

Appendix C – Summary of submissions and departmental advice

ATTACHMENT 1

Department of Natural Resources and Mines response to submissions received on the Aboriginal and Torres Strait Islander Land Holding Bill 2012

Submissions lodged with the Agriculture, Resources and Environment Committee

The Agriculture, Resources and Environment Committee has received submissions from the following people/organisations:

1. AgForce
2. Mr Vince Mundraby
3. Chalk and Fitzgerald (representing Kaurareg People)
4. Torres Strait Island Regional Council
5. Cape York Regional Organisations
6. Local Government Association of Queensland.

The Department of Natural Resources and Mines comments on specific key issues raised in the submission are as follows:

AgForce	AgForce support the Bill No issues were raised by AgForce in relation to the amendments to the *Land Act 1994* which define Indigenous Access and Use Agreements and implement a limited life rental concession.
Mr Vince Mundraby	Mr Mundraby is the former Mayor of Yarrabah Shire Council In Yarrabah, under the *Aborigines and Torres Strait Islander (Land Holding) Act 1985* there are: ▪ 13 granted perpetual leases ▪ no lease entitlements ▪ 56 invalid applications Mr Mundraby has raised specific issues regarding a group of residents from Yarrabah called "share farmers" and that this group of seven families negotiated a Certified Lease Agreement 30 years ago which has not been signed off by the government. Mr Mundraby is requesting that the share farming families be granted a 99 year commercial lease. This issue has no relevance to the Bill which relates to lease entitlements under the *Aborigines and Torres Strait Islander (Land Holding) Act 1985.* As such the department has no comment on the submission as it relates to the Bill. The majority of the submission relates to broader leasing issues and town planning matters. Whilst the recommendations on how these matters can be progressed in Yarrabah do not relate to the Bill, the Department will, nevertheless, consider the submission in relation to other leasing issues and policy currently being progressed by government in consultation with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs.

1

Chalk and Fitzgerald (representing Kaurareg People)	The submission by Chalk and Fitzgerald, on behalf of the Kaurareg people, raised a number of concerns with the Bill. A response is provided to each issues in turn. **Issue 1:** Native Title Rights - Lease Entitlements Are 'Future Acts' for which Compensation is Payable *We are advised that the government takes the view that the granting of a 'lease entitlement' is a 'pre-existing right-based act' under the Native Title Act 1993 (Cth). In our view, the 'lease entitlements' described by the Bill do not comprise "pre-existing right-based acts" under s241B of the Native Title Act 1993 (Cth). To qualify as a pre-existing right based act an entitlement must be either "a legally enforceable right created by any act done on or before 23 December 1996" or in good faith the giving effect of "an offer, commitment, arrangement or undertaking made or given in good faith before 23 December 1996". The entitlements contemplated by the Bill are neither* **DNRM Response:** With respect, the views in this submission are fundamentally misconceived as evidenced by Justice Dowsett's declaration in *Murgha* v *State of Queensland* [2008] FCA 33 (25 January 2008) where His Honour declared that upon the Yarrabah Council's approval of a [Land Holding Act] lease application: • that upon such determination the said Darryl Ralph Pollard and Elaine Marina Pollard became entitled to a lease in perpetuity of the said land; • that upon such determination the title to the said land was divested from the Yarrabah Shire Council, such land becoming Crown land within the meaning of the *Land Act 1962-1985* (Qld) and as subsequently amended; and • that the said Darryl Ralph Pollard and Elaine Marina Pollard are accordingly entitled to the grant of a lease of such land in perpetuity. This case was about an *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (Land Holding Act) lease application – these are referred to as 'lease entitlements' under the Bill. It is quite clear that the processes in the Bill regarding lease entitlements are wholly consistent with His Honour's declaration. Further, the *Native Title Act 1993* (Cth) sets out in section 24ID(1)(b) the affect that the conferral of a right of exclusive possession (as a result of a section 24 IB pre-existing right-based act), which is: "the act extinguishes any native title in relation to the land or waters". Further section 24ID(1)(d) provides that compensation is payable. **Issue 2**: Submission on Community Reference Panel – Inclusion of Native Title Parties to be Mandatory *Accordingly, the Kaurareg people take the view that:* *1. there ought to be a mandatory obligation on the Minister to establish a CRP for each affected location; and* *2. each CRP must include any registered native title parties or native title holders with respect to the land.*

2

	DNRM Response: This proposition seems to flow from the earlier misconceived view that the grant of a lease entitlement is not a 'pre-existing right-based act' under the *Native Title Act 1993* (Cth). The role of the Community Reference Panel includes advising the Minster about any practical obstacles to granting the lease entitlements. It may be the case that a particular community only has few lease entitlements and there are no practical obstacles to granting them. In this case nothing is likely to be gained by establishing a Community Reference Panel for that community. It would simply increase the burden on the members and delay the grant of the leases with no change in the practical outcome. Where a lease entitlement requires amendment of its boundaries (due to practical obstacles) over land where native title continues to survive, then the involvement of the native title party in the resolution of the lease entitlement is a necessity. This is accommodated in the Bill by a Community Reference Panel inviting persons likely to be affected by an issue to participate in the panel's consideration of the matter. **Issue 3:** Notification of Lease Entitlements - Publication to Broader Media *Clause 16 of the Bill requires that a notice for a lease entitlement be published on the department's website. Given that many older people in communities may not have access to modern technology the Kaurareg people take the view that notifications should also be published in a local newspaper. The department's website is publicly accessible so there should be no issue with a notice being published in a different form of publicly available media. Clause 35 should also be amended to reflect this change.* **DNRM Response:** The Bill provides for the department to publish individual lease entitlements on its website – this does not preclude the department from advising the trustee. However, clause 18 of the Bill provides that when the chief executive of the department is satisfied that substantially all of the lease entitlement notices for a trust area have been published then the chief executive must give a trust area notice that includes all the lease entitlement notices for that trust area. Clause 20 provides that the chief executive must publish a trust area notice on the department's website but also the chief executive may ask the trustee to display a copy of the trust area notice in a prominent location in the trust area for a stated period. Accordingly the Bill does provide for the appropriate publication of the requested information as part of the trust area notice which can be displayed in the community.

