

# Overview of the

## Aboriginal and Torres Strait Islander Land Holding Bill 2012

### The Bill amends four main pieces of legislation to implement four separate policy 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.
4. amendments to the *Land Act 1994* to define the requirements for Indigenous Access and Use Agreements under the Act.

#### ***Amendments to the Aborigines and Torres Strait Islander (Land Holding) Act 1985***

- The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* commenced on 24 April 1985.
- The principal policy 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.
- 697 applications for leases were made under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.

- Of these: 214 perpetual leases and 9 special leases were granted; 474 are unresolved applications. Of the unresolved applications 222 are entitled to be granted a lease and 252 applications are invalid.
- The Bill will repeal the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* and introduces a new Act – the *Aboriginal and Torres Strait Islander Land Holding Act 2012* to resolve the leasing issues arising from the implementation and operation of the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*.
- The new Act provides the necessary processes to grant the outstanding 222 applications as the applicants or their descendants are entitled to be granted a lease and provides options and legal resolution to lessee's who have invalid applications but believe they are entitled to a lease for various reasons.

#### ***Amendments to the Aboriginal Land Act 1991 and the Torres Strait Islander Land Act 1991***

- Amendments are being made to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to provide Indigenous local governments with continued access to the facilities from which they provide municipal services if the land is transferred under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.
- Currently this continued right of access only applies to the State and Commonwealth governments – the amendments will ensure local governments have continued access to

the existing facilities from which they provide municipal services.

- Further 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.

### ***Amendments to the Land Act 1994 for Deeds of Grant in Trust***

- Amendments are being made to the *Land Act 1994* to allow the Trustee of a Deed of Grant in Trust (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 these lots will be distinguishable on a survey plan.
- The DOGIT 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.
- By allowing 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 and save on development assessment processes.

### ***Amendments to the Land Act 1994 in relation Indigenous Access and use Agreements***

- As part of the implementation of the State Rural Leasehold Land Strategy, amendments are being made to the *Land Act 1994* to provide a framework for Indigenous access onto State rural leasehold land leased for agricultural, grazing or pastoral purposes.

- The amendments to the Act 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 IAUAs and for ILUAs which convey access and use rights to Indigenous people for traditional activities.
- The amendments only apply to State Rural Leasehold Land Strategy leases 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.
- Pastoralists will receive a 25% rental concession on their annual lease rent for a period of 5 years when they enter into a standard IAUAs or ILUAs, 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.
- Agreements are between the lessee and the Indigenous party for the area. The agreements are not mandatory for State Rural Leasehold Land Strategy leases
- The amendments provide that an agreement attaches to the land through its registration on title as an Indigenous cultural interest.