Parliamentary Committees

Land and Other Legislation Amendment Bill 2014

Report No. 39
State Development, Infrastructure and Industry Committee
May 2014

State Development, Infrastructure and Industry Committee

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Acknowledgements

The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of Natural Resources and Mines, the Department of Agriculture, Fisheries and Forestry, and McCullough Robertson Lawyers.

[1] On 6 May 2014, the committee was advised of the inability of the member for Gympie to attend meetings of the committee. The member for Keppel was appointed as Acting Chair and the member for Hervey Bay was appointed as a committee member for the duration of Mr Gibson's absence.

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Chair's foreword

This report presents a summary of the State Development, Infrastructure and Industry Committee's examination of the Land and Other Legislation Amendment Bill 2014.

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 to the legislation, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The committee is pleased to see the implementation of a number of its recommendations arising out of its previous *inquiry into the future and continued relevance of government land tenure across Queensland*. The Bill implements the first phase of long overdue land tenure reforms with the aim of reducing red tape and increasing tenure security for lessees.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Bill and others who informed the committee's deliberations.

I would also like to thank the officials from the Department of Natural Resources and Mines and the Department of Agriculture, Fisheries and Forestry who briefed the committee and responded to its requests for information, the committee's secretariat, and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

Bruce Young MP
Acting Chair

May 2014

Abbreviations

AgForce	AgForce Queensland
ALA	*Acquisition of Land Act 1967*
BCC	Brisbane City Council
Bill	Land and Other Legislation Amendment Bill 2014
committee	State Development, Infrastructure and Industry Committee
CCC	Capricorn Conservation Council
CYROs	Joint submission No 12 - Cape York Land Council, Balkanu Cape York Development Corporation and Cape York Institute
DAFF	Department of Agriculture, Fisheries and Forestry
department	Department of Natural Resources and Mines
CYLC	Cape York Land Council
DNRM	Department of Natural Resources and Mines
EDO	Environmental Defenders Office (Qld)
FLP	fundamental legislative principle
Forestry Act	*Forestry Act 1959*
Government	Queensland Government
ILUA	Indigenous Land Use Agreement
Land Act	*Land Act 1994*
Land Title Act	*Land Title Act 1994*
NQLC	North Queensland Land Council
Native Title Act	*Native Title Act 1993*
NTQA	*The Native Title (Queensland) Act 1993*
NTA	*Native Title Act 1993*
QRC	Queensland Resources Council
RTL	rolling term lease
SPA	*Sustainable Planning Act 2009*
Water Act	*Water Act 2000*
WPSQ	Wildlife Preservation Society of Queensland

Recommendations

Points for Clarification

The committee seeks clarification from the State Government on whether the program implemented by the Fitzroy Basin Association in partnership with AgForce Queensland, the Department of Agriculture, Fisheries and Forestry, and the Department of Environment and Heritage Protection to promote best practice land management will be expanded to areas outside of the Fitzroy Basin.

The committee requests the Minister for Natural Resources and Mines clarifies whether consultation with key stakeholders on the methods for calculating rent and purchase price/unimproved value of leasehold land and matters relating to the payment and collection of rent and instalments has occurred, or would occur, prior to the tabling of the regulation.

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

The committee's primary areas of portfolio responsibility are:[2]

- State Development, Infrastructure and Planning
- Energy and Water Supply, and
- Tourism, Major Events, Small Business and the Commonwealth Games.

1.2 The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

On 19 March 2014, the Land and Other Legislation Amendment Bill 2014 (the Bill) was referred to the committee for examination and report. In accordance with Standing Order 136, the Legislative Assembly fixed the committee's reporting date as 13 May 2014.

1.3 The committee's inquiry process

On 20 March 2014, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of relevant stakeholders. The closing date for submissions was 4 April 2014. The committee received 16 submissions (see Appendix A for list of submitters).

On 2 April 2014, the committee held a public briefing with the Department of Natural Resources and Mines (the department). On 10 April 2014, the committee held a public hearing in Brisbane (see Appendix B for list of witnesses). On 30 April 2014, the committee also met with representatives in Cairns from the Cape York Land Council, the North Queensland Land Council and some Traditional Owners to discuss matters relating to the Bill and native title rights and interests.

The submissions and the transcripts of the public departmental briefing and public hearing are available from the committee's webpage at www.parliament.qld.gov.au/sdiic.

1.4 Policy objectives of the Bill

The policy objectives of the Bill are to:[3]

- implement the first phase of state land tenure reforms which improve tenure security for term leases used for agriculture, grazing and pastoral purposes and declared offshore island tourism leases issued under the *Land Act 1994* (Land Act), and begin to reduce red tape and regulatory burden on landholders, business and government.
- reduce red tape and fix minor drafting errors relating to taking of water and water licencing and confirm validity of particular water licencing decisions.

[2] Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 11 February 2014).

[3] Explanatory Notes, p 1.

- broaden the application of high density development easements and make minor amendments to land titling legislation.
- amend the *Native Title (Queensland) Act 1993* (and supported by amendments to the *Acquisition of Land Act 1967* (ALA) to provide another way in which non-native title rights and interests can be acquired where native title rights and interests are being compulsorily acquired to assist in meeting requirements under the Commonwealth *Native Title Act 1993* (NTA)).
- clarify the public and environmental purposes for which land may be acquired under the ALA.
- validate decisions made regarding later work programs and later development plans under the *Petroleum and Gas (Production and Safety) Act 2004* and *Petroleum Act 1923* and decisions made regarding later development plans under the *Mineral Resources Act 1989*.
- provide greater flexibility to petroleum lease holders in relation to applying for an extension to the production commencement day.

These objectives are examined in Part 2 of this report.

1.5 The Government's consultation on the Bill

In relation to the land tenure reforms, the explanatory notes state:[4]

- there has been no community or stakeholder consultation on the specific provisions of the Bill relating to the reforms,
- the provisions reflect stakeholder aspirations and the Government's response to the committee's previous inquiry, and
- media coverage of the government's reform agenda indicates support for the land tenure reforms.

A number of submitters expressed concern that there was inadequate consultation during the development of the Bill.[5] A joint submission from Cape York Land Council, Balkanu Cape York Development Corporation and Cape York Institute (CYLC) and a submission from North Queensland Land Council (NQLC) were particularly concerned that there was a lack of consideration with Indigenous people. CYLC submitted that further consideration of the Bill be deferred until the Department of Natural Resources and Mines (DNRM) engages with Indigenous people.[6]

DNRM advised the committee that the Government had announced its intent in relation to the land tenure reforms at a media event. Following this, there was ongoing discussion in other media such as the *Queensland Country Life* publication and the department's responses to letters to the editor.[7]

The committee notes that CYROs were critical of the statement made in the explanatory notes justifying support for a legislative proposal based on media coverage. Media can be used to gauge a small section of the community's views about various policy positions and used to generate awareness of upcoming legislative proposals. However, media reports are not a strong basis on which to justify a legislative proposal.

4 Explanatory Notes, p 12. There was targeted consultation in relation to the other proposals within the Bill.

5 EDO Qld, Submission No. 7; Joint submission - Cape York Land Council, Balkanu Cape York Development Corporation and Cape York Institute (CYLC), Submission No. 12; North Queensland Land Council, Submission No. 14; Wildlife Preservation Society of Queensland, Submission No. 15.

6 Cape York Land Council, Submission No. 12.

7 Public hearing transcript, 10 April 2014, p 32.

The department has relied on the committee's consultation process during its inquiry into land tenure prior to the drafting of the Bill, in lieu of conducting its own consultation (including not consulting with Indigenous stakeholders in relation to native title). This issue was also noted in the committee's advice received on fundamental legislative principles.

The Bill implements a number of recommendations arising from the committee's land tenure inquiry where the committee consulted widely on land tenure policy in Queensland. However, consultation undertaken by the committee should be seen as separate to consultation undertaken by a department as part of the executive arm of government.

It is vitally important that departments, and ultimately the Government, consult on legislative proposals in order to provide an opportunity for stakeholders to comment on the legal effect of specific provisions and whether the Government has appropriately reflected their aspirations. Consulting with stakeholders provides invaluable feedback in relation to how the implementation of a Bill may work on the ground and can identify unintended consequences based on the way it is drafted.

In relation to this Bill, the aspirations regarding increasing security of land tenure have been developed appropriately. However, there were significant concerns raised in relation to native title aspects that could have been resolved if the department had consulted on this aspect of the Bill prior to its introduction.

The committee is pleased to note the department's discussion paper on the second phase of the land tenure reforms will be open to public submissions.[8] The department advised the committee that it will 'work with interested parties in developing an improved approach to native title negotiations' during the second phase of the land tenure reforms and that consultation will commence later this year.[9]

Some submitters commented on the short timeframe the committee imposed for seeking submissions on the Bill.[10] The committee endeavours to provide the maximum time available for providing submissions to its inquiries within the timeframes set by the Committee of the Legislative Assembly or the House.

1.6 Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the Bill be passed. After examining the Bill, and considering issues raised in submissions and at the public hearing, the committee has determined the Bill should be passed.

Recommendation 1

The committee recommends the Land and Other Legislation Amendment Bill 2014 be passed.

8 Public hearing transcript, 10 April 2014, p 32.

9 Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

10 Cape York Land Council, Submission No. 12; Queensland Environmental Defenders Office, Submission No. 7; North Queensland Land Council, Submission No. 14.

2 Examination of the Bill

2.1 Land tenure reforms

On 7 June 2012, the Legislative Assembly requested the committee inquire into and report on *the future and continued relevance of government land tenure across Queensland*. The committee called for public submissions and held a number of public briefings and hearings during the course of its inquiry. On 31 May 2013, the committee tabled its final report (Report No. 25), which contained 44 recommendations. On 23 August 2013, the Hon Andrew Cripps MP, Minister for Natural Resources and Mines tabled the government's response to the committee's report.

The Bill currently before the committee seeks to implement a number of the committee's recommendations accepted by the Government.[11] The Government's response indicated that the committee's recommendations would be addressed in two phases:[12]

> ***Phase one –*** *the government has commenced reforms to promote greater investment certainty for rural leasehold land. This phase focuses on red tape reduction in lease renewal processes and setting clear pathways to upgrade from leasehold to freehold.*
>
> ***Phase two –*** *The government will reform the* Land Act 1994 *and other land legislation to modernise the principles and purposes of land administration, management and disposal. The review will focus on:*
>
> - *investment certainty and sustainable land management focusing on leases for tourism and other commercial purposes, and*
> - *management of reserves and roads including stock routes.*

The Government also indicated that it would, in parallel with phase 2, consider the process of native title negotiations and incentives for resolution.[13] Consultation on this process is currently underway in conjunction with the second phase of land tenure reforms.[14]

> *… in relation to the Committee's recommendations about Indigenous land use agreements (ILUAs), the Government's response noted it supports the need to reduce transaction costs of native title resolution for all parties, will work with key stakeholders to develop template ILUAs to facilitate streamlined agreement-making, will work with all interested parties to consider an improved approach to native title negotiations, including examining incentives to enhance how consents are obtained.*[15]

The explanatory notes state that, if passed, the Bill will implement the first phase of state land tenure reforms which are aimed at improving tenure security for term leases used for agriculture, grazing and pastoral purposes and declared offshore island tourism issued under the *Land Act 1994* and reduce red tape and the regulatory burden on landholders, businesses and government.[16] The department advised consultation on land tenure reforms relating to phase two of the process are

[11] Report No. 25, Recommendation numbers 8-9; 14-15; and 24-25.

[12] Queensland Government, Department of Natural Resources and Mines, *Queensland Government response to the Inquiry into the continued relevance of government land tenure across Queensland*, tabled 23 August 2013.

[13] Ibid.

[14] Public briefing transcript, 2 April 2014, pp 8-9.

[15] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

[16] Explanatory Notes, p 1; Public briefing transcript, 2 April 2014, p 2.

expected to commence later in 2014, which will include a public discussion paper, with implementation expected during 2015.[17]

2.1.1 Rolling term lease extensions

Clause 46 of the Bill provides rolling term lease (RTL) extensions for certain term leases, including agriculture, grazing and pastoral purposes and all term leases issued for tourism purposes located on declared offshore islands.[18] Rolling term lease extensions are said to provide the security that rural leasehold land investors require to further invest in, and manage the land.[19]

A number of submitters were supportive of the implementation of the first phase of state land tenure reforms, including the proposed introduction of rolling term lease extensions.[20] The Queensland Tourism Industry Council (QTIC) submitted that the land tenure reforms would be positive for the tourism industry by reducing red tape and providing certainty in tenure, which would 'ensure developer confidence'.[21] The Whitsunday Regional Council concurred with QTIC's sentiments and submitted the Bill would enable security of tenure on offshore islands and pastoral land:[22]

> *This will create an environment for investment/reinvestment into tourism assets and pastoral assets and greater economic development in the Whitsundays.*

Communicating changes regarding lessees' rights and obligations

While AgForce was supportive of the proposed rolling term lease extensions, it raised several matters relating to their introduction. AgForce submitted the Government would need to clearly and proactively communicate the changes to lessees in order to avoid 'continued confusion and uncertainty for pastoral leaseholders'. In this regard, AgForce suggested the department should create fact sheets and conduct workshops to ensure relevant stakeholders were informed of the changes.[23]

The department confirmed it would focus on informing landholders of their rights and obligations if the Bill was passed:[24]

> *Engaging with our landholders will be a primary concern for us. We want to ensure that they fully understand their rights and continuing obligations. Education is in the forefront of our minds.*

The department advised it would write to each individual landholder to explain their rights and obligations throughout the process, and that key technical officers would be available across the State to answer queries about the reforms. The department further advised it is 'taking a proactive approach to dealing with the rural leasehold land term leases that are due to expire on or before 31 December 2014.' Should the Bill be passed, the department undertook to 'contact these lessees in July 2014 with a written offer to extend their current lease/s by a term equal to the original term of the lease, as long as they have satisfied a limited number of requirements (e.g. payment of outstanding rent).'[25]

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17 Public briefing transcript, 2 April 2014, p 2; Public hearing transcript, 10 April 2014, p 32.

18 Explanatory Notes, p 6.

19 Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

20 Ms M Finger, Submission No. 1; Queensland Tourism Industry Council, Submission No. 2; Whitsunday Regional Council, Submission No. 5; AgForce Queensland (AgForce), Submission No. 10.

21 Queensland Tourism Industry Council, Submission No. 2.

22 Whitsunday Regional Council, Submission No. 5.

23 AgForce, Submission No. 10.

24 Public hearing transcript, 10 April 2014, p 29.

25 Department of Natural Resources and Mines, Correspondence dated 14 April 2014; Public hearing transcript, 10 April 2014, p 29.

The committee is satisfied the department will adequately inform affected landholders of the changes to their rights and obligations in relation to the proposed land tenure reforms and supports this approach.

Application for extension

An extension application for a rolling term lease may be made at any time in the last 20 years of the term of the lease or at an earlier time approved by the Minister, if the Minister is satisfied special circumstances exist.