	Issue 4: Hardship Provisions *The Kaurareg people are concerned that the hardship provisions contained at clause 26 of the Bill will allow for situations where unauthorised buildings erected in unsuitable locations on Hammond island will be validated, despite the non-existence of a lease or lease entitlement. We understand that the issuing of a hardship certificate would require the chief executive to determine that the value or cost of the land for the purposes of a lease under the ALA or the TS ILA is 'nil' therefore assisting in the facilitation of the grant of a 99 year private residential lease by the trustee under the ALA and the TSILA.* **DNRM Response:** The hardship certificate provision in clause 26 of the Bill provides that the chief executive may determine that the value or cost of the land for the purposes of a residential lease to be granted by the trustee under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991* is 'nil' under specific circumstances. However, provision of a hardship certificate does not mean that the lease will be granted by the trustee. It will be up to the trustee, and where native title survives, the native title holders to approve the grant of any lease. Where a lease is granted then, if a hardship certificate is provided, the purchase amount of the lease will be set at nil. **Issue 5:** Practical Obstacles – Cultural Heritage Issues to be Included *Hammond Island contains a number of significant sites that are sacred to the Kaurareg people. It also contains a number of grave sites. It is likely that some areas where lease entitlements are proposed to be granted contain, or are in close proximity, to such sites.* ... *Accordingly, the Kaurareg people take the view that clause 29 ought to be amended by the insertion of a new clause, clause 29(1)(d) to read "that a significant Aboriginal area or object or a significant Torres Strait Islander area or object is contained within or on the boundary of the lease entitlement land".* *Inclusion of this clause would allow the cultural heritage issue to be considered up front and prevent uncertainty for lessees, the minister and the relevant cultural heritage 'party'.* *Failure to include this item in clause 29 of the Bill could lead to significant Aboriginal and Torres Strait Islander areas and objects being overlooked, included in lease entitlement areas and harmed by lessees. Those lessees and the Minister would then potentially be liable for offences under the Torres Strait Islander Cultural Heritage Act 2003 (Qld) and the Aboriginal Cultural Heritage Act 2003 (Qld).* **DNRM Response:** Cultural heritage is tenure neutral, that is, unlike native title, cultural heritage can not be extinguished, or affected by the grant of tenure. The grant of a lease to satisfy the lease entitlement does not constitute a breach of the Cultural Heritage legislation. However, if a lessee, as for all

	other tenures (including freehold) harms a cultural heritage site then that lessee would be liable under the relevant legislation. The *Torres Strait Islander Cultural Heritage Act 2003* and the *Aboriginal Cultural Heritage Act 2003* provide a duty of care obligation in relation to activities that may harm cultural heritage and establish processes for management of activities to avoid or minimise harm to cultural heritage. Further, the publication of the trust area notice would allow a party to bring forward cultural heritage information to the community reference panel, the trustee or the State. **Issue 6:** Consultations regarding Boundaries *The Kaurareg people as registered native title claimants ought also to be consulted about the boundaries of a lease area. Accordingly, clause 52(3)(c) ought to be amended as such that it reads that "a native title party or registered native title claim group and any person who in the Ministers opinion, is required to agree to a relocation of the lease boundaries. "* **DNRM Response:** The State is bound by the *Native Title Act 1993* (Cth) and all processes under the Bill must comply with that Act. The bill does not need a clause to state what is already a lawful obligation. Where the proposed relocation of a lease boundary includes new land, over which native title survives, into the lease adjustment then this could only be done in accordance with the requirements of the *Native Title Act 1993* (Cth). This would generally require a registered Indigenous land use agreement. **Issue 7**: Appeal Rights following Contested Boundaries *The Kaurareg people take the view that members of the CRP (including native title parties) ought to have a right of appeal to go to the Land Court in respect of boundary issues. Accordingly clause 55(1) ought to be amended to read that " The Minister and any member of the CRP including a native title party or registered native title claim group may apply to the Land Court for the relocation of the boundaries of a 1985 Act granted /ease (a contested boundary relocation) if the Minister considers that not all agreements necessary to support the boundary relocation have been entered into."* **DNRM Response:** This proposition seems to flow from both Issues 1 and 6 above. As already noted regarding Issue 1, there is a clear legal basis for the State's position that the grant of a lease entitlement is a 'pre-existing right-based act' under the *Native Title Act 1993* (Cth), contrary to the proposition put forward in the submission from Chalk and Fitzgerald. Accordingly, as a legally enforceable right there is no basis for any appeal rights. As stated previously in regard to Issue 6, if land, where native title survives, is to be included into any lease then the *Native Title Act 1993* (Cth) must be complied with. If the *Native Title Act 1993* (Cth) is

