

Introduction of the Aboriginal and Torres Strait Islander Land Holding Bill 2012

Overview and summary of changes relating to the Land Holding Act

On 21 August, 2012 the Aboriginal and Torres Strait Islander Land Holding Bill 2012 (the Bill) was introduced into the Queensland Parliament.

The Bill primarily addresses a series of longstanding issues arising from the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (Land Holding Act) including complicated tenure and application anomalies.

The introduction of the Bill, and subsequent amendments to existing pieces of legislation, will help in achieving sustainable home ownership on Indigenous land in Queensland.

The history of the Land Holding Act

The Land Holding Act was established to enable residents of the State's Aboriginal and Torres Strait Islander Deed of Grant in Trust and reserve communities (known as trust areas) to obtain perpetual leases for residential purposes, and term leases for other purposes.

However in 1991, the *Aboriginal Land Act 1991* (ALA) and *Torres Strait Islander Land Act 1991* (TSILA) were introduced to Queensland Parliament 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.

In 2010, the Queensland Government initiated a review of the Land Holding Act. The review sought to address and resolve a number of tenure issues arising from the interaction of the various pieces of legislation.

Following the review and extensive consultation with stakeholders the Bill was developed and introduced into Queensland Parliament.

What the new Bill will do

The changes proposed under the new Bill are summarised in-brief below.

Fixing the 'holes' in the trust area

When a person applied for a lease under the Land Holding Act, the land automatically changed to unallocated State land as soon as the trustee approved the application. These land parcels are 'holes' in the trust area but have been treated for practical and administrative purposes as though they were trust areas. The Bill will revest the affected land into the trust area.

Community Reference Panel

The Bill allows the Natural Resources and Mines Minister (the Minister) to establish a Community Reference Panel for each trust area. 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 will consist of the trustee (generally the Indigenous Council is the trustee) and the various Directors-General of Departments with responsibilities in the trust area. The Panel may also invite affected parties to participate in consideration of matters.

Existing leases and lease applications

Granted leases

The Bill continues the 214 perpetual leases granted under the Land Holding Act—to be called ‘1985 Act granted leases’. The leases will be continued in perpetuity and for the purposes for which they were granted. The Bill also confirms the trustee is the lessor of the granted leases.

Term leases

The Bill continues the nine special leases granted for a term of 30 years under the Land Holding Act (due to expire between 2019 and 2020). The leases will continue for their original term and purpose however, the leaseholder will be able to apply to the trustee for the grant of a new lease under the ALA and the TSILA prior to the expiry of the special lease.

Lease entitlement and trust area notices

The Bill requires information about the 222 lease applications, lawfully approved by the former Indigenous Councils, to be published on the Department of Natural Resources and Mines website. This is called a ‘lease entitlement notice’ in the Bill.

Once the lease entitlement notices for a trust area have been published, the Director-General of the Department of Natural Resources and Mines (Director-General) will advise the trustee that all lease entitlement notices have been published. This is called a ‘trust area notice’ in the Bill and will also be published on the website.

Application for a lease entitlement or to correct or replace a lease entitlement notice

Under the Bill, a person has 18 months from the date of a trust area notice being issued to apply to the Director-General if they believe they hold a lease entitlement that is not listed in a current lease entitlement notice, or if they believe the current lease entitlement notice is incorrect.

The Director-General must make a decision on the application within six months and provide reasons for the decision. Decisions made by the Director-General can be appealed to the Land Court.

Lease applications not lawfully approved

It is possible that some lease applications were not lawfully approved according to the requirements of the Land Holding Act however, the applicant may have built on the land relying on advice that the application was lawful and approved. In these cases, there is no legal entitlement to a lease but the applicant can apply to the Director-General for a ‘hardship certificate’.

The hardship certificate entitles the applicant to have the land cost valued at nil if the current trustee agrees to grant the applicant a lease under the ALA or TSILA.

Amending the boundary of an existing lease

Due to circumstances that have occurred since leases were originally granted, it may not be practicable for a lease to continue with the same boundaries. For example, part of a formed road may exist over part of a lease area.

In these cases, the Bill allows the Minister to seek the agreement of the lessee to have the boundary of the lease relocated. The Minister must refer a proposed boundary relocation to the Community Reference Panel for consideration (or trustee, if a Community Reference Panel wasn’t established) and the Panel must consult with the lessee and any other appropriate person.

Amending the boundary of an existing lease where there is agreement

If agreement is reached with all affected parties, the Minister may apply to the Land Court to relocate the lease boundary. This ensures there is independent scrutiny of processes undertaken to reach agreements to relocate lease boundaries. If the Land Court grants the application, the Minister must ensure a new survey plan is prepared so the new boundaries are recorded in the appropriate register.