AgForce proposed that all lessees should be able to make an application for a rolling term lease extension at any time within the term of their lease in order to 'seek additional security going forward.'[26] In response to this, the department advised the Bill would provide for:[27]

> *… a person to apply in the final 20 years of what is typically leases of a 30-year term. Outside that 20 years it specifically provides for the minister to consider special circumstances. The bill does not restrict or specify what those circumstances may be. We have considered that that would include the common reasons that people want to have a longer term and that would be refinancing or sale of the property.*

Committee comment

Based on the department's response, the committee is satisfied the Bill enables the Minister to extend a rolling term lease prior to the final 20 years of a lease under special circumstances, which may include the need to secure a longer term lease in the event of refinancing or sale of the property. The committee notes the suggestion from AgForce but does not see a need for further amendment.

2.1.2 Land management agreements and appropriate use and tenure

Clauses 26, 33 and 61 of the Bill remove the requirement for rural leaseholders to enter into a land management agreement (LMA) at the time of the rollover (renewal of lease).[28] The Bill also proposes to remove the current requirement to consider the most appropriate use and tenure for the land.

Land management agreements

While LMAs would no longer be required as part of the lease renewal process, they would remain as a tool of compliance in the same format as they currently exist:[29]

> *It is the process and the timing that would change with these amendments. So it is still a land management agreement that has the same characteristics as the current.*

AgForce expressed its support for the amendments but sought clarification regarding the grounds on which the Minister may seek to cancel a land management agreement with the lessee's agreement. The department advised the grounds for cancellation would be:[30]

- *where the land is not degraded or is not at risk of land degradation and the lessee is fulfilling their duty of care for the land; or*
- *the land is not subject to a remedial action notice.*

A number of submitters opposed the removal of the current requirement for lessees to enter into LMAs.[31]

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[26] Public hearing transcript, 10 April 2014, p. 10.
[27] Public hearing transcript, 10 April 2014, p. 29.
[28] Explanatory Notes, p 6.
[29] Public hearing transcript, 10 April 2014, p 31.
[30] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

The Capricorn Conservation Council (CCC) was concerned the introduction of automatic extension of leases would result in land management no longer being assessed independently and no opportunity to consider whether the purpose of the lease was still the best use of the land. CCC stated this could result in a lack of competition for use of the land and the inability to undertake ecosystems health assessments.[32]

The Great Barrier Marine Park Authority also expressed concern about the impact on the condition of the land and was of the view that the requirement for LMAs should be retained. The Wildlife Preservation Society of Queensland also called for the retention of LMAs during the renewal process.[33]

The department assured the committee it would 'continue to engage with rural lessees to promote sustainable management of state land.' The department emphasised lessees have a duty of care to ensure the condition of the land is maintained and that the department monitors land condition in a range of ways including, '… auditing, monitoring and compliance activities…' such as '… desktop, remote sensing and on ground evaluations such as land condition assessments' to ensure that lessees are managing the land appropriately.

The department further advised that the Bill does not remove the current powers of the Minister administering the *Land Act 1994* to require a land management agreement for any rural leasehold land (regardless of size) where:[34]

- *the land has been recognized as degraded;*
- *there is a possible threat of land degradation; or*
- *the lessee has not fulfilled their duty of care obligation.*

Importantly, the Bill would not remove the ability of the extension of a lease to be forfeited if the lessee failed to comply with their duty of care obligations. In this circumstance, the Chief Executive may enter into possession and sell the lease. The department advised that this would be used as a method of last resort.[35]

AgForce provided the committee with details of a land management program that began approximately three years ago as a partnership between the Fitzroy Basin Association, the Department of Agriculture, Fisheries and Forestry, and the Department of Environment and Heritage Protection. The program involved an industry-driven, voluntary, best land management practice that included modules relating to soil health and grazing land management. The program also included a mechanism to issue notices for compliance.[36]

Committee comment

The committee appreciates the concerns raised by some submitters regarding the removal of the requirement for lessees to enter into a land management agreement at the time of renewal. The committee is satisfied the amendments would not result in poorer land management by lessees on

[31] Great Barrier Reef Marine Park Authority, Submission No. 9; Capricorn Conservation Council, Submission No. 13; Wildlife Preservation Society of Queensland, Submission No. 15.

[32] Capricorn Conservation Council, Submission No. 13.

[33] Wildlife Preservation Society of Queensland, Public hearing transcript, p 9.

[34] Land management agreements have been used previously to apply to all term leases for agricultural, grazing or pastoral purposes that cover an area of 1000 hectares or more: Department of Natural Resources and Mines, Correspondence dated 6 May 2014; Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

[35] Ibid.

[36] Public hearing transcript, 10 April 2014, p 23.

the basis that the Minister's current powers under the *Land Act 1994* can require a land management agreement if the Minister believes the land is degraded or the lessee has not fulfilled their duty of care obligation.

The committee also notes the department will continue to engage with lessees to ensure ongoing and appropriate land management and monitor compliance through a range of tools, including land management agreements, desktop, remote sensing, and on the ground evaluations. For these reasons, the committee is satisfied the Government will continue to fulfil its monitoring and compliance role in regards to land management of leasehold land.

The committee supports the broader implementation of the program outlined by AgForce as another method for promoting best land management practice. The committee seeks clarification if it is the intention of the State Government to promote the program's expansion outside of the Fitzroy Basin.

Point for clarification 1

The committee seeks clarification from the State Government on whether the program implemented by the Fitzroy Basin Association in partnership with AgForce Queensland, the Department of Agriculture, Fisheries and Forestry, and the Department of Environment and Heritage Protection to promote best practice land management will be expanded to areas outside of the Fitzroy Basin.

Most appropriate use and tenure for land

In response to concerns relating to the removal of the consideration of the most appropriate use and tenure for the land at the time of a rural lease renewal, the department advised the current renewal provisions in the *Land Act 1994* are outdated:[37]

> [The provisions are] *primarily intended to enable the closer settlement of the State. However, this created a situation where management agencies would wait until renewal of a lease to allocate land for public purposes such as environmental purposes. If a government entity considers part of the leased land is needed for a public purpose including environmental purposes, it may be acquired by the government entity under an acquisition law including the* Land Act 1994 *at any time, rather than waiting (potentially a significant amount of time) until the lease is due for renewal.*

Committee comment

The committee is satisfied the proposed removal of the requirement to consider the most appropriate use and tenure for the land at the time of a renewal of lease will not adversely affect the interests of Queenslanders. The State Government may still acquire leased land for a public purpose at any time. Further, the proposed amendments in the Bill do not remove the requirement under the Land Act to consider the most appropriate use and tenure if the lessee applies to convert the tenure to a perpetual lease or freehold title.[38]

2.1.3 Review of lease conditions and regulated lease conditions

Clause 70 proposes to insert new provisions relating to the placement of particular conditions for leases, licences and permits into regulation. The explanatory notes further explained:[39]

[37] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.
[38] Ibid.
[39] Explanatory Notes, p 24.

> *The regulation may impose a condition on a category of leases, licences or permits. Unless it is removed, the condition is binding on the land holder irrespective of whether or not the condition is registered.*

Several submitters raised minor queries relating to clause 70 of the Bill.[40] AgForce sought further information regarding the objective of the amendments and how and when the department would use the regulated conditions.[41]

The department advised it would 'use the regulated conditions to modernise and standardise conditions of term leases being extended' and that the regulated conditions would have an effect at the time the lease is extended.[42]

One leaseholder submitted that the conditions of leases need to be fair and workable. The submitter was concerned about the ability to resume a lease at any time with as little as six months' notice for a stock grazing permit, and the payment of only 'unimproved value' for the land, as well as the potential requirement that a lessee pay for the removal of infrastructure improvements if the lease was resumed.[43]

The department advised:[44]

> *As part of the process of preparing the regulated conditions for leases for grazing, agriculture and pastoral purposes DNRM will be examining whether a condition is unfair and unworkable.*

In relation to the ability for a stock grazing permit to be revoked with as little as six months' notice, the Department of Agriculture, Fisheries and Forestry stated there was an 'existing process to deal with revocations of state forests for whatever purpose', and for this reason, there 'was no need to incorporate it into the bill'.

Committee comment

The committee is satisfied the query raised by AgForce in relation to lease conditions and regulated lease conditions has been adequately answered by the department.

In relation to the concerns raised regarding the nature of 'unfair and unworkable' conditions of a lease, the committee believes further consultation with relevant stakeholders is required to fully appreciate the issues involved. For this reason, the committee recommends the department consults with relevant stakeholders during its preparation of the regulated lease conditions for grazing, agriculture and pastoral purpose leases to ensure conditions are fair and workable.

Recommendation 2

The committee recommends the Department of Natural Resources and Mines consults with relevant stakeholders during its preparation of the regulated lease conditions for grazing, agriculture and pastoral purpose leases to ensure conditions are fair and workable.

[40] Ms M Finger, Submission No. 1; AgForce, Submission No. 10.
[41] AgForce, Submission No. 10.
[42] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.
[43] Ms M Finger, Submission No. 1
[44] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

2.1.4 Simplifying conversion of pastoral purpose term leases to freehold title

Clause 47 of the Bill amends section 166 of the *Land Act 1994* to remove the restriction on the ability of the lessee of a pastoral lease to convert the lease directly to freehold. Currently, this process requires an additional step of converting the pastoral lease to a perpetual lease prior to conversion to freehold. The proposed amendment aims to reduce regulatory burden on lessees and government and reduce the conversion costs for term lessees.[45]

Submitters expressed support for the amendment and considered it would reduce costs and red tape during an application to convert a pastoral purpose term lease to freehold title and provide additional security for leaseholders.[46]

One leaseholder expressed her support for the conversion to freehold but submitted the definition of 'freehold' needed to be clarified. The leaseholder also questioned whether many lessees would see any point in converting to freehold 'given the number of tenure-blind legislations, erosion of "property rights" and lack of confidence and security from one government term to the next.' The leaseholder highlighted that any conversion process would need to be 'practical and affordable'.[47]

AgForce was supportive of the amendment that would provide for the conversion of term leases to freehold under the *Land Act 1994*, it also strongly voiced its support for a clear pathway to make 'tenure conversion less onerous and simpler' and to improve the 'pathway for term leases to go to freehold.'[48]

The department advised:

> *The process of conversion of rural leasehold land to freehold has been simplified and streamlined through the amendment to section 166 of the* Land Act 1994 *(clause 47). Other opportunities to streamline the conversion process will be a consideration as part of the next phase of land tenure reform.*

Committee comment

The committee notes the general support for the proposed new method of converting a term lease to freehold. Some of the concerns, however, raised a lack of clarity regarding the pathway to freehold, and how the proposal would significantly improve the conversion process, a lessee's rights and the possibility of a policy change with a change in government.

The committee notes the department's advice that it will consider other opportunities to streamline the conversion process for term leases to freehold title during the second phase of the land tenure reforms. The committee strongly encourages the Government to consult with stakeholders in terms of the second phase of land tenure reforms in order to workshop these types of concerns.

2.1.5 Consistency with native title legislation

Background

Section 28 of the *Land Act 1994* provides that any action under the Land Act must not be inconsistent with the *Native Title Act 1993* (Cwlth) (Native Title Act or NTA) and the *Native Title (Queensland) Act 1993*. 'Action' includes, *inter alia*, granting land, renewing a lease or converting a lease to another form of tenure.[49] In other words, unless native title has been extinguished, the requirements of the

[45] Explanatory Notes, pp 7 and 21.
[46] M Finger, Submission No. 1; AgForce, Submission No. 10.
[47] M Finger, Submission No. 1.
[48] Public hearing transcript, 10 April 2014, p. 20.
[49] *Land Act 1994*, s 28(4).

Native Title Act must be complied with whenever the Government proposes a land dealing in that land.

The Native Title Act sets out a 'future acts' regime. Future acts are acts that affect native title, such as the grant of a new lease over land or the amendment of a lease allowing new activities to occur on that land. The Native Title Act sets out a framework for validating future acts to ensure a future act is consistent with native title. One process stipulated by the Native Title Act is the Indigenous Land Use Agreement (ILUA) process. The ILUA process essentially provides for the native title holders' or native title claimants' consent to the carrying out of the future act. Another way to ensure a future act is valid is to comply with section 24IC of the Native Title Act.

Section 24IC of the Native Title Act provides that a future act is valid if it is, a renewal, a re-grant or re-making of a lease, or an extension of a term of a lease and the renewal or extension does not confer any greater rights or interests over the land covered by the original lease.

Issues raised by submitters

Both the Cape York Land Council and North Queensland Land Council expressed concerns in relation to the Bill's consistency with native title legislation.[50]

CYLC stated 'the amendments currently proposed have the potential to significantly affect the rights and interests of Indigenous people in Cape York, and should not proceed unless and until native title issues have been clearly identified and addressed.'[51]

> *We submit the provisions of the Bill, particularly those relating to term leases for agriculture, grazing and pastoral purposes and declared offshore tourism leases issued under the* Land Act 1994 (Qld)*, are an attempt to further extinguish native title rights and interests, in circumstances where there is no adequate provision for compensation to the native title holders.* [52]

In relation to rolling term leases, CYLC considered:

> *… the extensions are effectively mandatory, and may therefore affect the rights and interests held by native title groups. We submit that the provisions effectively seek to make the leases in question perpetual (or at least longer than the original term) as covered by the* Native Title Act 1993 (Cth) *s.24IC(4)(b) or (c), so as to trigger the procedural rights under s.24ID(4)…*

CYLC also considered the proposed provisions allowing for the conversion of pastoral term lease to freehold, and the amalgamation of a term lease with an adjoining perpetual lease would trigger native title and require an ILUA.[53] CYLC opposed the amendments until the issues have been adequately addressed.[54]

The NQLC raised similar concerns:[55]

> *Achieving the stated objectives may result in long periods restricting the exercise of many native title rights and interests because there is no limit to the number of rolling terms that will be available, or it will result in extensive extinguishment of native title when there has already been a significant level of extinguishment in Queensland by previous exclusive possession acts. …*

[50] Cape York Land Council, Submission No. 12; North Queensland Land Council, Submission No. 14.
[51] Cape York Land Council, Submission No. 12.
[52] Ibid.
[53] Public hearing transcript, 10 April 2014, p 17.
[54] Cape York Land Council, Submission No. 12.
[55] North Queensland Land Council, Submission No. 14.