	complied with, then again, there is no basis for any appeal rights – compensation may arise however. **Issue 8:** Entitlements should only be Granted After Survey: *The Kaurareg people take the view that conducting full surveys in consultation with [~~the~~] them is a necessary prior step before any leases are validated, particularly leases that arise from the 'hardship' provisions. Given the relationship between community infrastructure (such as existing infrastructure servicing the township and proposed future infrastructure projects including the upgraded sewerage facilities) and land use on Hammond Island, there is considerable merit in having the town planning survey completed prior to the validation of any leases and prior to the transfer of the DOG IT under the ALA.* *Prior to the amendments to the ALA, the State acknowledged that Hammond Island was traditionally Aboriginal land inhabited by the Kaurareg people. In considering any decision involving granting a lease entitlement under any regime the Minister and his representatives must have regard to any Aboriginal tradition or Island custom applicable to the land. A necessary part of that consideration is for the Minister to take into account the history of Hammond Island (Kiriri) and its significance to the Kaurareg people, and to allow the Kaurareg people to have meaningful input into the survey process which ought to inform the formalisation of outstanding leases under the Aborigines and Torres Strait Islander (Land Holding) Act 1985.* *Accordingly, clause 86(1) of the Bill ought to provide for a consultation process with the native title group or the registered native title claimants in the Minister's preparation of the plan of survey.* **DNRM Response:** Three issues are raised here: 1. that any lease entitlements should only be granted after survey; 2. the town planning survey should be completed prior to the validation of any leases; and 3. that any survey is done in consultation with the Kaurareg people (the native title holders). Firstly the Bill, in several clauses, for example clauses 65 and 86, specifically requires that a plan of survey is prepared to show the identified boundaries of any proposed lease. Secondly, the road network and lease entitlements have been surveyed. These plans have not been registered as there are number of cases where the lease entitlements have constructed roads within their boundaries. The Department is currently considering the benefit of registering the road plans where there are no practical obstacles as a first step – this will require the council's approval. Thirdly, community consultation is not undertaken on the survey of a lease. If the native title holders' approval of the lease is required as described in the DNRM response to Issue 6, then it would be prudent for the trustee and proposed lessee to discuss the proposed lease, and its boundaries, with the native title holders prior to incurring the cost of

	survey. However, this is a matter for the parties. Ultimately if the native title holders do not approve of a lease boundary, where their approval is required for the grant of the lease, then they are able to withhold their approval and the lease could not be granted. **Issue 9:** Subdivision of DOGIT Area *We note that Clause 119 provides for the Minister to approve the subdivision of DOGIT land into two or more lots. In the case of Hammond Island such a subdivision should not take place until proper consultation has been carried out with the Kaurareg people, being the Aboriginal people particularly concerned with the land under the ALA.* **DNRM Response:** The subdivision of a DOGIT has no affect on native title or cultural heritage – it simply changes the description of the land. In the normal course of events, subdivision would only occur in the process to grant a tenure. As advised previously, any grant of tenure must comply with the *Native Title Act 1993* (Cth) and therefore if the native title holders' consent is required then it would be first obtained, else the grant could not occur. **Issue 10:** Terms for Cultural Interests *In relation to the creation of template guidelines for agreements, the Kaurareg people note that the mandatory guidelines are intended to cover existing template guides already developed in consultation with some Queensland native title representative bodies (such as the Pastoral ILUA template and Guide to the Pastoral ILUA developed in consultation with the Queensland South Native Title Services and the North Queensland Land Council). The Kaurareg people take the view that any further development of the templates which it is noted are "under development at the time of the introduction of this Bill" ought also to include consultation with Aboriginal and Torres Strait Islander Groups who fall under the Torres Strait Regional Authority's area, including the Kaurareg people.* *No templates should be finalised until these groups have also had an opportunity to be consulted through their representative bodies.* **DNRM Response:** The provisions relating to Indigenous cultural interests apply only to certain rural leases affected by the State Rural Leasehold Land Strategy, namely those leases for rural leasehold land with a term of 20 years or more and covering an area of 100 hectares or greater. There are no such leases in the Torres Strait Regional Authority's area. **Issue 11:** The importance of Surveying in Consultation with Traditional Owners – Particularly regarding DOG IT Transfers *The Kaurareg people are of the opinion that the Queensland Government*

	needs to invest in surveying and town planning in order to allow Aboriginal trustees of grant land, and residents on Indigenous land to strategically plan for growing residential and other land use areas. Surveying is vital in the lead up to any negotiations for a grant where it may be considered that certain areas need to be excised or leased back to the local government authorities (for example township areas that may eventually become the subject of perpetual leases from the Aboriginal grantee body to a Council). The willingness of the State to carry out these measures will expedite the implementation of the transfer and leasing process. *The negotiation of leasing arrangements, whether via an ILUA or another suitable arrangement will require adequate resourcing to enable our clients to fully consider the issues involved in reaching a decision on the appropriate vehicle to hold the land, and under what structural arrangement. In particular, as raised at the August 2010 meeting with DNRM, our clients are concerned to ensure that the Queensland Government:* 1. *provides adequate resources to allow our clients to conduct meetings to discuss the ramifications of the various holding options,* 2. *provides clear information pertaining to the current leasing arrangements on Hammond Island,* 3. *provides relevant land use options for areas to be granted and for the purpose of allowing our clients to assess the viability of severing township areas from other trust areas (such that the applicability of a perpetual lease back arrangement of the township area can be fully assessed), and* 4. *provides adequate resources to enable the negotiation of leases or ILUAs on terms to be decided by the trustees.* **DNRM Response:** This point goes well beyond the scope the Bill, however, the State recognises the importance of surveying and land use planning to the good management of communities. This is evidenced by the recent work to develop planning schemes for Indigenous communities. The Government is funding and managing the preparation of 15 planning schemes for Indigenous communities, with the Intention that they will come into effect over the next 18 months. Recently one planning scheme was put out for public notification and comment and a further two to follow this month and next month. In addition to the recent work on surveying and the preparation of planning schemes, this Department created a special unit in Cairns – the Leasing Support Unit – to specifically assist with the leasing of Indigenous land under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. This team has advised, and assisted, trustees, State agencies, and lease applicants on the process for granting a lease. http://www.derm.qld.gov.au/indigenous/land/leasing_ind_land.html The Department of Aboriginal and Torres Strait Islander and Multicultural Affairs has created a Home Ownership Team, to work with Councils and individuals. The team will coordinate government activities relating to home ownership in communities, and work with Indigenous Councils on land administration issues, providing tools and information so Councils

