Frequently Asked Questions

Aboriginal and Torres Strait Islander Land Holding Bill 2012

What does this Bill achieve?

The Bill amends four main pieces of legislation to implement **four separate** initiatives.

These are:

1. amendments to repeal and replace the *Aborigines and Torres Strait Islander (Land Holding) Act 1985*;
2. amendments to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to provide local governments continued access and use to their facilities once land is transferred under either of these Acts;
3. amendments to the *Land Act 1994* to allow the subdivision of Deed of Grant In Trust land; and
4. amendments to the *Land Act 1994* to define the requirements for Indigenous Access and Use Agreements under the Act.

Aborigines and Torres Strait Islander (Land Holding) Act 1985 amendments

Why repeal the Aborigines and Torres Strait Islander (Land Holding) Act 1985?

The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (the 1985 Act), is to be repealed and replaced by a new Act, the Aboriginal and Torres Strait Islander Land Holding Act.

The 1985 Act commenced on 24 April 1985. The principal objective of the Act was to provide residents of Indigenous Deeds of Grant in Trust (DOGIT) and Indigenous reserve land to be able to apply for perpetual leases for private home ownership and special leases for commercial purposes.

From 1985 to December 1991 697 applications for leases were made under the 1985 Act. Of these only 214 perpetual leases and 9 special leases were granted and the other 474 applications remain unresolved.

Of the unresolved applications 222 applicants are entitled to be granted a lease and 252 applications are invalid. There are significant issues which need to be addressed in order to be able to deal with these unresolved lease applications. The 1985 Act does not have the necessary provisions to allow for dealing with the unresolved applications.

As such, it is considered more appropriate to repeal the 1985 Act and introduce a new Act which does have the necessary processes included into the legislation to deal with all situations which may arise whilst dealing with the unresolved applications.

Why can't the leases just be granted under the 1985 Act?

Several issues have been identified which make it difficult to grant lease entitlements under the 1985 Act. These include:

- tenure anomalies – the 1985 Act automatically returned land the subject of an application to the State as "unallocated State land" when the application was approved by the former trustee. Until the lease is granted these areas of State land exist within the trust areas – this was not the intent and needs to be rectified by either the lease being granted or the land being returned to the DOGIT;
- community infrastructure has been built on lease or lease entitlement land, there must be

mechanisms in place to resolve these issues through consultation with the affected parties to ensure lease holders or lease entitlement holders retain their rights to their lease or lease entitlement;
- a number of lessees or lease entitlement holders are now deceased;
- determining the precise location of approved applications and granted leases; and
- how to deal with encroachments on the leases.

How will the new Act proposed in the Bill rectify these issues?

The Bill:
- provides a more flexible regime for granting existing entitlements and managing leases;
- simplifies the tenure and leasing arrangements;
- ensures consistency with the primary land legislation in Indigenous communities - the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*;
- promotes agreement-making between parties affected; and
- provides jurisdiction to the Land Court where necessary.

What communities are affected?

Granted leases under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* 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.

Is there a cost for implementing the changes to lease holders or lease entitlement applicants?

The departments will seek to limit the costs that individual lease entitlement holders or individual lease holders may incur under the Bill.

The costs of implementing the proposed amendments in the Bill will be met by the Government through the agencies implementing the new Act.

This will primarily affect the Department of Natural Resources and Mines, the Department of Housing and Public Works and the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs.

The relevant government departments will bear the costs of determining beneficiaries, negotiating agreements or surrenders, and survey work for lease applications and entitlements.

How do I know if my lease is valid?

Searches by the Department of Natural Resources and Mines of records held by relevant State Government agencies and local governments has identified (as at 30 July 2012) 697 applications for leases made under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

Of these known applications:
- 214 perpetual leases have been granted (for residential purposes);
- 9 special leases have been granted (for commercial purposes); and
- 474 applications remain unresolved.

Of the 474 unresolved applications:
- 222 applicants are entitled to be granted a lease; and
- 252 applications are invalid

For the 222 applicants that are entitled to a lease the Bill provides that the Department will publish on the internet a notice of lease entitlements.

This lease entitlement notice will:

(a) identify the trust area for the lease entitlement;
(b) include the identification number of the original application, if known;
(c) identify the holder of the lease entitlement; and
(d) give a description of the lease entitlement land to the extent reasonably practicable.

Where a person believes they hold evidence of a lease entitlement that has not been published, or that a lease entitlement notice is not accurate, they will be able to bring forward evidence to the chief executive of the department who then must consider this evidence.

For the 252 applications which are invalid, there will be instances where a person applied for a lease and they thought it was approved by the Trustee. Consequently, they may have relied upon that belief and may have built on the land.

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

What if I no longer want my lease?

If a lease holder or lease entitlement applicant no longer wishes to retain or be granted their lease they may surrender their interest to the State.

What if the lease boundaries are wrong and affected parties can not reach an agreement on lease boundaries?

If agreement cannot be reached with all affected parties, the Minister may apply to the Land Court by explaining the proposed approach and seek a decision from the Land Court.

The Land Court can make any order it considers appropriate and the Minister must follow the Court's direction.

The lessee can apply to the Land Court for compensation from the State if the Court's decision decreases the value of their interest in the land or if they will incur expenses in undertaking any required practical measures.

Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991 Amendments

Amendments to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to provide local governments continued access and use to their facilities once land is transferred under either of these Acts.

Why are local governments being provided with this right?