> *The extensive extinguishment could occur by the conversion of term leases to perpetual lease or freehold and the suspension of some native title rights and interests could occur pursuant to the non-extinguishment principle by the rolling term extension of term leases.*

NQLC further argued that:[56]

> *… the extension of a term lease to a rolling lease of quite a long duration would be a future act and native title would have to be addressed…*

Following the public hearing, the committee met privately with representatives of both land councils, as well as Traditional Owners in Cairns to further discuss their concerns. During this meeting, the land councils echoed their concerns with the provisions of the Bill. In particular, the land councils were both concerned that a legal argument could be mounted on the basis that rolling term leases could be considered perpetual leases under the Native Title Act. This is because the Bill proposes that the Minister must grant an extension of a term lease and there are no limits to the number of times an extension could be given. The land councils suggested that the incremental increase in tenure security may grant an exclusive right over the land and extinguish native title as found in *Wilson v Anderson* [2002].[57]

The Department of Natural Resources and Mines responded to the issues raised in submissions:[58]

> *…(a) in relation to the rolling term leases, the department's position is that these extensions can proceed under section 24IC of the NTA (subject to meeting the relevant requirements). As the extended term cannot be longer than the original term then the extension of the term is not a longer term and therefore will not trigger the right to object process under section 24MD(6B) of the Native Title Act. Under section 24IC, there are no procedural rights but compensation is payable for the effect of the extension on native title. The department's view is that under the proposed rolling term lease provisions are no greater effects on native title rights as result of the extension.*
>
> *(b) the actions of freeholding unallocated State land, allowing term leases to go directly to freehold or the grant of a perpetual lease where a term lease and perpetual lease is amalgamated cannot simply extinguish native title unless that is the outcome provided under the Commonwealth Native Title Act. As noted above, the State cannot over-ride the Commonwealth Act and not appropriately address native title. For example, the freeholding of unallocated state land or a pastoral holding will likely require an Indigenous land use agreement which is a voluntary agreement in which the native title party must consent to the surrender of native title. Where an ILUA is the only option, there can be no extinguishment unless the native title party consents.*

Committee consideration and comment

The issues before the committee regarding native title are complex. The committee sought independent legal advice from McCullough Robertson on the extent of the Bill's consistency with native title legislation. A copy of the legal advice is provided in Appendix C of this report.

[56] Public hearing transcript, 10 April 2014, p 16.

[57] The High Court decision in *Wilson v Anderson* [2002] determined that native title had been extinguished by perpetual grazing leases granted under the New South Wales *Lands Act 1901*. The High Court found that a perpetual pastoral lease was completely inconsistent with native title so as to extinguish it completely.

[58] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

Each of the land dealings proposed by the Bill, in particular clauses 46, 47 and 57 constitute future acts which must comply with the Native Title Act. The department advised the committee that clauses 47 and 57 relating to the conversion of pastoral leases to freehold and the amalgamation of term leases to perpetual leases would require an ILUA. The committee notes that the negotiation and completion of an ILUA will ensure those acts are valid and consistent with native title.

In relation to clause 46 providing for rolling term leases, there are two ways in which this act can ensure compliance with native title: the first being compliance with section 24IC of the NTA and the second being the negotiation of an ILUA.

The legal opinion provided to the committee indicated that the provisions relating to rolling term leases satisfy the requirements of section 24IC of the Native Title Act on the basis that the extension of the lease is no greater than the original term and the rights and interests of the extended lease are no greater than they previously were (and are for the same purpose).

The advice indicated that, importantly, provided that rolling term leases are pursued in accordance with the requirements of section 24IC, a rolling term lease would not give rise to a right of exclusive possession and extinguish native title.

Based on the advice the committee has received, the committee is satisfied the Bill complies with the requirements of the Native Title Act and has no significant concerns with recommending the Bill be passed in its current form. The committee does not consider that the Bill requires amendment to clarify its consistency with native title legislation. The committee does, however, see the benefit in the Minister clarifying in his second reading speech that the intent of rolling term leases is not to create perpetual leases.

Recommendation 3

The committee recommends the Minister for Natural Resources and Mines clarifies in his second reading speech that the intent of rolling term leases is not to create perpetual leases.

2.1.6 Protection of state forest products on land being freeholded

Part 3 of the Bill proposes amendments to the *Land Act 1994* and the *Forestry Act 1959* to introduce a 'forest consent area' and a 'forest consent agreement' that would replace the use of forest entitlement areas. This would allow the State to retain its ownership of the forest products when State land is converted to freehold tenure.

The aim of the proposed amendments is to overcome the current difficulties with the forest entitlement area 'in getting the land owner to purchase the area when the state no longer requires the area' and will allow the lessee to purchase the land containing the forest products with the State retaining the ownership of such products.

The State would protect its interest in the forest products under the proposed forest consent agreement, which would be registered as a profit a prendre. This would bind the owner and all successors in title even if the underlying tenure is freehold and ensures access arrangements and interests in commercial timber are retained by the State.[59]

[59] Explanatory Notes, p 7 & 16-17.

Definition of forest products

AgForce supported the proposed amendment to the *Forestry Act 1959* introducing forest consent agreements. However, AgForce submitted the definition of 'forest products' is broad and may result in lessees unknowingly breaching the Act. AgForce stated:[60]

> *…under the definition if you go to forest products it basically includes all vegetable growth and material of vegetable origin whether dead or living and whether standing or fallen, including timber. Inherently that could include the grass which the lessee basically needs for a cattle grazing operation or any manner of things. That is interpreted on the particular day, so we know that probably what is commercial today to forestry may not be in 10 or 20 years' time.*
>
> *So what we sought is that we lock in what particular resources they are so that at a point in time someone who may have signed up for a particular lease knows that the state retains the mulga, or the sandalwood, or the cypress aspects of that but not the grass—basic concepts like that.*

The department advised the committee the definition of forest products currently includes exceptions for stock routes and forest entitlement areas but not for the proposed forest consent areas. To ensure the protection of lessees or owners on a forest consent area, the department advised was seeking approval to make an amendment to the Bill to ensure that the exemption applies to forest consent areas. Further:[61]

> [The] *Department of Agriculture, Fisheries and Forestry (DAFF) notes that the existing exemption within the definition of forest products under the* Forestry Act 1959 *for grasses on a stock route, grasses [Indigenous or introduced) or crops grown on a Crown holding by the lessee or by the licensee or on a forest entitlement area by the lessee or owner needs to be extended to the lessee or registered owner of the land containing the forest consent area.*

Committee comment

The committee supports the concern raised by AgForce that the current exemption contained within the definition of forest products (that currently applies to forest entitlement areas) does not apply to forest consent areas. In this regard, the committee encourages the Minister to support an amendment to the definition of forest products.

Recommendation 4

The committee recommends the definition of forest products under the *Forestry Act 1959* be amended to ensure that the current exemption for forest entitlement areas also applies to the proposed forest consent areas.

Conditions of forest consent agreements

Clause 48 of the Bill provides for the chief executive of DAFF to set conditions of a forest consent agreement as part of the conversion of term leases to freehold under the *Land Act 1994*. AgForce sought involvement with DAFF to ensure the conditions of forest consent agreements are clear and

[60] AgForce, Submission No. 10; Public hearing transcript, 10 April 2014, p 25.

[61] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

reasonable. The department confirmed both DAFF and DNRM have agreed to meet with AgForce. DAFF clarified that the conditions required by the chief executive (forestry):[62]

> *will relate to the extent, location and boundaries of the area required for the forest consent area and to the requirement for the lessee to enter into a forest consent agreement for the forest consent area.*

Committee comment

The committee supports the involvement of AgForce in departmental discussions regarding the conditions of forest consent agreements and is pleased to note the agreement of DAFF and DNRM to meet with AgForce to discuss this matter.

2.1.7 Granting of term leases, permits to occupy and stock grazing permits

The Bill proposes amendments to section 35 of the *Forestry Act 1959* relating to the granting of term leases, permits to occupy and stock grazing permits within State Forest. The amendment would 'confirm that a term lease under the Land Act may be granted, extended or renewed only if the grant, renewal or extension would not prejudice or oppose the objects of the Forestry Act.' In addition, 'any extension of a term lease will be made only with the agreement of the chief executive of the Forestry Act.'[63]

A submitter who holds a grazing lease on State Forest expressed concern that the proposed changes would not go far enough in providing tenure security for forestry leaseholders by improving their asset's 'banking equity', which could impact on leaseholders' investment into, and management of their land.[64]

While AgForce was similarly concerned about security for stock grazing permit holders on forestry land, it stated on the contrary that the amendments would improve tenure security for those permit holders:[65]

> *Term leases are for graziers the preferred form of tenure upon forestry land as they usually offer better terms and conditions than permits. The new rolling lease structure is of particular interest to term lessees on forestry given their history of insecurity…'*

The department clarified the Bill 'does not seek to upgrade the security of stock grazing permits over State forests and or of permits to occupy over State forests or timber reserves, as the amendment only seeks to enable term leases with rolling term extensions over these reserves.' However, the Bill provides that a 'holder of a stock grazing permit issued under the *Forestry Act* to graze a defined area of State forest could apply to have their permit converted to a term lease issued under the *Land Act*.' The department also clarified any application to convert lease tenure 'would be subject to meeting the requirements of the *Native Title Act 1993*.'[66]

Committee comment

The committee is satisfied the proposed amendments providing the holder of a stock grazing permit to convert to a term lease, subject to meeting the requirements of the *Native Title Act 1993*, and the

[62] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

[63] Explanatory Notes, p 15.

[64] M Finger, Submission No. 1. 'Unfair and unworkable' conditions include: the lease may be resumed at any time, and with as little as 6 months' notice; only unimproved value will be paid (unless an improvement has prior approval, and approval for compensation; and the lessee may be liable to pay for the removal of infrastructure improvements.

[65] AgForce, Submission No. 10.

[66] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

provision to make application for a rolling term lease extension would offer improved security of tenure for forestry leaseholders.

2.1.8 Removal of restrictions on eligibility criteria for holding pastoral leases

Clauses 53, 56 and 57 of the Bill would 'remove the restriction on corporations owning and individuals aggregating pastoral holdings'. The current provisions in the Land Act prevent leases from being held by family corporations that are not restricted to the lessee, their spouse and children, and an Aboriginal corporation.[67] The department provided the following benefits of the amendments:[68]

- socio-economic benefits obtained through increased flexibility for property build-up and modernisation of business structure/ownership arrangements
- capitalisation arrangements and succession planning
- increased investment opportunities in regional and rural Queensland
- cost savings through the reduction of red tape and removal of the need for land dealings and legal manoeuvres designed to circumvent the corporation and aggregation restrictions
- minor savings to government in terms of administration costs, and
- Indigenous corporations being able to hold property for community and business benefit in accordance with their mandates.

In regard to clause 53 and despite having reconsidered their policy position on a number of occasions, AgForce opposed the amendment and supported retaining the current restrictions on corporations holding perpetual and freeholding leases. Historically, AgForce has supported the retention of the restrictions on the basis that the restrictions support the family-farm unit, which represents the general pastoral industry profile.[69]

AgForce supported clauses 56 and 57 that would allow the amalgamation of two or more leases where each lease is either a term lease for pastoral purposes or a perpetual lease for pastoral purposes. AgForce, however, questioned the ability of pastoral leaseholders to amalgamate term and perpetual leases given that the leases will be for perpetual leases, which would require native title to be addressed. The department clarified:

> *The amendment to section 176K or the* Land Act 1994 *will not stop a term lease for pastoral purposes being amalgamated with another term lease for pastoral purposes. The amendment by clause 56 and 57 will allow the amalgamation for a term lease for pastoral purposes with a perpetual lease for pastoral purposes, where native title has been appropriately addressed.*

Committee comment

While the committee understands AgForce's support for the retention of the restriction on corporations holding perpetual and freeholding leases on the basis of recognising the family-farm unit, the committee did not hear any other evidence to retain this restriction. The committee therefore supports the proposed amendment.

[67] Department of Natural Resources and Mines, Correspondence dated 14 April 2014; Explanatory Notes, p 7.
[68] Explanatory Notes, p 7.
[69] AgForce, Submission No. 10.

2.1.9 Relocating operational matters and removing duplication for land rent and purchase price to regulation

The Bill proposes to relocate operational matters relating to land rent and purchase price for state land from the *Land Act 1994* to subordinate legislation, including details about calculating land rents, purchase price, hardship provisions and payment processes.

The explanatory notes state the relocation of these matters would present an opportunity to 'remove red tape and unnecessary costs, remove duplication of legislative powers relating to forgiveness of deferred rents, and increase the Queensland Government's capacity to respond more effectively to conditions of hardship.' The department also stated that placing these operational matters within regulation would ensure flexibility and responsiveness in times of natural disaster.[70]

Two submitters expressed concern about the proposed relocation of rental arrangement provisions to regulation.[71] AgForce was concerned about the removal of all rental arrangement provisions to regulation due to the potential impact on scrutiny and tenure security and stated it:[72]

> *…is generally adverse to the placement of significant legislative sections into regulation given the lesser level of certainty, scrutiny and consultation that is associated with regulation amendment as opposed to primary legislation.*

<u>The method for calculating rents</u>

Both submitters questioned how rents would be calculated under the proposed amendments. One leaseholder was particularly concerned about the use of purchase price as a benchmark for calculating rents.[73] AgForce supported an 'alternative (and affordable) rental regime be put in place' and advised the committee it had been involved in a Ministerial round-table in 2013 where it had presented 11 separate recommendations for an alternative rental regime. AgForce's key point in relation to the calculation of rents was that 'sustainable decisions on rents must be reached'. AgForce advised it had not received a response from Government to date about its recommendations.[74]

<u>Calculation of the value of leasehold land and purchase price</u>

AgForce was also concerned about how the proposed amendments to the calculation of the value of leasehold land under clause 23 and the setting of purchase price through regulation under clause 51 of the Bill would 'prescribe a fair and transparent value based on information which is understood and justifiable.'

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70 Explanatory Notes, pp 7-8.

71 M Finger, Submission No. 1; AgForce, Submission No. 10.

72 AgForce, Submission No. 10.

73 M Finger, Submission No. 1: The reasons for concern included a) investing their own capital into their land and infrastructure will increase the market value of the property and therefore drive a rise in land rental; b) an increase in rent is not reflected in an increase in government services for the same property; c) property values can fluctuate greatly over short periods of time, making rent calculation difficult; d) the long term average price will always rise; e) an increase in a property's purchase price does not necessarily reflect an increased ability to generate a profit from this same land; and f) whilst the long-term average price of land may continue to rise indefinitely, the amount of production that can be sustainably harvested from that same land has a limit.

74 AgForce, Submission No. 10; Public hearing transcript, 10 April 2014, p 21.

The department advised:[75]

> *the provisions being amended by the clauses that relate to purchase price/unimproved value are not being 'relocated' to regulation; the provisions are amended but will remain in the Act. The only exception is that the definition for unimproved value as provided by section 434 of the Land Act (Clause 88) will be omitted from the Act and moved to the Land Regulation.*

The department confirmed the method for determining the purchase price/unimproved value would be defined by regulation and that this would elevate its current status from departmental policy to regulation:[76]

> *Currently, the method for determining purchase price/unimproved value for the provisions amended by the clauses is through departmental policy. This departmental policy will now be elevated to regulation through these reforms, and so provide better scrutiny by the legislative assembly.*

Further discussion in relation to this proposed amendment is included in Part 3 of this report relating to fundamental legislative principles.