	can enable home ownership opportunities **Issue 12:** Land Use Plan to be Finalised *Also relevant to the issues raised above is the necessity of a land use plan for Hammond Island. We are aware that a planning document known as the 'Torres Strait Sustainable Land Use Plan' ('the Plan') was commissioned by TSIRC, the Queensland Government the Federal Government and the Torres Strait Regional Authority and was completed on 7 March 2011. We understand that the Plan was prepared between 2008-2010.* *'Part 2' of the Plan relates to Hammond Island. The purpose of Part 2 is said to review land uses on Hammond Island and to provide a guideline for the community to "plan for and manage the impacts of future development". The Plan notes that Hammond Island is "traditionally owned by the Kaurareg people" and that it is "an area of significant cultural heritage value to the traditional owners".* *The Plan notes that in achieving sustainable land use objectives, "the native title group with rights over the land" needs to be consulted.* *The areas of Hammond Island identified for possible future development in Part 2 of the Plan were shown on maps 11 136 (copies of which are attached). The plan ought to be finalised in consultation with the Kaurareg people.* **DNRM Response:** Whilst this point is beyond the scope of the bill, the following comments are provided. A planning scheme is a statutory plan under the *Sustainable Planning Act 2009* (SPA) that provides local councils with a framework for making decisions about development, it also provides for the identification and mapping of land that is of ecological and cultural significance, so that land with these values may be zoned appropriately to reflect the level of protection required by the community. The planning scheme does not affect native title, however the planning scheme applies to everyone who "develops" land. SPA defines "development" and an approval is generally not required for building a house. Approval is required if land is to be divided into separate lots (sub-divided) or in some cases of higher density or intensity of land use. The preparation of the planning scheme will involve consultation with each island community including the Kaurareg Aboriginal people, a Community Engagement Plan is to be presented to the Torres Strait Island Regional Council (TSIRC) for approval before any consultation takes place. Both the Council and Program Office (within the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs) strongly support the opportunity for all traditional owners and other residents within the TSIRC area to be consulted and to have input into the preparation of the planning scheme. The "Torres Strait Sustainable Land Use Plan" is not a statutory plan, but the information contained in these land use plans will form the basis of the planning scheme, in defining land for future urban and industrial

	development, protection and general community purposes ie sewerage and water treatment and airstrip.
Torres Strait Island Regional Council	The Torres Strait Island Regional Council (TSIRC) has referred to its submission to the State Development, Infrastructure and Industry Committee earlier this year in its Inquiry in land tenure. This submission goes well beyond the scope of this Bill. This submission is noted by DNRM and will be considered in the progression of other leasing issues and policy currently being progressed by Government in consultation with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs. The TSIRC has also raised two specific issues in relation to the Bill. ***Issue 1*** *c24(c)(i) It is not defined what "reliance" will suffice to enable hardship to be claimed by an applicant, for instance construction of a dwelling, construction of a temporary home, planting of gardens or simply advising others etc.* ***Issue 2*** *Part 6 Council is concerned that there will be a number of boundary relocations necessary in its local government area due to encroachments and improvements whilst leases have been held pending. Council is concerned lessees of both 1985 leases and pending leases may be forced to pay their own costs of and incidental to obtaining Land Court determinations, whether by consent or contested. It is noted that Council will also be a party to such proceedings. It is submitted that the State must indemnify the parties to such proceedings and for all associated travel and accommodation costs from the Torres Strait to the closest available Land Court (Cairns, Qld), failing which parties simply will not be able to afford to seek the grant of pending leases.* **DNRM Response to Issue 1:** Clause 26 of the Bill (not clause 24 per the TSIRC submission) outlines when the chief executive may give a person a hardship certificate. The consequence of a hardship certificate is that the chief executive may determine that the value or cost of the land for the purposes of a residential lease to be granted by the trustee under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991* is 'nil'. One of the requirements that needs to be satisfied for the chief executive officer, as set out in section 26(1)(c), is that there is evidence that the person acted in reliance on the advice from the trustee council, or acted on reliance on what the person understood from the trustee council to be the case, that the trustee council had approved the granting of the lease. The circumstances outlined by the TSIRC in the submission may, where all the other conditions of clause 26 are satisfied, go to establishing the required reliance in a particular case. **DNRM Response to Issue 2:** The Department is not in a position to provide the requested indemnification. The Land Court is the most appropriate forum to consider matters.