Amending the boundary of an existing lease where there is no agreement

If agreement cannot be reached with all affected parties, the Minister can apply to the Land Court to relocate the lease boundary—the Minister is bound by this decision.

The Minister must ensure a new survey plan is prepared to give effect to the Court’s decision and to ensure the new boundaries are recorded in the appropriate register.

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

Leases granted under the new Act

Considering and granting leases

The Natural Resources and Mines Minister will consider and grant leases under the Bill—to be called ‘new Act granted leases’. The process for considering and granting leases depends on whether or not there are ‘practical obstacles’ to the grant of the lease (detailed below).

Considering practical obstacles

If practical obstacles are identified during the consideration of a lease application, the Minister will refer these to the Community Reference Panel for deliberation (or the trustee, if a Community Reference Panel is not established).

A practical obstacle could be that two houses have been constructed over one lease entitlement area. The Bill clearly states that the need to identify the beneficiary of a deceased estate is not a practical obstacle.

After considering information from the Community Reference Panel (or trustee), the Minister is required to prepare a ‘statement of reasons (obstacles)’ to identify the nature of any obstacles to the grant of the lease—this will be made publically available.

The statement of reasons (obstacles) can be appealed to the Land Court by an affected person.

Granting leases where there are practical obstacles

If there are practical obstacles identified, the Minister must try to reach agreement with those affected parties to resolve the practical obstacles before the grant of the lease. This is called a ‘deferred grant’ in the Bill.

To grant the lease, the Minister must consult with the lease entitlement holder or their beneficiaries, the Community Reference Panel and any other person affected.

Where agreement is reached with all affected parties then the Minister may grant the lease.

Granting leases where practical obstacles can not be resolved

If agreement cannot be reached with all affected parties, the Minister may apply to the Land Court to seek a decision about whether the lease can be granted—the Minister is bound by this decision.

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

Granting leases where there are no practical obstacles

The Minister may grant a lease in the trust area if there are no practical obstacles identified. The lease must be in perpetuity if the original application was less than one hectare.

Conditions of leases

The conditions applied to new Act granted leases and 1985 Act granted leases are the same as for those leases granted under the ALA or TSILA (to the extent possible while taking into account the rights and obligations under the Land Holding Act).

For perpetual leases, these conditions include:

- Leases must be surveyed and registered
- A lease may be transferred only to an Aboriginal person, Torres Strait Islander or their spouse
- A peppercorn rent (not more than \$1) applies to each lease
- An interest (e.g. a sublease) may be created in favour of any person, with the written consent of the trustee. The trustee will need to be reasonable in considering whether or not to give their consent
- A lease may be mortgaged without the consent of the Minister or trustee.

Other relevant parts of the ALA and TSILA will also be applied to granted leases (e.g. forfeiture processes).

Ownership of improvements

Under section 15 of the Land Holding Act, the ownership of the lease was separate to the ownership of any improvements, such as to dwellings, on the land unless the Governor approved a contract for the sale of the improvements—the Bill continues any existing contracts or arrangements made for the purposes of section 15.

Where the relevant parties agree that a contract or arrangement has been completed, the Housing Chief Executive can publish a gazette notice confirming the purchaser owns the improvement.

Where there is no existing contract or arrangement, and a social housing dwelling is located on lease land or proposed lease land, the dwelling may be transferred to the lessee or proposed lessee. The value of the dwelling must be determined using the same valuation methodology for a social housing dwelling under the ALA or TSILA. If there is no methodology in operation, the valuation methodology is decided by the Housing Chief Executive unless the value has been decided by the Land Court.

Information Privacy Act

The Bill ensures that the *Information Privacy Act 2009* does not prevent the sharing of information necessary to consult or negotiate with a person about lease entitlements, relocating lease boundaries or resolving the ownership of improvements.

Review

The Bill requires the review of the Act within five years of its commencement.

Supporting amendments

To support the operation of the Act, the Bill also contains amendments to the following legislation:

- *Aboriginal Land Act 1991*
- *Environmental Protection Act 1994*
- *Land Court Act 2000*
- *Mineral Resources Act 1989*
- *Torres Strait Islander Land Act 1991*
- *Survey and Mapping Infrastructure Act 2003*
- *Sustainable Planning Act 2009*
- *Sustainable Planning Regulation 2009*
- *Wild Rivers Regulation 2007.*

For more information

For more information on the Aboriginal and Torres Strait Land Holding Bill or on Indigenous land in Queensland visit www.dnrm.qld.gov.au or call 13 25 23.