Payment and collection of rents

AgForce stated it was unable to comment about the effectiveness of the amendments proposed under clause 100 of the Bill relating to the payment and collection of rent and instalments as the regulations and details are not yet known.[77]

Consultation period on regulation

In response to AgForce's request for a 60-day consultation period on the regulation when it is tabled, the department advised that the Government would consider opportunities to streamline and review the provisions relating to land rents and purchase price, if the Bill is passed.[78]

The department further advised that information regarding the regulation would be made available 'once government had settled its position on that prior to debate.'[79] The Hon Andrew Cripps MP, Minister for Natural Resources and Mines confirmed he would make this information available to Parliament:[80]

> *In moving the detail of financial matters to the regulation, the government is presently considering changes to rural rent rates and rural freeholding purchase price methodologies. Once the government's consideration of these matters has been finalised, I will provide further information to the parliament about proposed amendments to regulation to assist it in considering the implications and effect of the land tenure reform initiatives in this bill.*

The department also advised it was 'desirable' that, if the Bill was passed, the accompanying regulation would be in place by 1 July 2014 'because of the billing cycle for the rents being on the financial year.'[81]

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75 Department of Natural Resources and Mines, Correspondence dated 6 May 2014.
76 Ibid.
77 AgForce, Submission No. 10.
78 Department of Natural Resources and Mines, Correspondence dated 14 April 2014; AgForce, Submission No. 10.
79 Public hearing transcript, 10 April 2014, p 29.
80 Record of Proceedings, Queensland Parliament, 19 March 2014, p 709.
81 Public hearing transcript, 10 April 2014, p 29.

Committee comment

The committee notes the concerns raised by stakeholders regarding the relocation of land rent and purchase price provisions for state land from the *Land Act 1994* to subordinate legislation. The committee does not support the view that it would result in less security for leaseholders. In relation to parliamentary scrutiny, the committee notes that these matters would still be subject to disallowance by the Legislative Assembly under section 50 of the *Legislative Standards Act 1992*. The committee can see merit in the department's view that the relocation of these matters to regulation would improve flexibility and responsiveness in times of natural disaster and hardship.

The committee notes the Minister for Natural Resources and Mines has undertaken to provide further information about the proposed amendments to the regulation prior to debate on the Bill.

The committee is unclear, however, whether the Government will undertake any consultation with key stakeholders during its review of provisions relating to land rents and purchase price. The committee believes there is value in consulting with key stakeholders to ensure their views regarding the methods for calculating rent, the value of leasehold land and purchase price, as well as provisions relating to the payment and collection of rent and instalments are taken into consideration during the Government's review process.

The committee requests the Minister for Natural Resources and Mines clarifies whether consultation with key stakeholders on the methods for calculating rent and purchase price/unimproved value of leasehold land and matters relating to the payment and collection of rent and instalments has, or would, occur prior to the tabling of the regulation.

Point for clarification 2

The committee requests the Minister for Natural Resources and Mines clarifies whether consultation with key stakeholders on the methods for calculating rent and purchase price/unimproved value of leasehold land and matters relating to the payment and collection of rent and instalments has occurred, or would occur, prior to the tabling of the regulation.

2.2 Water licensing and taking of water

2.2.1 Taking of water

Clause 131 of the Bill proposes to amend section 24 of the *Water Act 2000* and enable the chief executive to limit or prohibit the taking of water from a watercourse, lake or spring for a relevant purpose if there was a water shortage. The explanatory notes state:[82]

> *This will result in improved outcomes for the water resource and more equitable management arrangements between different types of water users.*

The policy objective of this amendment aims to reflect the changes introduced by the *Land, Water and Other Legislation Amendment Act 2013* that gave individuals a statutory right to take or interfere with water for a variety of purposes.[83]

AgForce opposed the inclusion of 'stock purposes' within the definition of a 'relevant purpose' (clause 131(4)). AgForce argued the inclusion of stock purposes could further restrict the taking of water for livestock purposes and therefore 'may result in adverse animal welfare outcomes.' AgForce also advised the committee that this amendment could result in 'additional costs and pressures for

[82] Explanatory Notes, p 8.
[83] Explanatory Notes, p 2.

livestock owners in having to destock the area, transporting in or establishing alternative water supplies'.[84]

The department advised:[85]

> *The restriction powers in section 24 of the* Water Act 2000 *originated in the* Water Resources Act 1989 *and were introduced into the Water Act in 2003. The power has been rarely used and only as a last resort during drought conditions. It has never been used to restrict stock water access. The situation would need to be extreme for this to occur, such as a need to protect town water supplies (and it is highly unlikely that there would be any stock left in the area in such dire circumstances). In some instances, it is the protection of stock water which prompted the restrictions (such as in the Mary Basin in 2007). The proposed amendment extends the existing power to the new authorisations to take water that were introduced in 2013, ensuring that all water users who are able to access water without an entitlement are treated equally.*

Committee comment

The committee is satisfied the amendments would not adversely affect stock water access and that the amendment would fulfil its intention to protect water supply in the event of a water shortage by treating all water users who are able to access water without an entitlement, equally.

2.2.2 Subartesian water licensing

The Bill proposes to make certain groundwater works exempt from requiring development approval under the *Sustainable Planning Act 2009* in order to reduce red tape. Exempt works would include:[86]

- Works that take or interfere with subartesian water:
  - all stock and domestic bores
  - new non stock and domestic bores outside critical setback distances
  - all replacement bores within 10m of original bore
  - pump testing bores, and
  - monitoring bores.
- Works that take or interfere with artesian water:
  - all monitoring bores.

The department further explained:[87]

> *The most significant change* [to the Water Act] *proposes to provide a development approval exemption for certain groundwater works. The current regulatory framework often requires water users to hold both a water licence and a development permit to access subartesian water. For works that take groundwater such as a bore, the requirement to obtain separate development approval is in some cases an unnecessary burden that does not reflect the level of risk posed to the water resource. In addition, often the development approval merely duplicates the requirements specified on the water entitlement. In order to remove this unnecessary burden to industry, community and government, it is proposed to exclude the assessment triggers for the works listed*

[84] AgForce, Submission No. 10.
[85] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.
[86] Explanatory Notes, p 2.
[87] Department of Natural Resources and Mines, Public briefing transcript, 2 April 2014, pp 4-5.

> *above from the water regulation and a number of water resource plans that regulate groundwater. This streamlining of regulatory approvals will provide for greater efficiencies and allow these works to be regulated solely under the Water Act. The removal of this unnecessary regulation will assist in reducing the regulatory burden and costs on water users while reducing the administrative burden on departmental officers.*

Committee comment

The committee did not hear any evidence opposing this amendment and supports the department's view that the amendment would reduce the regulatory burden for government, industry and the community.

2.2.3 Validity of particular water decisions

Clause 132 of the Bill proposes amendments to the *Water Act 2000* (Water Act) in order to provide 'certainty for thousands of water licence holders in Queensland by removing any doubt about the validity of water licensing decisions that relate to current water licenses.' A departmental review of a sample of water licencing decisions 'found that the department failed to take particular factors into account when making water licensing decisions' and concluded that 'many water licence decisions were legally deficient in considering one or more of the mandatory decision making criteria that are prescribed in the Water Act.'[88]

The department emphasised:[89]

> *…the validation provided by this clause does not apply to decisions that, within six months of the decision, were the subject of internal review or consideration by a court. A six month period is sufficient to capture the existing timeframes for appeal (for example, under section 863 of the Water Act an application for internal review of a water licensing decision must be made within 30 business days) and provide some flexibility to extend the timeframes as appropriate. This provision also ensures that existing rights of appeal provided in both* the Water Act *and the* Judicial Review Act 1991 *are preserved and that current appeals can continue to be considered on their merits.*

Both Wildlife Preservation Society of Queensland (WPSQ) and the Queensland Environmental Defenders Office (EDO Qld) questioned whether amendments to validate water licence decisions retrospectively was best practice and suggested that it conflicts with the intent of the Water Act.[90] EDO's objections included:[91]

- the lack of consultation on the amendments,
- providing certainty for water licence holders is not sufficient to overcome the concerns relating to retrospective changes,
- removal of accountability of the chief executive and department for failing to comply with the law is against best practice and inconsistent with the achievement of the objects of the *Water Act 2000*, and

[88] Explanatory Notes, p 3.

[89] Explanatory Notes, pp 34-35.

[90] Wildlife Preservation Society of Queensland, Submission No. 15; Environmental Defenders Office (Qld), Submission No. 7.

[91] Environmental Defenders Office (Qld), Submission No. 7; Wildlife Preservation Society of Queensland, Public hearing transcript, p 10.

- the integrity of the water licencing scheme would be undermined with the retrospective validation of such a large number of errors.

For these reasons, EDO Qld submitted the department should reassess all applications that may be invalid, rather than retrospectively validating the licences.

The department advised:[92]

> *It is not feasible for the department to individually review each decision that relates to current water licences. Validation is required to remove any doubt about the validity of water licensing decisions in a timely manner. It is untenable for the department's clients to be uncertain about their ability to take or interfere with water for any period of time, including the time it would take to review all licensing decisions.*

The department further advised:[93]

> *…the Water Act currently prescribes a significant list of criteria that need to be considered as part of the decision making process. That relates to granting licences, renewing licences, amending licenses and reinstating a number of licences. The various transactions are listed in the provision section 132. If any one of those criteria was not considered as part of the process, that creates doubt over the validity of that grant. Across Queensland there are something like 23,000—24,000 water licences that authorise taking and interfering with ground water, surface water and storage of water. The concern was that quite a large number of those licences are potentially invalid. Given the property right that is associated with a water entitlement, obviously a water entitlement is a high value asset that is fundamental to many rural, industrial and mining developments. This provision would take away any doubt over the validity of those licences that individuals and companies—local governments for that matter—currently hold in relation to the taking or interfering with water.*

EDO Qld and WPSQ sought information regarding the measures the department was taking to ensure the law would be properly applied for current and future water licence applications and recommended further investigation.[94]

The department advised that it had taken steps to ensure that the *Water Act 2000* was being properly applied, in particular, the department has:[95]

- *reviewed its operational policies,*
- *updated departmental policies to remove references that could fetter the chief executive's decision-making power, and*
- *emphasised the need to document decisions and follow good administrative decision-making principles.*

Committee comment

Given the property right associated with a water entitlement, water licence holders need to continue to be certain about their ability to take or interfere with water. On this basis, the committee supports the proposed amendment. The committee is also satisfied with the department's clarification that the validation provided by the amendment would not apply to decisions that, within six months of the decision, were the subject of internal review or consideration by a court. Additionally, the

[92] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.
[93] Public briefing transcript, 2 April 2014, p 9.
[94] Environmental Defenders Office (Qld), Submission No. 7; Public hearing transcript, 10 April 2014, p 10.
[95] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

committee is satisfied the department has undertaken steps to ensure the law is properly applied in the future.

Native title implications for validating water licence decisions

Several submitters opposed the validation of water licencing decisions on the basis that if the decisions were made invalidly, native title would remain and any retrospective validation must address native title.[96]

The department advised:[97]

> *…the validation amendments regarding the water licences under the* Water Act 2000 *are valid in relation to native title under section 24HA(1) as it is the amendment of the legislation relating to the management or regulation of water. Under section 24HA(1), there are no procedural rights, the non-extinguishment principle applies and compensation is payable for any effect on native title.*
>
> *In addition, issues raised by the review of a sample of historical administrative decisions relate to the consideration of decision-making criteria prescribed in the* Water Act 2000 (Qld). *The review did not identify any failure to comply with the notification requirements of the* Native Title Act 1993 (Cth).

Committee comment

The committee is satisfied with the department's response that the review did not identify a failure to comply with the notification requirements of the *Native Title Act 1993* (Cwlth).

2.3 Resource tenure holders

2.3.1 Validating decisions made regarding later work programs and later development plans

The *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* require exploration tenures to have an approved work program and production tenures to have an approved development plan. Mining leases under the *Mineral Resources Act 1989* must also have an approved development plan. The plans and programs provide overviews of the activities to be carried out annually as well as an estimated cost.[98]

Before the end of the initial work program or development plan period, a resource authority holder must lodge a later work program or development plan. The explanatory notes provide:[99]

> *If a decision is not made to approve or refuse the proposed later work program before the end of the current work program, the authority holder is taken to have a work program and the holder may carry out any authorised activity for the authority. The department and industry have interpreted this to mean the holder can carry out work in accordance with the proposed later work program rather than the earlier, approved, work program. However, the legislation provides that the approval of the proposed later work program takes effect on the date the holder is given notice or a later date that is stated in the notice. There is no express power to approve a later work program from a date in the past, or to allow a proposed new later work program to apply whilst a decision is being made. This brings into question the validity of decisions made regarding later work programs and later development plans.*

[96] Cape York Land Council, Submission No. 12; North Queensland Land Council, Submission No. 14.
[97] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.
[98] Explanatory Notes, p 3.
[99] Ibid.

Clauses 116, 123 and 128 of the Bill propose to validate decisions made regarding later work programs and later development plans. The explanatory notes state:[100]

> *…This is needed to ensure tenure holders who have received approvals for later work programs or later development plans will be able to continue with their operations unaffected. … It provides certainty to landholders, tenure holders and government.*

The Queensland Resources Council and Australian Petroleum Production and Exploration Association were both supportive of the amendments to provide greater certainty through the validation of work being undertaken when a later development plan or work plan has been submitted and assessed.[101]

The Cape York Land Council opposed this amendment on the basis that, '… there has been no assessment of the way in which this might affect native title rights and interests.'

In response to the submission, the department advised the committee:[102]

> *Confirming the validity of the later work programs and later development plans under the relevant resource legislation does not give the holder of the resource interest any additional rights in relation to the land to which they already hold under the existing resource interest… Native title will have been addressed for the grant of the resource interest under the Commonwealth* Native Title Act 1993.

Committee comment

The committee supports the amendments on the basis that they will provide certainty to relevant authority holders and remove doubt about the validity of the later work programs and later development plans, and it is satisfied there is no greater effect on native title.

2.3.2 Changes to extending production commencement days for petroleum leases

The *Petroleum and Gas (Production and Safety) Act 2004* requires petroleum leaseholders to commence production within two years after the lease takes effect unless a longer timeframe is approved by the Minister.

Petroleum leaseholders can apply to have this date extended if they are unable to meet the requirement and they have an arrangement in place (such as a contract) to supply petroleum. However, the application for extension must be submitted no later than one year before the production is required to commence.[103]

This requirement presents difficulties for some leaseholders when dealing with complex projects with uncertain infrastructure construction timeframes or when several leases are part of one project.[104] To assist with this situation, the Bill provides a head of power for regulation to prescribe a period (for applying for an extension) that is less than one year.[105]

Both the Queensland Resources Council and the Australian Petroleum Production and Exploration Association support the proposed amendments.[106] QRC stated:[107]

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[100] Explanatory Notes, p 11.

[101] Queensland Resources Council, Submission No. 8; Australian Petroleum Production and Exploration Association, Submission No. 11.

[102] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

[103] Public briefing transcript, 2 April 2014, p 5.

[104] Public briefing transcript, 2 April 2014, p 5; Explanatory Notes, p 4.

[105] Public briefing transcript, 2 April 2014, p 5.

[106] Queensland Resources Council, Submission No. 8; Australian Petroleum Production and Exploration Association, Submission No. 11.

[107] Queensland Resources Council, Submission No. 8.

> *… the existing requirement to commence production within the first two years can be unrealistic as it does not provide for the commercial viability. This has caused issues where production is commenced just to achieve compliance. The proposed amendment provides for greater management and stewardship of the resource*.