	The Department is aware of the concerns raised and will work with relevant parties to identify ways to keep costs to a minimum.
Cape York Regional Organisations	The Cape York Regional Organisations (CYRO) have raised a number of issues in relation to the Bill as it relates to the policy intent and the content of the Bill. Specifically: *CYRO submits to the Committee that the Committee should:-* 1. *recommend that the Legislative Assembly **not** support the Bill in its current form;* 2. *request that the Bill be amended to include **only** those reforms that are appropriate at this point in time; and* 3. *recommend that outstanding issues be addressed through a further Bill which is developed as part of broader Aboriginal land reform processes.* *Some aspects of the Bill, particularly those concerning the identification of interest holders, location of lots, grant of entitlements and subdivision of DOGIT lots are supported, and will be necessary and useful regardless of the outcomes of broader Aboriginal land reform processes. CYRO supports that an amended Bill be prepared that continues to address these issues.* **DNRM Response:** **Amendments to the *Aborigines and Torres Strait Islander (Land Holding) Act 1985*** In relation to the policy and the timing of the introduction of the Bill as it relates to amendments to the *Aborigines and Torres Strait Islander (Land Holding) Act 1985*, the Bill is consistent with the policy decision of Government to rectify the outstanding leasing arrangements under the *Aborigines and Torres Strait Islander (Land Holding) Act 1985* (the Land Holding Act). The leasing issues under the Land Holding Act must be resolved prior to consideration and implementation of land tenure reform in Aboriginal and Torres Strait Islander communities. The matters raised by CYRO will be considered in the progression of other leasing issues and policy currently being progressed by Government in consultation with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs. The Department can not comment on what the findings and recommendations might be from the Parliamentary Inquiry into the future and continued relevance of Government land tenure across Queensland or the Government's policy agenda in relation to freehold land. In regard to the seven specific issues raised in Attachment A to the submission, DNRM Response is as follows: **Issue 1:** Lease entitlements under the Land Holding Act were granted under the Land Holding Act and not under either the *Land Act 1962* or the *Land Act*

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	1994 and therefore conversion of term leases to perpetual leases, or from perpetual leases to freehold, does not apply. It does not change the status of the granted land holding Act leases nor lease entitlements. Additionally, where boundary adjustments are required this will be facilitated by having a single underlying land tenure. It will also facilitate any longer term land tenure reforms in indigenous communities. **Issue 2:** Vesting the unallocated State land that results from the trustee's approval of an application for a lease under the Land Holding Act into the surrounding deed of grant in trust land will, in fact, simplify tenure arrangements. The number of tenures that have to be dealt with will be reduced and there will be a single 'owner' of the land – this is preferable to the current arrangements of multiple tenures and 'owners'. The granting of these lease entitlements under the Bill is giving effect to a legally enforceable right – it is proper that the State grants these leases. **Issue 3:** Division 1 of Part 8 of the Bill sees the removal of the "qualified person" requirement to hold a 1985 Act granted lease, other than for a lease granted for a term of years. The requirement of who may hold this lease type is brought into line with the *Aboriginal Land Act 1991* and Torres Strait Islander Land Act 1991. Division 2 of Part 8 deals with 1985 Act granted leases that were granted for a term of years. Clause 69 provides a mechanism for the current holder to apply to the trustee to be granted a lease under the Aboriginal Land Act 1991 or Torres Strait Islander Land Act 1991. Accordingly, under the scheme in the Bill, the person who can hold this new lease granted under the Aboriginal Land Act 1991 or Torres Strait Islander Land Act 1991 is not limited to a "qualified person" but is instead the same as provided by the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991.* Accordingly the eligibility criteria for both lease types (perpetual and for a term of tears) will be the same, and is the same as provided for under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991.* **Issue 4:** The submission asserts that section 60 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* violates section 10 of the *Racial Discrimination Act 1975* (Cth). The Bill makes use of this section in respect of deceased estates. The same power does not exist in respect of non-Indigenous persons. The department does not agree with the substance of this submission. It considers that section 60 may be viewed as a 'special measure' under section 8 of the Racial Discrimination Act and accordingly that section 10 does not apply. **Issue 5:** (a) This appears to be about a person making an application.

	Applications under the Land Holding Act have not been possible since 1991. If this is about a lease grant to satisfy an entitlement, then in this case the information about the entitlement will be provided through the lease entitlement notice and then the trust area notice. There will be no need for the lease applicant to provide any further information, unless they disagree with the lease entitlement notice or the lack of a lease entitlement notice. In those situations, all the information will be provided and the applicant has the right to appeal to the Land Court. (b) The Bill places an obligation on the chief executive, in clause 15, to publish a lease entitlement notice where the chief executive is satisfied that the lease entitlement exists. Clause 9 of the Bill sets out the circumstances that must exist for a lease entitlement and reflects the process provided for in the Land Holding Act. Where these circumstances do not exist, there is no lease entitlement. The Bill provides a suitable mechanism for a person who asserts these circumstances do in fact exist, and that they hold a lease entitlement which is not the subject of a lease entitlement notice, to apply to the chief executive to publish a lease entitlement notice – see clause 22 of the Bill. The Bill also provides that a person can appeal to the Land Court the refusal of the chief executive to publish a lease entitlement notice applied for under clause 22 – see clause 23 of the Bill. Where a person makes an application under clause 22, and is ultimately unsuccessful, then those circumstances, of themselves do not preclude an application by that person for a hardship certificate under clause 26, and for an application to be granted by the chief executive where the requirements of clause 26 are made out. The department does not agree that a person who is unsuccessful under clauses 22 and 23 of the Bill should automatically qualify for a hardship certificate under clause 26. (c) The hardship certificate relates to the purchase price for a 99 year private residential lease under either the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*. The purchase price is legislated under those Acts, the trustee can not waive the purchase price in recognition of any hardship – hence the provisions in this Bill. However, for any other type of lease there is no purchase price and the trustee is able to set the rent – therefore no provision is required in this Bill. Leases over 1ha in size were limited to a maximum term of 30 years under the Land Holding Act. The bill does not propose to increase the entitlements of people who hold a lease entitlement for a term lease. Accordingly, the bill does not have a 99 year private residential lease. (d) Resolving practical obstacles will have to be dealt with at the time they are identified and agreed upon. The relevant players (State agencies and the trustee) to resolving the practical obstacles are