Currently under the Acts local governments do not have a specific right to continue to access and use the facilities from which they provide municipal services when land is transferred under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

This means that the local government may need to negotiate a lease through the transfer process to continue to use facilities, such as sewerage treatment plants, council chambers etc.

Under the Acts, this right already applies to the State Government and the Commonwealth Government. The amendments are being made to ensure local governments have a similar right as other levels of Government and they have continued access to the existing facilities from which they provide municipal services.

Why does the area of land need to be defined?

Currently under the Acts there is some uncertainty about the extent of the area the State and the Commonwealth governments may continue to access and use when the land is transferred.

The amendments are included to clearly define the area that can continue to be used by the State and Commonwealth Governments once the land is transferred.

Land Act 1994 subdivision of Deed of Grant Amendments

Amendments to the *Land Act 1994* to allow the subdivision of Deed of Grant In Trust (DOGIT) land.

Why would the Trustee of the DOGIT want to subdivide the DOGIT?

The ability for the land to be subdivided into "lots" allows Trustees to be able to better manage the DOGIT for future development and ongoing management of the DOGIT.

With the land being subdivided, this will also save the Trustee additional costs currently expended for development assessment processes.

If the land is subdivided does this mean the land is no longer part of the DOGIT?

The amendments only allow the Trustee of a DOGIT to subdivide DOGIT land subject to the Minister's approval.

The subdivision of the DOGIT does not transfer the management of the land from the Trustee. It allows the DOGIT land to instead be made up of a number of "lots" rather one large lot and for these lots to be distinguishable on a survey plan.

The DOGIT lands will still be the responsibility of, and managed by, the Trustee. The subdivision does not in any way transfer ownership of the land being subdivided to someone else.

Land Act 1994 Indigenous Access and Use Agreements

Amendments to the *Land Act 1994* to define the requirements for Indigenous Access and Use Agreements under the Act.

What is an Indigenous Access and Use Agreement?

The State Rural Leasehold Land Strategy (the Strategy) is the State's Policy for the management of State rural leasehold land leased for agricultural, grazing or pastoral purposes.

Indigenous Access and Use Agreements are incorporated in the Strategy and the *Land Act 1994* as a mechanism for allowing Indigenous people to access and use State Rural Leasehold Land for traditional purposes. These agreements are an alternative to Indigenous Land Use Agreements. However, the Indigenous party and the pastoralist can choose to enter into either an Indigenous Access and Use Agreement or an Indigenous Land Use Agreement to reach agreement about access to and use of the land for traditional purposes.

The *Land Act 1994* does not currently define the requirements for an Indigenous Access and Use Agreement.

The amendments clearly set out the requirements for Indigenous Access and Use Agreements (IAUAs) and Indigenous Land Use Agreements (ILUAs) by defining the requirements for the making, registration, notification, review, monitoring and continuity of an IAUA and for ILUAs which convey access and use rights to Indigenous people for traditional activities. The amendments ensure that the nature of rights under an IAUA is consistent with recognised native title rights and interests under native title case law and the Commonwealth *Native Title Act 1993*.

Why should agreements be registered as an Indigenous cultural interest?

The amendments provide for the creation of an Indigenous cultural interest when an IAUA or ILUA is registered on title. This allows the agreement to 'attach' to the land and survive land transactions under a non-freehold tenure (for example, if the lease is transferred, subdivided, amalgamated or converted to another non-freehold tenure such as a perpetual lease or protected area estate).

Both industry and Indigenous stakeholders have sought this high level of certainty to warrant the effort involved in putting access and use agreements in place.

An Indigenous cultural interest has no 'life' under other legislation, nor will it erode a pastoralist's rights under the lease or capacity to manage their production.

What benefit is there for Indigenous People to enter into an agreement?

The amendments only apply to State Rural Leasehold Land Strategy leases (specifically those with a term of 20 years or more and an area of 100 hectares or greater) and provide Indigenous people with the opportunity to access and use State rural leasehold land for traditional purposes in a faster way through entering into an agreement with the pastoralist.

By entering into an agreement the Indigenous parties do not have to wait until the resolution of their native claim to access and use the land for traditional purposes.

In any event, a native title determination by the Federal Court simply declares a state of affairs; it does not actually detail the relationship between the parties or how it will work on the ground. The benefit of the agreement is that it will guide the future relationship and provides for practical arrangements for the parties to work effectively together.

The agreements do not impact upon or change native title claims processes.

In addition, the pastoralist may agree to withdraw as a respondent party to the native title claim and pay the public liability insurance, which has been a stumbling block for a number of Indigenous parties in recent years.

What benefit is there for the Pastoralist to enter into the Agreement?

Assuming all other conditions have been met, the pastoralist will be able to access the maximum term and lease extension available for State rural leasehold land under the *Land Act 1994*.
In addition, pastoralists will receive a 25% rental concession on their annual lease rent for a period of 5 years when they enter into a standard IAUA or ILUA, remove themselves as a respondent to the native claim process and pay for public liability insurance under the agreement.

These amendments provide both Indigenous parties and lessees an opportunity to resolve access and use issues (and where agreed, native title) in a faster and more economical way.

Are entering into agreements required?

Agreements are between the lessee and the Indigenous party for the area. The agreements are not mandatory for a standard term lease.

The agreements do not impact upon or change native title claims processes. If an Indigenous party wants to pursue access and use rights through the native claim process they can do so – they do not have to enter into an agreement prior to the native title claim being resolved through the Federal Court.