Committee comment

The committee supports the amendments on the basis of increasing flexibility on production commencement dates and that the requirement for the petroleum leaseholder to prove they have a relevant arrangement in place to supply petroleum produced from the area will remain.

2.4 High density development easements

High density development easements are created where buildings with a shared wall have been constructed on adjoining lots of a certain size and limit. Currently, easements cannot be created before buildings are constructed which restricts their use during land development projects. The Bill proposes to expand the operation of the method for creating easements for particular high density developments under the *Land Title Act 1994* (Land Title Act).[108]

The department advised:[109]

> *The high-density development easement provisions were introduced in the previous LOLA bill to facilitate a streamlined approach to high-density urban developments. After the introduction of those particular amendments, in discussions with industry it was identified that there was a limitation on the application of those high-density development easements insofar as the structures that were to be protected by the easements had to be actually built before the easements could be registered.*
>
> *It was recognised that in high-density development, such as Fitzgibbon and Caloundra South, there were significant and already in place planning controls that identified the types of buildings that were to be built—the size, the shapes, the fact that they had common walls and such. Therefore, it was identified that, provided that a suitable planning control was in place, the high-density development easement could be registered prior to the buildings and walls actually being built.*

The proposed amendments will enable easements to be created where buildings have not yet been constructed but the relevant planning laws allow for their construction. The Bill also makes minor amendments to other provisions of the Land Title Act to improve clarity and consistency.[110]

Committee comment

No concerns were raised with the committee in relation to high density development easements. The committee supports the amendments on the basis that it will simplify the creation of easements during land development projects.

2.5 Acquisition of non-native title rights and interests

Section 144 of the *Native Title (Queensland) Act* currently provides the power for the compulsory acquisition of native title in relation to land or waters under a number of compulsory acquisition Acts such as the *Acquisition of Land Act 1967* (ALA). This power applies even though the compulsory acquisition Act would not otherwise apply to that land.

[108] Explanatory Notes, p 5 & 9.
[109] Public briefing transcript, 2 April 2014, p 9.
[110] Explanatory Notes, p 9; See clauses 103-114.

Clause 118 amends section 144 of *Native Title (Queensland) Act 1993* to provide another way in which non-native title rights and interests can be acquired where native title rights and interests are being compulsorily acquired. Non-native title rights and interests include for example, a leasehold interest, a resource interest or a licence or permit.[111]

This amendment is said to assist in meeting requirements under the Commonwealth *Native Title Act 1994*. In order to facilitate the requirements, the Bill also proposes corresponding amendments to the ALA.

The department advised the committee:[112]

> *…it was brought to the department's attention that, where the department was processing requests from local governments to progress compulsory acquisition of native title in response to an offer to purchase unallocated state land as freehold, there could be an example where over a parcel of unallocated state land native title needs to be addressed in order for that to move to freehold and, if compulsory acquisition is a means by which the native title can be addressed, there was a potential gap that not all other interests could also be taken at the same time in that process.* ***That is essentially to meet the requirements of the Commonwealth Native Title Act, which sets out the requirement for the compulsory acquisition of native title whereby that leads to extinguishment. All other non-native title rights and interests need to be taken at the same time****.* [Emphasis added]

The explanatory notes also provide:[113]

> *Whilst a non-native title right or interest can be acquired in different ways (e.g. through surrender, cancellation, resumption, compulsory acquisition), an option of compulsory acquisition of a non-native title right or interest is not always available under a compulsory acquisition Act. This amendment makes this option available only when compulsorily acquiring native title rights and interests.*

The North Queensland Land Council supported this amendment only on the basis that it would apply when all interests in land are being compulsorily acquired.[114]

The committee was advised that the proposed amendment is not related to native title interests per se. It is a parallel process for when native title is already being compulsorily acquired, non-native title rights and interests can also be acquired at the same time.[115]

Committee comment

The committee supports the proposed amendment in relation to the acquisition of non-native title rights and interests as a method of ensuring consistency with Commonwealth native title legislation where all rights in land, including native title rights, are being acquired at the same time.

2.6 Clarification of public and environmental purposes for acquiring land under the *Acquisition of Land Act*

Under the *Acquisition of Land Act 1967* (ALA) a state or local government can acquire land for 'environmental purposes'.

[111] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.
[112] Public briefing transcript, 2 April 2014, pp 7-8.
[113] Explanatory Notes, p 5.
[114] North Queensland Land Council, Submission No. 14.
[115] Public briefing transcript, 2 April 2014, p 7.

In the matter of *Lipovsek v BCC* [2013] QSC 185 (Lipovsek matter), the applicant successfully challenged the exercise of power by the Brisbane City Council (BCC) to resume land under the ALA for 'environmental purposes'.

In this matter, the Supreme Court also considered whether the headings in Schedule 1 of the ALA themselves constitute purposes for acquiring land. The Lipovsek matter has brought into question the State's ability (or local government's ability) to acquire land for environmental purposes.[116]

Accordingly, clause 6 of the Bill proposes to amend the ALA to:[117]

> *…clarify the environmental purposes (such as the management and protection of the seashore and land adjoining the seashore) and public purposes (such as access to enable the management and protection of the seashore) for which the State government or another constructing authority (such as local government) can acquire land.*

The successful challenge in the Supreme Court about BCC's exercise of power to resume land under the ALA for environmental purposes demonstrated an ambiguity in the current provisions for the powers of a constructing authority to resume land for these purposes.[118]

The department advised that the amendment to clarify the public and environmental purposes for which land may be acquired by state or by a constructing authority would 'confer the power to resume land for the purpose of the management, protection or control of the environmental values of area or place'.[119]

The EDO suggested amendments to the clauses 'to ensure they are an appropriate and proportionate response to Lipovskek and consistent with the existing categories of environmental purposes.'

The EDO submitted that the current purposes in Schedule 1 Part 2 of the ALA are 'for environmental protection and conservation'. EDO considers the proposed introduction of a new category of environmental purpose would extend the current environmental values within the Schedule beyond environmental protection. EDO proposed clause 6(1) be amended to provide 'protection of the environmental values of areas or places' and that clause 6(2) of the Bill be omitted.[120]

The department advised it is 'not intended to restrict the amendments so that powers of compulsory acquisition for environmental purposes are restricted to the "protection" of the environment.'

CYLC opposed the amendments on the basis that native title rights and interests would exist and likely be recognised on most of the land that would be used for environmental purposes in Cape York. CYLC submitted that the Government already had 'considerable powers' to 'manage, protect or control environmental values of land in Cape York'. Further, CLYC stated the amendments appeared 'to be directed at the future vesting of areas of prime waterfront real estate in local government authorities, which has the potential to significantly impact existing native title rights and interests.[121]

NQLC was similarly concerned on the basis that the amendments may further restrict the land available to be claimed by native title claimants' and questioned the lack of consultation with native title representative bodies. NQLC also noted that 'waterfront land may have high valuation and the native title compensation liability may be considerable.'[122]

[116] Explanatory Notes, pp 5-6.
[117] Explanatory Notes, p 9.
[118] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.
[119] Public briefing transcript, 2 April 2014, p 4.
[120] Environmental Defenders Office (Qld), Submission No. 7.
[121] Cape York Land Council, Submission No. 12.
[122] North Queensland Land Council, Submission No. 14.

The department advised that matters of native title would be addressed:[123]

> *Where native title is impacted through the exercise of this amendment, in order for native title to be wholly extinguished under the Commonwealth* Native Title Act 1993 *all interests must be acquired, including native title rights and interests, and are subject to compensation. Further, the native title party's right to compensation is protected under the Commonwealth* Native Title Act 1993*.*

Committee comment

The committee supports the proposed amendments on the basis they would clarify the environmental and public purposes for which the State Government or other constructing authority could acquire land. The committee is also satisfied that native title rights and interests, including compensation, would continue to be addressed under the *Native title Act 1993* (Cwlth).

[123] Department of Natural Resources and Mines, Correspondence dated 14 April 2014.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' (FLPs) 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 has examined the application of the fundamental legislative principles to the Bill.

3.1 Does the Bill have sufficient regard to the rights and liberties of individuals?

As noted above, FLPs include requiring that the legislation has sufficient regard to the rights and liberties of individuals.

Clause 15

Clause 15 inserts new section 53A into the *Forestry Act 1959* which would create the offence of interfering with or causing to be interfered with, any forest products on any forest consent area.

The new section would impose a maximum penalty of 1000 penalty units ($110,000) for a first offence and 3000 penalty units ($330,000) for a subsequent offence.

The committee notes a penalty should be proportionate to the offence. The OQPC Notebook states:[124]

> *Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other*.

The department advised:[125]

> *The proposed maximum penalty provisions under new section 53A of the* Forestry Act 1959 *are the same as the maximum penalty provisions that apply, for example, under existing sections 53 and 54 of the* Forestry Act 1959*, which cover similar and other tenure categories where the forest products are owned by the State and administered under the* Forestry Act 1959*.*

Committee comment

The committee is satisfied that the penalties under new section 53A of the *Forestry Act 1959* are consistent with penalties for similar tenure categories and is proportionate to the offence.

Clauses 116, 123, 128, 129 and 132

Clauses 116, 123 and 128 contain provisions amending the *Mineral Resources Act 1989,* the *Petroleum Act 1923*, and the *Petroleum & Gas (Production and Safety) Act 2004* which will validate decisions made regarding later work programs and later developments plans.

Clause 129 contains a provision amending the *Petroleum & Gas (Production and Safety) Act 2004* and provides that petroleum lease holders who did not make an application to change their production commencement day in time, including those whose production commencement day has already passed, have six months from the commencement of the clause to make an application. In the meantime, these holders will be taken to be in compliance in meeting their obligation to commence

[124] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

[125] Department of Natural Resources and Mines, Correspondence dated 6 May 2014.

production. For those whose production commencement day has already passed, there is in effect a retrospective alteration of their statutory obligation as in existence before the Act commences. This amendment provides opportunity to petroleum lease holders to apply to change their production commencement day to ensure they remain compliant.

Clause 132 contains a provision amending the *Water Act 2000*, which validates particular decisions about water licences.

In accordance with the *Legislative Standards Act 1992*, section 4(3)(g), legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. In order to justify retrospective legislation, strong argument is required that there will not be any adverse effects on the rights and liberties of individuals, or the imposition of obligations.

In evaluating legislation with retrospective effect the Scrutiny of Legislation Committee (SLC) had regard to whether the retrospective application was beneficial to persons other than the government; and whether individuals had relied on the legislation and have a legitimate expectation under the legislation before the retrospective clauses commence. Further, the SLC recognised that there are occasions on which curative retrospective legislation is justified in order to clarify a situation or correct unintended legislative consequences.[126]

In relation to clauses 116, 123 & 128, the explanatory notes stated:

> *This* [the amendments] *is needed to ensure tenure holders who have received approvals for later work programs or later development plans will be able to continue with their operations unaffected. It is not anticipated that this benefit to resource holders would be to anyone's disadvantage, because it validates the existing and accepted understanding of the resource interest holders and the department. It provides certainty to landholders, tenure holders and government.*[127]

In relation to clause 129, the explanatory notes stated:

> *It is not envisaged that this amendment could disadvantage anyone. However, if such a disadvantage emerged, there is an opportunity for it to be considered via section 175AC of the Petroleum and Gas (Production and Safety Act), which states that the Minister, in deciding whether or not to change the production commencement day, must consider the public interest. The amendment will not have detrimental effects but rather provides investment certainty to resource companies.*[128]

In relation to clause 132, the explanatory notes stated:

> *Clause 132 of the Bill potentially breaches the principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. In this case retrospectivity is required to remove any doubt about the validity of water licensing decisions that relate to current water licences. In doing so the provision provides certainty for the holders of the approximately 24 000 current water licences.*
>
> *Importantly, the validation provided by this clause does not apply to decisions that, within six months of the decision, were the subject of internal review or consideration by a court. This ensures that existing rights of appeal provided in both the Water Act and*

[126] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 56.
[127] Explanatory Notes, p 11.
[128] Ibid.

> *the Judicial Review Act are preserved and that current appeals can continue to be considered on their merits.*[129]

Committee comment

The committee considers sound justification is provided in the explanatory notes for each of the clauses that apply retrospectively. In this situation, retrospectivity has been in order to clarify the situation and provide assurances to landholders, tenure holders and water licence holders. Accordingly, the committee is satisfied that the clause provides sufficient regard to the rights and liberties of individuals.

3.2 Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?

Clause 48

Clause 48 would amend section 168 of the *Land Act 1994* to provide that where an application for conversion to freehold of a term lease issued for tourism purposes is made, and the lease is on an offshore island, the Governor in Council's prior approval of the conditions of offer is required.[130] The amendment also provides that the conditions for the approval will be stipulated by the chief executive.

Powers should only be delegated to appropriately qualified officers or employees. The OQPC Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.[131]

In response to the possible issue of the application of FLPs, the department advised:[132]

> *In delegating the powers of the chief executive under the* Land Act 1994 *(the Land Act), the chief executive of the Department of Natural Resources and Mines is first satisfied that the officer receiving the delegation is appropriately qualified.*

In regard to the matters the chief executive must consider before deciding whether to offer to convert any lease to some higher form of tenure, such as freehold land or a perpetual lease, the department advised:[133]

> *… consideration would be made only following an evaluation of the most appropriate tenure and use for the land and, as supported by section 16* [of the Land Act]*, that evaluation will take account of State, regional and local planning strategies and policies and the object of the Land Act.*

The department further advised:[134]

> *With regards to leases for tourism on offshore islands, the Government is aware of their uniqueness and, for this reason, section 167 is being amended to ensure that any offer to convert such a lease will need the prior approval of the Governor in Council and, if it is*

[129] Explanatory Notes, p 11.
[130] Ibid, p 22.
[131] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 33.
[132] Department of Natural Resources and Mines, Correspondence dated 6 May 2014.
[133] Ibid.
[134] Ibid.

decided to freehold the land, the offer to convert the lease to freehold contains any conditions imposed by the Governor in Council.

Section 171 of the Land Act confirms that no offer is accepted until the lessee fulfils all of the conditions of the offer. And, for an offer to freehold, section 172 confirms the freeholding of the lease cannot proceed until the offer is accepted.

Committee comment

Based on the department's response, the committee is satisfied that the power delegated to the chief executive officer is appropriate in this circumstance.

3.3 Does the Bill have sufficient regard to Aboriginal tradition and Island custom?

Clause 118

Clause 118 proposes to amend section 144 of the *Native Title (Queensland) Act 1993* (Compulsory acquisition of native title). The amendment provides another way in which non-native title rights and interests can be acquired where native title rights and interests are being compulsorily acquired to assist in meeting requirements under the Native Title Act (Cwlth).[135]

This is achieved by extending the reach of a compulsory acquisition Act to compulsorily acquire non-native title rights and interests in relation to the land and waters at the same time native title rights and interests are being compulsorily acquired.[136]

To support this amendment, clause 4 inserts two provisions in the Acquisition of Land Act related to the taking of non-title rights and interests.[137]

Legislation should have sufficient regard to Aboriginal tradition and Island custom.[138] The SLC considered that this FLP encompassed two considerations – (i) legislation should be drafted to recognise Aboriginal and Islander customary law and to avoid unintended legislative impacts on traditional practices; and (ii) 'limited concession' to Aboriginal traditional Island custom was based on 'a recognition of the unique status of Aborigines and Torres Strait Islanders as Australia's indigenous peoples.'[139]

Several significant items of legislation underpin Aboriginal and Island custom. Any amendment of this legislation, whether direct or implied, has to be examined to find out whether the protection to Aboriginal and Island custom contained in them has been adversely affected.[140]

The *Native Title (Queensland) Act 1993* is one of the listed significant pieces of legislation.