	members of the Community Reference Panel and are best placed to identify what resources are required and available. **Issue 6:** The role of the Community Reference Panel includes advising the Minister about any practical obstacles to granting these lease entitlements. Where a lease entitlement requires amendments of its boundaries (due to practical obstacles) over land where native title continues to survive, then the involvement of the native party in the resolution of the lease entitlement is a necessity. This is accommodated in the Bill - a Community Reference Panel will invite persons likely to be affected by an issue to participate in the panel's consideration of the matter. **Issue 7:** As the lease is granted by the State, and there may be social housing located on the lease, it is appropriate that any surrender is to the State. However, as a result of 'filling in the holes', the underlying tenure will be deed of grant in trust (ie DOGIT) and therefore the trustee will come into full control of land as the result of a surrender of a 1985 Act granted lease or lease entitlement. **Amendments to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*** *CYRO support the amendments to these Acts to provide local governments continued access to the facilitates from which they provide municipal services if the land is transferred under these Acts.* However, CYRO also consider these amendments should be delayed until the outcomes of the Parliamentary Inquiry into the future and continued relevance of Government land tenure across Queensland is determined **Amendments to the *Land Act 1994* (subdivision of the DOGIT)** *CYRO support the amendments.* **Amendments to the *Land Act 1994* (Indigenous Access and Use Agreement)** *CYRO do not support the amendments.* The matters raised by CYRO largely revolve around concerns about the effects on native title of proposed amendments to the *Land Act 1994* for access and use agreements under the State Rural Leasehold Land Strategy. It is important to point out that the statutory framework is about Indigenous Access and Use Agreements (IAUAs) and Indigenous Land Use Agreements (ILUAs) that allow Indigenous people to access and use state rural leasehold land for traditional activities. It should not be confused with the determination of native title. In addition, DNRM can not comment on what the findings and recommendations might be from the Parliamentary Inquiry into the future and continued relevance of Government land tenure across Queensland or the Government's future policy agenda in relation to Indigenous land.

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	However, CYRO's submission will be considered in the context of any future leasing issues and policy to be progressed by Government in consultation with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs. DNRM Response to specific issues raised by CYRO: Although the proposed amendments provide for a rental discount as an incentive for lessees to resolve their participation in native title claims, the outcome (where there is take up) is that the lessee simply withdraws as a respondent to the Indigenous party's native title claim while the lessee's interest under the agreement, the lease and a determination is protected. The agreement itself does not— • determine native title (resolution of native title is still subject to the native title claims process and the decision of the Federal Court); • override a Federal Court decision about what native title rights exist on the leased land. DNRM is not convinced that the proposed statutory framework will weaken native title rights and interests. DNRM has worked with AgForce Queensland and the Indigenous representative bodies that cover more than 80% of the State's rural leasehold estate to ensure that the requirements and tools for access and use agreements are framed— • to not diminish native title rights and interests; • to be consistent with both native title case law and the provisions of the *Native Title Act 1993* (Cth), including respecting the relationship between the lessee's and native title party's particular rights; and • to deliver on the intent of the State Rural Leasehold Land Strategy of bringing Indigenous people back on country sooner rather than later; • to be consistent with the provisions of the *Land Act 1994*, in particular with regards to the purpose for which a lease for rural leasehold land is issued and processes under this Act. The proposed standard template agreements under the State Rural Leasehold Land Strategy compliment rather than undermine the current native title process and its outcomes. DNRM, North Queensland Land Council, Queensland South Native Title Services and AgForce Queensland share the view that the agreements will facilitate faster and more cost effective agreement-making and encourage relationship building between traditional owners and lessees; and this may lead to the exploration of further opportunities for both parties. The proposed statutory framework and template agreements will not prevent the parties from either amending negotiated agreements (for example, after a determination should they wish the agreement to reflect the full extent of the recognised rights in their individual cases) or negotiating further agreements to address new and emerging opportunities. Many of the concerns raised by CYRO, including the extent of rights and obligations under the agreement, were initially raised by the Indigenous representative bodies which participated in the development of the Pastoral ILUA template and guide; and these matters were resolved to their satisfaction. The Cape York Land Council was provided the opportunity to participate in this process. Importantly, the statutory framework will apply only to certain pastoral leases affected by the State Rural Leasehold Land Strategy, and only if the lessee will be seeking access to certain benefits under the *Land Act*