The SLC recognised the significance of consulting with Aboriginal and Islander people and representative bodies on proposed legislation.[141]

[135] Explanatory Notes, p 31.
[136] Ibid
[137] Ibid
[138] *Legislative Standards Act 1992*, section 4(3)(j).
[139] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 79.
[140] Ibid.
[141] Ibid, p 80.

The department clarified that the amendment would not affect native title:[142]

> *Whilst this amendment is linked to the compulsory acquisition of native title, this amendment is actually about the acquiring of non-native title rights and interests and providing a more administratively efficient and streamlined way forward.*
>
> *Section 144 of the* Native Title (Queensland) Act 1993 *(NTQA) already provides the power to extend the reach of a compulsory acquisition Act to acquire native title rights and interests.*
>
> *Whilst the amendment supports a requirement under the Commonwealth* Native Title Act 1993 *(NTA) about the need to acquire all non-native title rights and interests to achieve an extinguishment outcome (required to ensure a valid subsequent land allocation), the amendment itself does not affect native title.*

Committee comment

On the basis that the amendment proposes to acquire non-native title rights (which for example, may include a mining tenure) when native title is already being compulsorily acquired, the committee is satisfied that that amendment has sufficient regard to Aboriginal Torres Strait Islander custom. The committee has not been presented with any evidence to suggest otherwise.

3.4 Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

Clauses 4, 7 and 118

Clauses 4, 7 and 118 refer to the taking of 'non-native title right or interest' and or 'non-native title rights and interests' in certain circumstances. Clauses 4 and 7 insert sections into the *Acquisition of Land Act 1967* and clause 118 inserts a section into the *Native Title (Queensland) Act 1993.*

Clause 7 amends schedule 2 (Dictionary) to insert definitions including the following:

> *Non-native title right or interest means any right or interest included in non-native title rights or interests.*
>
> *Non-native title rights and interests has the same meaning as it has in the Native Title Queensland (Queensland) Act 1993.*

The *Native Title (Queensland) Act 1993* does not contain a definition of 'non-native title right or interest' or 'non-native title rights and interests'.

Legislation should be unambiguous and drafted in a sufficiently clear and precise way.[143] Plain English is recognised as the best approach to the use of language in legislation, with the objective to produce a law that is both easily understood and legally effective to achieve the desired policy objectives.[144]

Definitions applicable to legislation should generally be included in the legislation and not located elsewhere. Definitions in the *Acts Interpretation Act 1954* are an exception.[145]

The SLC commented adversely on the 'reduction of simplicity and accessibility caused by the practice of stating in one item of legislation that definitions in other legislation apply, for example, by stating

[142] Department of Natural Resources and Mines, Correspondence dated 6 May 2014.
[143] *Legislative Standards Act 1992*, section 4(3)(k).
[144] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, pp 87-88.
[145] Ibid, p 89; Alert Digest (AD) 1999/2, p. 2, paras 1.9-1.14; AD 1996/2, p.11; AD 1996/1, p.6.

that words used in the legislation have the same meaning as in the other legislation, or by otherwise directing the reader to a definition in other legislation'.[146]

Although the internet has made cross-referencing more accessible, in this case the cross-referenced legislation does not define the terms.[147]

In response to this concern, the department advised:[148]

> *The department currently considers there is no need for a specific definition. The Office of the Queensland Parliamentary Counsel is of the same view.*
>
> *This is because section 5 of the NTQA provides that words and expressions used in both the NTA and the NTQA have the same meaning as in the NTA unless specifically defined or the context or subject matter indicates otherwise. The NTA also does not define "non-native title rights and interests" but only "interest".*

Committee comment

The committee is satisfied with the department's response and the view of the Office of the Queensland Parliamentary Counsel and agrees that it is unnecessary to provide a specific definition for 'non-native title rights or interest' or 'non-native title rights and interests' within the *Acquisition of Land Act 1967* and the *Native Title (Queensland) Act 1993*, as they are taken to have the same meaning as in the Commonwealth *Native Title Act 1993*.

Clause 60

Clause 60 would amend section 176W of the *Land Act 1994* to reflect that land management agreements would be used in the future as a tool of compliance rather than a mandatory requirement for rural leasehold land.[149]

The new section includes '*any matter* the Minister considers appropriate to achieve the purposes of a land management agreement'. [Emphasis added]

The committee notes the broad definition of 'any matter' as opposed to narrow drafting of the provision, as well as the absence of qualifying terms such as 'reasonable' and 'relevant', which respectively convey different meanings to the term 'appropriate'.

In response, the department requested the committee view the drafting of this clause in light of how it intends on implementing land management agreements:

> *Land management agreements have been used previously to apply to all term leases for agricultural, grazing or pastoral purposes that cover an area of 1000 ha or more, being rural leasehold land. The Government considers they would be more appropriately used as a form of compliance. Rather than forfeit the lease for the lessee's failure to exercise the duty of care, or give the lessee a remedial action notice, the Government will seek to enter into a land management agreement with the lessee with the primary aim of working with the lessee to resolve land degradation issues affecting the lease.*

[146] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 89; AD 1999/3, p.7, paras 1.52 and 1.54.

[147] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 89; AD 2004/2, pp. 21-22, para. 6.

[148] Department of Natural Resources and Mines, Correspondence dated 6 May 2014.

[149] Explanatory Notes, p 23.

The department also advised:

> *Section 176W as amended will confirm that a land management agreement for a lease may include any matter the Minister considers appropriate to achieve the purposes of a land management agreement. In considering those matters, the Minister must have regard to the reason(s) why a land management agreement is required (section 176UA) and the relevance to the lease of the purposes of a land management agreement as listed under section 176V.*
>
> *For example, taking into account the purpose listed under section 176V(d), the Minister would need to be satisfied the land suffered from land degradation. If satisfied, the Minister may require the lessee enters into a land management agreement and considers it appropriate that the agreement contains clauses relating to improving the degraded land.*

Committee comment

The committee is satisfied with the department's response and notes that whilst consideration of 'any matter' may be interpreted broadly, the committees notes that the Minister must, when considering a land management agreement, have regard to the reasons why a land management agreement is required as well as its purposes. Those purposes are listed under section 176V of the *Land Act 1994* and apply as the extent they are relevant to leased land.

3.5 Does the Bill have sufficient regard to the institution of Parliament?

Relocation of provisions from the Act to a Regulation and transitional provisions

Clauses 23-25, 27-29, 31, 32, 44, 51, 72, 86, 89-97 relocate provisions about matters such as purchase price and conditions from the *Land Act 1994* into the *Land Regulation 2009*.

Clauses 100 and 101 are transitional provisions to be inserted into the *Land Act 1994* that provide for matters to be included in a regulation.

The explanatory notes stated that '[t]his reform ensures that operational processes for financial considerations under the Land Act are flexible and responsive in times of natural disaster or hardship, while still respecting the institution of Parliament.'[150]

The committee notes that it is not uncommon for Acts to provide that fees or amounts to be used when calculating payments be prescribed by regulations. It is also noted that the regulation will be subject to the procedures for a disallowance motion.

However, a Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[151]

The OQPC Notebook stated:

> *For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation*.[152]

'The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or

[150] Explanatory Notes, p 8.
[151] *Legislative Standards Act 1992*, section 4(4)(b).
[152] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 154.

similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny'.[153] The SLC commented adversely on provisions allowing matters, which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, the SLC considered:

- the importance of the subject dealt with;
- the practicality or otherwise of including those matters entirely in subordinate legislation;
- the commercial or technical nature of the subject matter;
- whether the provisions were mandatory rules or merely to be had regard to.[154]

The department advised the method of determining unimproved value/purchase price into regulation would 'elevate' it from departmental policy to subordinate legislation, which would mean it could be the subject of disallowance by the Legislative Assembly:[155]

> *These amendments to the Land Act will move land rent provisions that are day to day management matters to subordinate legislation. The amendments also elevate departmental policy on the method of determining unimproved value/purchase price into regulation. The amendments to the Land Regulation 2009 (Land Regulation) resulting from introduction of Part 4 of the Bill will be by subordinate legislation and, as a result, be subject to disallowance by the Legislative Assembly under section 50 of the* Legislative Standards Act 1992*.*

The department also clarified that provisions being amended by clauses that relate to purchase price/unimproved value 'are not being "relocated" to regulation; the provisions are amended but will remain in the Act':[156]

> *The only exception is that the definition for unimproved value as provided by section 434 of the Land Act (Clause 88) will be omitted from the Act and moved to the Land Regulation. The amendments will ensure that the method of determining the purchase price/unimproved value will be defined by regulation. Currently, the method for determining purchase price/unimproved value for the provisions amended by the clauses is through departmental policy. This departmental policy will now be elevated to regulation through these reforms, and so provide better scrutiny by the legislative assembly.*

The department also provided advice regarding other clauses which the committee identified as having a possible insufficient regard to the institution of Parliament:[157]

> *Clause 24 – the amendment of section 26A of the* Land Act 1994 *(Land Act) is a consequential amendment and takes into account the move of rental provision section 184 from the Land Act to the Land Regulation (clause 64).*
>
> *Clause 44 does not omit a provision from the Land Act but clarifies the referred to 'category' in section 162(3) of the Land Act is a 'rental category'.*
>
> *Clause 86 amends section 422 of the Land Act and clarifies that a decision made under the Land Act and mentioned in schedule 2, and a decision made under a section of the*

[153] Ibid, p 155.
[154] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 155.
[155] Department of Natural Resources and Mines, Correspondence dated 6 May 2014.
[156] Ibid.
[157] Ibid.

Land Regulation that provides for an appeal against a decision made under the section, will be, in the first instance, subject to an internal review. The amendment takes into account the movement of land rent and purchase price provisions from the Land Act to the Land Regulation and ensures people affected by decisions made under the amended Land Regulation will continue to be able to appeal against an 'original decision'.

Clauses 91, 92 and 93 do not affect the purchase price for freeholding leases under the Land Act but take into account the fact that the deferral for hardship provisions under the Act are being moved to the Land Regulation (clause 64).

Clause 100 lists the matters for which a regulation may be made about the payment and collection of rents and instalments under the Land Act and Land Regulation. The listing is not exhaustive but is meant to illustrate the regulation making power under section 448 of the Land Act (clause 90).

Clause 101 omits reference to sections of the Land Act being moved to the Land Regulation as a result of the omission of the rental provisions of the Land Act (clause 64) and changes to references in sections in the schedule that have been renumbered as a result of the amendments made to the Land Act by the Bill. A schedule to the Land Regulation will list the sections of the regulation against which an appeal may be lodged under the Act. These sections will include the sections of the Act omitted from the Bill and moved to the Land Regulation.

Committee comment

The committee is satisfied with the Department's comprehensive response in relation to this matter. The committee's preference would be for all matters to be included in legislation. However, the committee recognises that operational processes for financial considerations under the Land Act may be best dealt with in subordinate legislation as opposed to government policy.

3.6 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendices

Appendix A – List of submitters

Sub #	Name
1	Michelle Finger
2	Larry Daniels
3	Queensland Tourism Industry Council
4	Janet Appleton
5	Whitsunday Regional Council
6	Mackay Regional Council
7	Environmental Defenders Office Queensland
8	Queensland Resources Council
9	Great Barrier Reef Marine Park Authority
10	AgForce Queensland Industrial Union of Employers
11	Australian Petroleum Production & Exploration Association Limited
12	Cape York Land Council Aboriginal Corporation – Joint submission with Balkanu Cape York Development Corporation and Cape York Institute
13	Capricorn Conservation Council
14	North Queensland Land Council
15	Wildlife Preservation Society of Queensland
16	Cassandra McMahon

Appendix B – List of witnesses at the public hearing held 10 April 2014

Witnesses	
1	Michelle Finger, Landholder
2	Daniel Gschwind, Chief Executive – Queensland Tourism Industry
3	Desmond Boyland, Policies and Campaigns Manager – Wildlife Preservation Society of Queensland
4	Shannon Burns, Policy Officer – Cape York Land Council
5	Jennifer Jude, Senior Legal Officer – North Queensland Land Council
6	Lauren Hewitt, General Manager Policy – AgForce Queensland
7	Peter Burton, Director, Land and Asset Policy – Department of Natural Resources and Mines
8	Bernadette Ditchfield, Executive Director, Land and Mines Policy – Department of Natural Resources and Mines
9	Lyall Hinrich, Executive Director, Water Policy – Department of Natural Resources and Mines
10	Judith Jensen, Executive Director, Aboriginal and Torres Strait Islander Land Service – Department of Natural Resources and Mines
11	Stephen Sheppard, Principal Policy Officer, Land and Asset Policy – Department of Natural Resources and Mines

Appendix C – McCullough Robertson legal advice

Partner Dominic McGann
Direct line 07 3233 8838
Email dmcgann@mccullough.com.au
Our reference DMM:162833-00002

Lawyers | McCullough Robertson

7 May 2014

Mr D Gibson
Chairman
State Development, Infrastructure and Industry Committee
Queensland Parliamentary House
Cnr George and Alice Streets
BRISBANE QLD 4000

Dear Chairman

Land and Other Legislation Amendment Bill 2004 (Bill) - compliance with the Native Title Act 1993 (NTA)

Background

1 On 19 March 2014, the Bill was introduced into Parliament.

2 The Bill was referred to the State Development, Infrastructure and Industry Committee (**SDIIC**), which is currently considering it (and must report to Parliament on the Bill by 13 May 2014).

3 Amongst other matters, the Bill implements Recommendation 8-9, 14-15 and 24-25 of the SDIIC's *Report No. 25 - Inquiry into the future and continued relevance of government land tenure across Queensland* (**Report No. 25**).

4 For its part, in its Response to the Report No. 25, the Queensland Government indicated that there would be two phases:

(a) Phase 1 (as reflected in the Bill) – were to be reforms to the land tenure system to promote greater investment certainty for rural leasehold land and would focus upon 'red tape reduction in lease renewal processes' and 'clear pathways to upgrade from leasehold to freehold'; and

(b) Phase 2 (which is yet to be developed) – would see reforms to the *Land Act 1994* and other land legislation to modernise the principles and purposes of land administration, management and disposal. Importantly, in parallel with Phase 2, there would be the 'development of a smoother approach to native title negotiation and incentives for all parties to resolution will be considered'.

5 McCullough Robertson previously provided advice to the SDIIC that culminated in Report No. 25.

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Mr D Gibson
Chairman
State Development, Industry and Infrastructure Committee

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6 In the context of its consideration of the Bill, the SDIIC has recently sought particular legal advice from McCullough Robertson. More specifically, the SDIIC has held various public hearings on the Bill and initially received what the SDIIC considers to be contrasting evidence from 'submitters' and the Department of Natural Resources and Mines on the interaction between the Bill and the NTA.

7 Therefore, the SDIIC has sought advice from McCullough Robertson in relation to the following:

> *'The extent of the Bill's consistency with Queensland and Commonwealth native title legislation (confined to Part 4 of the Bill pertaining to the amendments of the Land Act 1994). The committee's focus is on the particular provisions relating to the creation of rolling leases and the amalgamation of adjoining term leases and perpetual leases.*
>
> *Any suggestions for amending the Bill to rectify any identified inconsistencies with native title legislation.*
>
> *Any other contextual information McCullough Robertson considers relevant to the committee's consideration of the Bill'.*

Summary

8 Unless native title has been extinguished in relation to the relevant land, the requirements of the NTA must be complied with whenever the Queensland Government proposes a land dealing (or "a dealing") in that land.

9 Accordingly, to the extent that a dealing in land constitutes a 'future act', the dealing will be invalid unless the NTA has been complied with.

10 In relation to Part 4 of the Bill, to the extent relevant, it provides for rolling term leases, the conversion of pastoral leases to freehold and the amalgamation of term and perpetual leases to perpetual leases.

11 Each of those dealings would constitute future acts and to validly do them the Queensland Government must comply with the NTA.

12 Having had the opportunity to review a range of material related to the Bill, it is apparent that, whereas the Queensland Government is conscious that the Bill must comply with the NTA, the manner in which the Bill and related material has been presented has resulted in submitters being either:

(a) oblivious of the need to comply with the NTA; or

(b) for those who are aware of the need to comply with the NTA, concerned that the presentation of the Bill suggests that the Queensland Government is ignorant of or unwilling to comply with the NTA.

13 In short, the aspirations reflected in Part 4 of the Bill will only be realised by ensuring compliance with the NTA and compliance will primarily be by way of Indigenous land use agreements (or **ILUAs**) (in respect of which it is widely acknowledged that the existing regime for obtaining them can be cumbersome and costly).

14 Finally, it is acknowledged that, upon the completion of Phase 2 of the Government's Response to Report No. 25, those aspirations will then be by way of the revised regime for ILUAs (which will, hopefully, reduce the cumbersome nature related to obtaining and cost attached to the existing regime for obtaining ILUAs).

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Chairman
State Development, Industry and Infrastructure Committee

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NTA

15 Amongst others objects, section 11 of the NTA identifies the main objects of the NTA as:

(a) to provide for the recognition and protection of native title; and

(b) to establish ways in which future dealings affecting native title may proceed and to set standards for those dealings.

16 Acts which affect native title (which are referred to as 'future acts') will only be valid if they comply with the NTA (see section 24AA (1) and (2) of the NTA).

17 Conversely, acts (or dealings in land) that do not affect native title (either because native title has been extinguished or there is no further impairment of native title), are not future acts and the NTA does not apply to them.

18 Importantly, compliance with the NTA would ordinarily be by either:

(a) entry into an Indigenous land use agreement (or ILUA); or

(b) compliance with the statutory regimes contemplated by various sections of Part 2, Division 3 of the NTA.

19 Insofar as the Bill is concerned, in circumstances where native title has not been extinguished in the relevant land, each of the following dealings contemplated by:

(a) clause 46 – which provides for rolling term leases;

(b) clause 47 – which provides for the conversion of pastoral leases to freehold; and

(c) clause 57 – which provides for amalgamation of term leases and perpetual leases to perpetual leases,

would constitute future acts for the purpose of NTA and be invalid unless the NTA was complied with when completing those dealings.

20 Having reviewed the various material, it is apparent that the Queensland Government is conscious that each of the dealings (or future acts) under clause 47 and 57 will require an ILUA. To that extent, the reforms contemplated by those clauses will only be realised by reference to the existing regime for the negotiation and completion of ILUAs. To put it another way, the reach reflected in those clauses extends no further than the grasp of the existing regime for the negotiation and conclusion of an ILUA.

21 Clause 46 of the Bill is less constrained though.

22 For its part, the Department of Natural Resources and Mines believes that there are two potential mechanisms for such dealings (or future acts):

(a) compliance with section 24IC of the NTA; or

(b) the negotiation of an ILUA.

23 It is apparent from the observations above that the negotiation and conclusion of an ILUA is certainly a mechanism which would be available for rolling term leases.

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Chairman
State Development, Industry and Infrastructure Committee

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24 In relation to section 24IC, I am satisfied that the requirements of section 24IC could be met if the dealing involved in the extension of the underlying lease is for a term which is no greater than the term of the initial lease and the rights and interests of the extended lease are otherwise no greater than they previously were (and are for the same purposes).

25 Importantly, provided they are pursued in accordance within the terms of section 24IC, they would not on their terms give rise to a right to exclusive possession (such as to give rise to an extinguishment of native title).

Other observations

26 Importantly, any piece of legislation should be considered in its entirety and also within context.

27 In the current circumstances, my sense is that:

(a) the Queensland Government has presented material which has concentrated upon the reforms although it has otherwise understood the need to comply with the NTA;

(b) for the submitters who may ultimately be the beneficiaries of the reforms, they have enthusiastically embraced the proposed reforms without necessarily recognising the need to comply with the NTA to realise the benefits of those reforms; and

(c) for the submitters who give primacy to the interests of native title holders, they understandably have correctly identified the need to comply with the NTA and have expressed concern at the Queensland Government's failure to more explicitly acknowledge that fact.

28 I suspect that, with the benefit of hindsight, the Queensland Government will be well advised to ensure that any future material about the reforms also explicity identify the need to comply with the NTA to fully realise those benefits.

Yours sincerely

Dominic McGann
Partner

Appendix D – Correspondence received from the Department of Natural Resources and Mines throughout the inquiry

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11.1.16

Queensland Government

Department of
Natural Resources and Mines

RECEIVED
16 APR 2014
STATE DEVELOPMENT, INFRASTRUCTURE AND INDUSTRY COMMITTEE

Our Ref CLLO/14030

14 APR 2014

Mr David Gibson MP
Chair
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Gibson

Please find enclosed the response of the Department of Natural Resources and Mines to the public submissions received by the State Development, Infrastructure and Industry Committee, in relation to its inquiry into the Land and Other Legislation Amendment Bill 2014.

I trust this information is of assistance. Should you have any further enquiries, please contact Lisa McGerty-Huynh, Acting Manager, Legislative Support, Department of Natural Resources and Mines on telephone 3199 7339.

Yours sincerely

Dr Brett Heyward
Director-General
Natural Resources and Mines

Enc

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LAND AND OTHER LEGISLATION AMENDMENT BILL 2014
RESPONSE TO SUBMISSIONS Department of Natural Resources and Mines

Date: 14 April 2014

Comments / Response in Clause Order

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
1	Michelle Finger	46, 48, 64, and 70	Land tenure reform initiatives	Ms Finger expressed broad support for the land tenure reforms, however concerns that the amendments to leasehold land do not go far enough with regards to: • making leases more secure for the purpose of investment; • removal of unfair and unworkable lease conditions; • encouragement of conversion of leasehold land to freehold; • manner in which the land rents are calculated; • future security on tenure decisions through changing governments.	The Department of Natural Resources and Mines (DNRM) thanks Ms Finger for her general support of land tenure reforms and has noted the concerns. DNRM considers that introduction of the rolling term lease provisions will provide the security that rural leasehold land investors require. DNRM will use regulated conditions, being introduced as part of the rolling term lease extension reform, to modernise and standardise conditions of term leases being extended. As part of the process of preparing the regulated conditions for leases for grazing, agriculture and pastoral purposes the Department will be examining whether a condition is unfair and unworkable. The process of conversion of rural leasehold land to freehold has been simplified and streamlined through the amendment to section 166 of the *Land Act 1994* (clause 47). Other opportunities to streamline the conversion process will be a consideration as part of the next phase of land tenure reform. In moving the land rent and purchase price legislative provisions to the regulation the government is considering opportunities to streamline and review the provisions. The Minister stated in his Explanatory Speech that once the government's consideration on these matters has been finalised, that the Minister would provide further information to the parliament about the proposed amendments to regulation to assist Parliament in considering the implementation and effect of the land tenure reform initiatives in the Bill.
2	Larry Daniels		No specific section	Mr Daniels raised issues relating to impediments, including native title processes, surrounding purchasing state land and procedures to permanently close roads.	Mr Daniel's submission relates to specific land dealings which have no relevance to the Bill. One dealing he refers to is constrained by native title. Native title must be addressed in accordance with the Commonwealth *Native Title Act 1993* for the doing of each and every land and resource dealing. In parallel with phase two of the reform to the *Land Act 1994*, the development of a smoother approach to native title negotiation and incentives for all parties to resolution will be considered. In particular, as noted in the government's response to the Committee's recommendations about Indigenous land use agreements (ILUAs) in the *Inquiry into the Future and Continued Relevance of Government Land Tenures across Queensland*, the government supports the need to reduce transaction costs of native title resolution for all parties, will work with key stakeholders to develop template ILUAs to facilitate streamlined agreement-making, will work with all interested parties to consider an improved approach to native title negotiations, including examining incentives to enhance how consents are obtained.
3	Queensland Tourism Industry Council		No specific section	The Queensland Tourism Industry support the objectives of the Bill, particularly the implementation of the first phase of state land tenures reforms which improve tenure security for term leases used for agriculture, grazing and pastoral purposes and offshore island tourism leases on regulated islands issued under the *Land Act 1994*.	DNRM thanks the Queensland Tourism Industry Council for their support of the objectives of the Bill and phase 1 land tenure reforms.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
4	Janet Appleton		No specific section	Ms Appleton requests that "...some additional amendments be considered. These amendments relate specifically to Mining Leases and Mining Claims." Ms Appleton state's in the submission in relation to mining leases that "....there appears to be a loophole where it is not necessary to provide evidence of [the applicant's] viability or capability to be miners." Ms Appleton suggests amendments be "...instigated whereby applicants are required to provide evidence of their financial funding and expertise, as well as commitment to becoming a viable operator...." Ms Appleton also suggested amendments regarding: - rehabilitation of mined areas - funds held as security bonds for rehabilitation - spread of noxious weeds	The department thanks Ms Appleton for her submission but the concerns raised in the submission are outside the scope of the Bill. The department will take the issues under consideration.
5	Whitsunday Regional Council		No specific section	The Whitsunday Regional Council supports the current proposed amendments to the Land Act 1994, in particular the amendments that enable security of tenure on the offshore islands and pastoral land. The Whitsunday Regional Council also stated that they are looking forward to working with the State on implementing changes to land administration in the future.	DNRM thanks the Whitsunday Regional Council for their support of the phase 1 land tenure reforms.
6	Mackay Regional Council		No specific section	The Mackay Regional Council stated that their Council officers have no objections to the proposed changes being made by the Land and Other Legislation Amendment Bill 2014.	DNRM thanks the Mackay Regional Council for their support of the Land and Other Legislation Amendment Bill 2014.
7	Environmental Defenders Office (Qld) Inc	6	Amendment to definition of environmental purpose under *Acquisition of Land Act 1967*	The Environmental Defenders Office expressed concern that the use of the 'control' is unnecessary, as 'protection' would be sufficient enough for land acquisition purposes conducive to environmentally positive outcomes. Further that Clause 6(1) of the Land and Other Legislation Bill 2014 should be amended to "Protection of the environmental values of areas or places" and to omit clause 6(2) of the Bill.	Lipovsek's case highlighted a possible shortfall in the State's powers to acquire land for environmental purposes. The State's powers are restricted to those purposes currently under the dot points in part 2 of the schedule to the *Acquisition of Land Act* 1967 (ALA) or some other purpose authorised under the ALA . This has possible follow on consequences for the powers of Brisbane City Council as a constructing authority to acquire land for environmental purposes. It is not intended to restrict the amendments so that powers of compulsory acquisition for environmental purposes are restricted to the "protection" of the environment
		132	Validation of water licensing decisions	The Environmental Defenders Office expressed concern that validating decisions through legislative amendments without prior consultation removes accountability, is contrary to best practice, inconsistent with the achievement of the objects of the *Water Act 2000* and undermines the integrity of the water licensing scheme. The Environmental Defenders Office also suggested that: • providing certainty is not a sufficient reason for breaching fundamental legislative principles • there should be a specific inquiry held to investigate departmental failures • department should reassess applications that may be invalid (rather than validating licensing decisions). In addition, the Environmental Defenders Office asked the department about what measures are being taken to ensure that the chief executive correctly and properly applies the law for current and future applications.	It is not feasible for the department to individually review each decision that relates to current water licences. Validation is required to remove any doubt about the validity of water licensing decisions in a timely manner. It is untenable for the department's clients to be uncertain about their ability to take or interfere with water for any period of time, including the time it would take to review all licensing decisions. Where specific regional issues have been identified in decision-making processes they will addressed through water planning processes. For example, a targeted review of the water resource plan and the resource operations plan for the Barron area was announced on 28 March 2013. The review will address licensing concerns in the Barron plan area, particularly in relation to groundwater resources on the Atherton Tablelands. The department has also taken steps to ensure that the *Water Act 2000* is properly and correctly applied. In particular, the department has: • reviewed its operational policies • updated departmental policies to remove references that could fetter the chief executive's decision-making power • emphasised the need to document decisions and follow good administrative decision-making principles.

Sub No.	Submitter	Clause	Section/Initiative	Key Points	Departmental Response
8	Queensland Resources Council		No specific section	The Queensland Resources Council is supportive of the proposed amendments in the Land and Other Legislation Amendment Bill. In particular the Queensland Resources Council supports the proposed amendments to the *Mineral Resources Act 1989*, the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923*.	DNRM thanks the Queensland Resources Council for their support of the Land and Other Legislation Bill 2014.
9	Great Barrier Reef Marine Park Authority		Proposed rolling term lease extension procedures	Great Barrier Reef Marine Park Authority is supportive of simplifying regulatory processes while improving on ecological and water quality outcomes for the health and resilience of ecosystems in the Great Barrier Reef World Heritage Area and Great Barrier Reef Marine Park. However, the Great Barrier Reef Marine Park Authority expressed concern about the removal of the requirement for state land tenure term leases used for agriculture, grazing and pastoral purposes and declared offshore island tourism leases under the *Land Act 1994* to undertake land condition assessments and enter into land management agreements at the time of lease extension. Further, under the rolling term lease extension process that there is no consideration of the most appropriate use and tenure for the land.	DNRM will continue to engage with rural lessees to promote sustainable management of state land. All lessees have a duty of care to ensure that the condition of the land is maintained. The Minister administering the *Land Act 1994* still has a discretion to require a land management agreement for any rural leasehold land (regardless of the size of the lease) if: • the land has been recognized as degraded; • there is a possible threat of land degradation; or • the lessee has not fulfilled their duty of care obligation. Land management agreements are capable of being one of the compliance tools, available to the Government to ensure the appropriate, productive and responsible use of leasehold land. DNRM uses a range of methodologies in its auditing, monitoring and compliance activities including, desktop, remote sensing, and on ground evaluation such as land condition assessments. The consideration of most appropriate use and tenure for the land contained in the current *Land Act 1994* renewal provisions were primarily intended to enable the closer settlement of the State. However, this created a situation where management agencies would wait until the renewal of a lease to allocate land for public purposes such as environmental purposes. If a government entity considers part of the leased land is needed for a public purpose including environmental purposes, it may be acquired by the government entity under an acquisition law including the *Land Act 1994* at any time, rather than waiting (potentially a significant amount of time) until the lease is due for renewal.. Under the *Land Act 1994*, the consideration of the most appropriate use and tenure remains a requirement when a lessee applies to convert the lease to a more secure form of tenure (e.g. perpetual or freehold tenure).
		No specific section	Taking water, water licencing and decisions under the *Water Act 2000*	The Great Barrier Reef Marine Park Authority made a general comment that water resource management should recognise that catchment ecosystem connectivity, maintenance and improvement in water quality and biodiversity play a critical role in supporting the health of the Great Barrier Reef World Heritage Area. Need to assess legislative changes against these matters. Further discussion is required on sustainable use and management of land and water resources.	The Queensland Government remains committed to the Reef Water Quality Protection Plan and, in recognition of catchment connectivity, has committed significant resources to work proactively with canegrowers and graziers to better manage run off into coastal waters. The amendments to the Water Act relating to the taking of subartesian water will not put groundwater resources at risk as the Bill simply removes a layer of regulation for landholders that provided no greater protection for the water resource. The framework provided by the Water Act will continue to provide for the responsible allocation and use of water.