	1994, namely a longer lease term, a lease extension or the proposed 5-year 25% rental discount. Otherwise, unaffected or uninterested parties will be under no obligation to comply with the requirements covered by the Aboriginal and Torres Strait Islander Land Holding Bill for IAUAs and ILUAs. Whether native title holders sign up to the IAUA or ILUA will also be a matter for them – it is entirely voluntary.
Local Government Association of Queensland	The LGAQ provides in principle support for the Bill. DNRM notes LGAQ comments. DNRM is working with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (through the Remote Indigenous Land and Infrastructure Program Office) on a number of activities, including the provision of surveying in 34 Indigenous communities. The survey program includes road network, reserves, existing and new social housing dwelling leases, and Land Holding Act granted leases and lease entitlements. DNRM and the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs will work together to implement the most cost effective way to resolve survey issues. DNRM, with other relevant government departments, will implement a detailed communication strategy to ensure affected leaseholders have all the required information and knowledge as it relates to the outstanding leasing issues under the *Aborigines and Torres Strait Islander (Land Holding) Act 1985* following passage and enactment of the Bill. The Department of Aboriginal and Torres Strait Islander and Multicultural Affairs has created a website which provides relevant information on the Bill and a form and other contact details for obtaining further information [http://www.datsima.qld.gov.au/atsis/aboriginal-torres-strait-islander-peoples/resolution-of-land-holding-act]. DNRM can not comment on what the findings and recommendations might be from the Parliamentary Inquiry into the future and continued relevance of Government land tenure across Queensland or the Government's future policy agenda in relation to Indigenous land. However, the LGAQ's submission will be considered in the context of any future leasing issues and policy to be progressed by Government in consultation with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs.

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Appendix D – Summary of lease entitlements

Summary of granted leases, lease entitlements and invalid applications made under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*

Torres Strait Island Regional Council

Perpetual leases

Island/Community	LAND			
	Perpetual Leases Granted	Entitlements	Invalid Applications	Total
Badu	1	19	13	33
Boigu	0	48	13	61
Poruma	25	1	1	27
Hammond	2	20	31	53
Iama	0	0	33	33
Mabuiag	1	15	0	16
Saibai	0	13	18	31
Ugar	0	6	7	13
St Pauls community	0	25	1	26
Kubin community	3	1	16	20
Warraber	2	17	0	19
Masig	26	13	0	39
Total	60	178	133	371

Northern Peninsula Area Regional Council

Perpetual leases

Community	Perpetual Leases Granted	Approved Applications	Invalid Applications
Bamaga	3	0	1

Special leases – 30 years

Community	Number Granted	Purpose	Expiry
Bamaga	2	Residential and farming, Cashew nut industry	4/10/2019
New Mapoon	3	Light engineering and fabrication, Grazing cattle and associated activities	20/12/2019 and 13/6/2020

Aboriginal Councils

Perpetual leases

Community	LAND			
	Perpetual Leases Granted	Entitlements	Invalid Applications	Total
Cherbourg	**0**	**0**	**3**	3
Doomadgee	**6**	**6**	**8**	20
Kowanyama	**94**	**4**	**14**	112
Lockhart River	**0**	**32**	**1**	33
Napranum	**1**	**0**	**2**	3
Pormpuraaw	**36**	**2**	**30**	68
Woorabinda	**1**	**0**	**4**	5
Yarrabah	**13**	**0**	**56**	69
Total	151	44	118	313

Special leases – 30 years

Community	Number Granted	Purpose	Expiry
Pormpuraaw (Edward River)	**3**	**Cultural, Grazing and agriculture, Cattle Enterprise**	**4/10/2019**
Kowanyama	**1**	**Pastoral**	**20/12/2019**

Appendix E – Chronology of Legislation

Chronology of legislation introduced affecting Aboriginal & Torres Strait Islander people in Queensland.

- Aboriginal and Torres Strait Island communities established under the *1962 Land Act* as reserves. They were then created in most cases into a deed of grant in trust (DOGIT) under the *1962 Land Act*.
- Introduction of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.
- Introduction of the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.
- The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* became the principal legislation for administering Aboriginal and Torres Strait island lands and did not disengage the operation of the *Land Act 1994*, nor did it completely disengage the operation of the previously introduced *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. In some circumstances all three pieces of legislation were relevant to granting leases in these communities. Result - a complex set of land arrangements because of the operation of these three pieces of legislation.
- The 'Mabo Decision'. In May 1982, Eddie Mabo and four other Meriam people of the Murray Islands in the Torres Strait began action in the High Court of Australia seeking confirmation of their traditional land rights. They claimed that Murray Island (Mer) and surrounding islands and reefs had been continuously inhabited and exclusively possessed by the Meriam people who lived in permanent communities with their own social and political organisation.
- On 3 June 1992, the High Court by a majority of six to one upheld the claim and ruled that the lands of this continent were not terra nullius or land belonging to no-one when European settlement occurred, and that the Meriam people were 'entitled as against the whole world to possession, occupation, use and enjoyment of (most of) the lands of the Murray Islands.' The decision struck down the doctrine that Australia was terra nullius - a land belonging to no-one. The High Court judgment found that Native Title rights survived settlement, though subject to the sovereignty of the Crown
- Introduction of the (Commonwealth) *Native Title Act 1993*.
- Introduction of the (Queensland) *Land Act 1994* which repealed the *Land Act 1962*.
- Given the operation of these acts, the Bill seeks to deal with the interests and entitlements that arose under the 1985 Land Holding Act and specifically to try to resolve the issues with granted leases and entitlements and allow for the subdivision of the DOGIT.

Appendix F – Advertisement in Torres Strait News – 1 October 2012

Have your say...

Parliamentary Committees

I WRITE on behalf of the Queensland Parliament's Agriculture, Resources and Environment Committee to tell you about some important work we are doing that may affect you and your family. The committee has been asked by the Parliament to examine a Bill to make new laws affecting leases over lands in these communities:

- Badu
- Boigu
- Hammond
- Iama
- Kubin Community
- Mabuiag
- Masig
- Poruma
- Saibai
- St Pauls Community
- Ugar
- Warraber

The Queensland Government has proposed these laws to fix long-standing problems with land rights in Deed of Grant in Trust (DOGIT) communities.

Your parents or grandparents may have applied for leases (known as Katter leases) over land in these communities, or you may have applied. You or your family may be entitled to land but your claim may not have been settled. If you fall into one of these groups, our work will be important to you and your family.

I urge you to find out about the Bill and what it means to you. You can call us for help and to ask questions on 1800 504 022 for the cost of a local call. Talk to your family about this as well.

If you have concerns about the Bill, talk to your councillor or your community forum who act as a land panel in relation to DOGIT lands. Ask them to make representations to the committee on your behalf. Or tell the committee directly about your concerns. You can tell us by calling **1800 504 022** or by writing to us. Our address is:

Agriculture, Resources and Environment Committee
Parliament House
BRISBANE QLD 4000

Email arec@parliament.qld.gov.au

We must report back to Parliament by **27 October 2012** about any problems with the Bill. We hope to hear from you soon.

Ian Rickuss MP
Chair

Statements of reservations

Jackie Trad MP

I write to lodge a statement of reservations on the *Aboriginal and Torres Strait Islander Land Holding Bill 2012.*

A number of stakeholders have raised concerns in relation to this legislation that have not been adequately responded to through the Committee process. These include:

- Mr Vince Mundraby, the Local Government Association of Queensland and Torres Shire Council have all argued in submissions that an appropriate communication strategy needs to be developed so that all impacted parties can understand the processes involved in the Bill.
- While the Committee has engaged in consultation with Aboriginal and Torres Strait Islander stakeholder organisations, there has been no coordination of a consultation process that extends to the actual lease applicants being impacted by the proposed legislation. Mr Vince Mundraby has explained to the Committee that this needs to involve education workshops and requires resourcing from the State Government.
- Allowing the Minister to authorise grant leases and set conditions will complicate land administration with the trustee of the Deed of Grant in Trust (DOGIT) still the lessor of existing leases (Cape York Regional Organisations).
- The proposed amendments to the *Land Act 1994* are claimed to set a 'lowest common denominator' approach to resolution of native title interests on pastoral leases by encouraging 'mandatory fixed terms' that are inconsistent with schedule 3 requirements including allowing the right to bury human remains (Cape York Regional Organisations).
- The Committee has yet to respond to the submission from Cape York Regional Organisations that Section 60 *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Maters) Act 1984* violates the *Racial Discrimination Act 1975*.
- That hardship provisions may lead to leases being granted without the input of a native title party where they are yet to be transferred DOGIT tenure undermining land use planning (Chalk and Fitzgerald Lawyers).
- The issue of costs being imposed from Land Court determinations or amendments to lease boundaries (as a result of the legislation), on impacted stakeholders (Torres Strait Island Regional Council, Torres Shire Council, Local Government Association of Queensland).

The most significant concern with this legislation from the Opposition is that it is likely to be counter to its objectives and to impose greater costs on persons entitled to the leases.

The State Development, Infrastructure and Industry Committee is currently undertaking an 'Inquiry into the future and continued relevance of Government land tenure across Queensland' which includes in its terms of reference 'the needs and aspirations of traditional owners' and consideration of whether DOGIT tenure and leases under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* be converted to freehold.

As the Cape York Regional Organisations have set out in their submission:

> *"Concurrent Parliamentary Committees providing conflicting recommendations to the Legislative Assembly about future land tenure in Aboriginal villages is counterproductive and imposes costs on persons holding or entitled to LHA tenures. Therefore AREC should not advance proposals in the Bill and make recommendations about LHA land tenure until SDIIC has reported about future land tenure in Aboriginal Villages."*

The Opposition will not support legislation that:

- Has not been properly explained and communicated with the people who will be impacted;
- Imposes changes to Aboriginal and Torres Strait Islander land tenure while it is currently being reviewed for further change by another State Government Committee and risks imposing two sets of changes in a short period of time generating needless complexity; and
- Will potentially impose costs on stakeholders who are not in a position to meet these costs.

Yours sincerely,

Jackie Trad MP
Member for South Brisbane
Shadow Minister for Transport, Environment,
Small Business, Consumer Protection and the Arts
Deputy Chair, AREC

Shane Knuth MP

The Bill is proceeding as an isolated proposal about the resolution of one land issue within Queensland's Indigenous Local Government Areas. This fails to recognise multiple interrelated land issues in Indigenous communities that require resolution. Coordinated reform needs to be developed with clear objectives so that all issues can be addressed and result in outcomes consistent with the stated goal to 'facilitate higher levels of home ownership in Indigenous communities'[i].

The State Development, Infrastructure and Industry Committee's *Inquiry into the future and continued relevance of Government land tenure across Queensland* is due to report to Parliament on 30 November and could possibly propose that land within Indigenous villages, including the land where LHA leases have been (or are entitled to be) granted should be converted to fee simple freehold. This raises serious questions such as why is the AREC preparing to support a Bill that proposes to address Land Holding lease issues by converting the interest in land to a lease of DOGIT or are the recommendations from the SDIIC inquiry a foregone conclusion?

There is a bigger picture that this Bill should be fitting into, but the government is not coordinating the development of that bigger picture.

There has been consultation with the people who are directly affected by the Bill however the form of consultation has not been appropriate to the audience. Considering the small number of communities applying for Land Holding leases a direct and appropriate engagement strategy could have been implemented.

Also included in this Bill are proposals to amend the Land Act 1994 regarding Indigenous Agreements on pastoral leases. This has nothing to do with the rest of this Bill, which is about land issues within Aboriginal villages, not pastoral leases.

Sincerely,

Shane Knuth

Member for Dalrymple

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[i] http://www.parliament.qld.gov.au/documents/tableOffice/HALnks/120821/aboriginal.pdf.