Sub No.	Submitter	Clause	Section/initiative	Key Points	Departmental Response
10	Agforce Queensland Industrial Union of Employers (Agforce)	9	Granting of term leases, permits to occupy and stock grazing permits	Agforce supports the move to this new lease category, but seek the involvement with the Chief Executive of the Forestry Act to ensure that lessees are provided this security wherever possible.	The Land and Other Legislation Amendment Bill 2014 does not seek to upgrade the security of stock grazing permits over State forests and or of permits to occupy over State forests or timber reserves, as the amendment only seeks to enable term leases with rolling term extensions over these reserves. However the holder of a stock grazing permit issued under the Forestry Act to graze a defined area of State forest could apply to have their permit converted to a term lease issued under the Land Act. Such applications will be subject to meeting requirements of the Native Title Act 1993. Note that a permit to occupy is not a permit issued under the Forestry Act but rather a permit issued under the Land Act and that under the provisions of the Forestry Act stock
		15 and 16	Provision for forest consent areas under the *Forestry Act 1959*	Agforce is concerned that the definition of forest products includes pasture species and forage plantations like leucaena which may have been established by the lessee.	Department of Agriculture, Fisheries and Forestry (DAFF) notes that the existing exemption within the definition of forest products under the *Forestry Act 1959* for grasses on a stock route, grasses (indigenous or introduced) or crops grown on a Crown holding by the lessee or by the licensee or on a forest entitlement areas by the lessee or owner needs to be extended to the lessee or registered owner of the land containing the forest
		23,51, 64 and 100	Removal of land rent and purchase price provisions under the *Land Act 1994* to regulation	Agforce seeks confirmation that the regulation setting determining the value of the purchase price and rent determination for land will be fair and transparent value based on information that is understandable and justifiable.	In moving the land rent and purchase price provisions to the regulation the government is considering opportunities to streamline and review the provisions. The Minister stated in his Explanatory Speech that once the government's consideration on these matters has been finalised, that the Minister would provide further information to the parliament about the proposed amendments to regulation to assist Parliament in considering the implementation and effect of the land tenure reform initiatives in the Bill.
		26, 33 and 61	Removal of requirements for and cancellation of land management agreements under the *Land Act 1994*	Agforce supports this amendment as it believes is it a reasonable requirement that the Minister may use land management agreements where the Minister believes that the land suffers from or is at risk of land degradation. Agforce is also seeking further information on the grounds on what the Minister will agree to cancel land management agreements.	DNRM thanks Agforce for their support of this amendment. The ground on which the Minister may seek to cancel a land management agreement with the lessee's agreement include: • where the land is not degraded or is not at risk of land degradation and the lessee is fulfilling their duty of care for the land; or • the land is not subject to a remedial action notice.
		46	Provisions relating to rolling term lease extensions under the *Land Act 1994*	Agforce supports of the new rolling lease structure under clause 46. However, Agforce requests the department proactively communicate with lessees and provide fact sheets with regards to the reforms and that all lessees are able to apply for a the roll of extension of the lease at any time of their term rather than just in the last 20 years prior to the expiry of the lease term.	DNRM thanks Agforce for their support of the rolling term lease extension reforms. DNRM is taking a proactive approach to dealing with the rural leasehold land term leases that are due to expire on or before 31 December 2034. Following passage of the Bill, DNRM will be contacting these lessees in July with a written offer to extend their current lease/s by a term equal to the original term of the lease, as long as they have satisfied a limited number of requirements (eg. payment of outstanding rent). DNRM will ensure key technical officers across the State are available to answer queries of landholders on the reforms.
		47	Provisions on conversion of term leases to freehold under the *Land Act 1994*	Agforce strongly supports this reform.	DNRM thanks Agforce for their support of this reform.
		48	Provisions on forest consent agreements as part of conversion of term leases to freehold under the *Land Act 1994*	Whilst Agforce is supportive of the forest consent agreements in the lease conversion process. However, Agforce seeks involvement with DAFF to ensure that the conditions in the forest consent agreements are clear and reasonable.	Department of Agriculture, Fisheries and Forestry (DAFF) and DNRM are agreeable to meet with Agforce. DAFF has identified that conditions required by the chief executive (forestry) will relate to the extent, location and boundaries of the area required for the forest consent area and to the requirement for the lessee to enter into a forest consent agreement for the forest consent area.
		51, 64 and 100	Provisions relating to purchase price for deed of grant under the *Land Act 1994*	Agforce seeks that the regulation will prescribe a fair and transparent value based on information which is understood and justifiable. Agforce also state that they are generally adverse to the placement of significant legislative sections into regulation given the lesser level of certainty, scrutiny and consultation that is associated with regulation amendment as opposed to primary legislation. However, Agforce is also advocating for an alternative (and affordable) rental regime.	In moving the land rent and purchase price provisions to the regulation the government is considering opportunities to streamline and review the provisions. The Minister stated in his Explanatory Speech that once the government's consideration on these matters has been finalised, that the Minister would provide further information to the parliament about the proposed amendments to regulation to assist Parliament in considering the implementation and effect of the land tenure reform initiatives in the Bill.
		53	Provisions to remove corporation and aggregation restrictions under the *Land Act 1994*	Agforce states that despite reconsideration of this policy upon numerous occasions, Agforce remains in support of prohibitions being maintained on corporations holding perpetual and freeholding leases.	DNRM acknowledges Agforce's concerns however the current provisions in the Land Act prevent leases being held by family corporations that are not restricted solely to the lessee and spouse and their children, and prevent leases from being held by an Aboriginal corporation.

Sub No.	Submitter	Clause	Section/Initiative	Key Points	Departmental Response
		57	Provisions to amalgamate leases under the *Land Act 1994*	Agforce has concerns about the ability for pastoral leases to amalgamate term and perpetual leases given that the leases will be for perpetual leases.	The amendment to section 176K of the *Land Act 1994* will not stop a term lease for pastoral purposes being amalgamated with another term lease for pastoral purposes. The amendment by clause 56 and 57 will allow the amalgamation for a term lease for pastoral purposes with a perpetual lease for pastoral purposes, where native title has been appropriately addressed.
		69 and 70	Provisions on review of lease conditions and regulated lease conditions under the *Land Act 1994*	Agforce seeks further information about the purpose behind this the amendments and how and when DNRM proposes to use regulated conditions.	DNRM will use the regulated conditions to modernise and standardise conditions of term leases being extended. As part of the process of preparing the regulated conditions for leases for grazing, agriculture and pastoral purposes DNRM will be examining whether a condition is unfair and unworkable. The regulated conditions will have effect in at the time the lease is extended.
		131	Restrictions on taking water under section 24 of the *Water Act 2000*	Agforce is concerned that further restrictions may result in adverse animal welfare outcomes and impose additional costs and pressures on livestock owners. Request removal of reference to stock purposes.	The restriction powers in section 24 of the *Water Act 2000* originated in the *Water Resources Act 1989* and were introduced into the Water Act in 2003. The power has been rarely used and only as a last resort during drought conditions. It has never been used to restrict stock water access. The situation would need to be extreme for this to occur, such as a need to protect town water supplies (and it is highly unlikely that there would be any stock left in the area in such dire circumstances). In some instances, it is the protection of stock water which prompted the restrictions (such as in the Mary Basin in 2007). The proposed amendment extends the existing power to the new authorisations to take water that were introduced in 2013, ensuring that all water users who are able to access water without an entitlement are treated equally. The department will consider amendments to section 24 as part of the broader review of the Water Act announced by the Minister for Natural Resources and Mines on 4 March 2014.
		132	Validation of water licensing decisions	Agforce are supportive of the proposed validation of water licensing decisions.	The department thanks Agforce for its support of this amendment.
11	Australian Petroleum Production & Exploration Association		Amendments to resources legislation	APPEA are supportive of the proposed changes to the *Petroleum and Gas (Production and Safety) Act 2004*.	The department thanks APPEA for its support of the Bill.
12	Cape York Land Council Aboriginal Corporation, Balkanu Cape York Development Corporation and Cape York Institute (CYROs)		General concerns as to native title and consultation	CYROs expressed significant concern about consultation in the development of the Land and Other Legislation Amendment Bill 2014. Further that the Bill does not address CYROs issues raised in their submission to the State Development Industry and Infrastructure Committee's previous inquiry into the future and continued relevance of government land tenure across Queensland (Parliamentary Inquiry). CYROs also stated that they do not believe that the Bill complies with Fundamental Legislative Principles, as the Bill adversely affects the rights held by the Indigenous people of Cape York. CYROs also seeks deferment of the Bill pending further consultation with CYROs.	DNRM welcomes the submissions and participation of CYROs in this committee process. In summary: • The State must and will comply with the Commonwealth *Native Title Act 1993* when doing acts affecting native title under the provisions of the Bill. • It is not necessary to repeat the requirements of the Commonwealth *Native Title Act 1993* in the Bill as the Commonwealth *Native Title Act 1993* applies irrespective of the provisions in the Bill, or any other state legislation. • In relation to extinguishment of native title, the Commonwealth *Native Title Act 1993* sets out when native title is extinguished, or instead suppressed, and provides compensation rights for any effect on native title. • In terms of consultation the department will work with interested parties in developing an improved approach to native title negotiations. In developing the Land and Other Legislation Amendment Bill 2014, DNRM took into account previous submissions made to the State Development Industry and Infrastructure Committee's to inform the development of the Bill. However, as stated in the Government response to the Parliamentary Inquiry, not all issues would be addressed as part of phase 1 of the land tenure reforms which is the focus of the Land and Other Legislation Amendment Bill 2014. The Government response also stated that native title processes would be addressed in parallel to the phase 2 of the land tenure reforms. In terms of consultation the department will work with interested parties in developing an improved approach to native title negotiations. . In particular, in relation to the Committee's recommendations about Indigenous land use agreements (ILUAs), the Government's response noted it supports the need to reduce transaction costs of native title resolution for all parties, will work with key stakeholders to develop template ILUAs to facilitate streamlined agreement- making, will work with all interested parties to consider an improved approach to native title negotiations, including examining incentives to enhance how consents are obtained. Consultations will commence later this year.

Sub No.	Submitter	Clause	Section/Initiative	Key Points	Departmental Response
			Land tenure reform initiatives	CYROs does not support the amendments to the Land Act 1994 as they have concerns that the Bill adversely affects native title rights and interests in relation to the land tenure reform provisions. CYROs also stated that the provisions of the Bill particularly those relating to term leases for agriculture, grazing and pastoral purposes and declared offshore tourism leases, are an attempt to further extinguish native title in circumstances where there is no adequate compensation for native title holders.	DNRM notes CYROs concerns on the land tenure reforms introduced in the Land and Other Legislation Amendment Bill 2014. The Bill is deliberately silent in relation to the effect of the reforms on native title and also in relation to compensation. Such silence cannot be construed that the Bill is seeking to over-ride the Commonwealth *Native Title Act 1993*. The Bill cannot override the Commonwealth *Native Title Act 1993*. It is silent on these matters as they are dealt with under the Commonwealth *Native Title Act 1993*. There is no need for the State, and nor should it, re-enact the protections and provisions of the Commonwealth *Native Title Act 1993* in state legislation or limit the types of land and resource dealings it
					can carry out as the Commonwealth Act ensures that native title is protected through compliance under the future act regime. When doing acts that affect native title, it is the Commonwealth *Native Title Act 1993* that sets out the requirements for addressing native title, the effect on native title, the relevant procedural rights and compensation for the effect on native title. It is the Commonwealth *Native Title Act 1993* which allows the States and Territories to validly proceed with land and resource dealings subject to the requirements of the Commonwealth Act. It is important to note that the State cannot cause extinguishment of native title, or otherwise affect native title, unless that is the outcome provided under the Commonwealth *Native Title Act 1993*. In relation to compensation for the effect on native title, as noted above, there is no need for the Bill to deal with native title compensation as compensation for the effect on native title is dealt with under the Commonwealth Native Title Act. It is a matter for the native title party to bring a compensation application forward in the Federal Court unless agreement is otherwise reached in the form of a registered Indigenous Land Use Agreement (ILUA). Where native title is not wholly extinguished over the relevant land, land dealings done under the land tenure reforms under the *Land Act 1994* are subject to native title being appropriately addressed in accordance with the Commonwealth *Native Title Act 1993*. To provide some specific examples: (a) in relation to the rolling term leases, the department's position is that these extensions can proceed under section 24IC of the NTA (subject to meeting the relevant requirements). As the extended term cannot be longer than the original term then the extension of the term is not a longer term and therefore will not trigger the right to object process under section 24MD(6B) of the Native Title Act. Under section 24IC, there are no procedural rights but compensation is payable for the effect of the extension on native title. The department's view is that under the proposed rolling term lease provisions are no greater effects on native title rights as result of the extension. (b) the actions of freeholding unallocated State land, allowing term leases to go directly to freehold or the grant of a perpetual lease where a term lease and perpetual lease is amalgamated cannot simply extinguish native title unless that is the outcome provided under the Commonwealth Native Title Act. As noted above, the State cannot over-ride the Commonwealth Act and not appropriately address native title. For example, the freeholding of unallocated state land or a pastoral holding will likely require an Indigenous land use agreement which is a voluntary agreement in which the native title party must consent to the surrender of native title. Where an ILUA is the only option, there can be no extinguishment unless the native title party consents.
		132	Validation of water licensing decisions	CYROs state that the validation provisions are opposed because if the decisions were made invalidly then native title will remain and any attempt to validate now must be done by a process that addresses native title.	The validation amendments regarding water licences under the *Water Act 2000* are valid in relation to native title under section 24HA(1) as it is the amendment of legislation relating to the management or regulation of water. Under section 24HA(1), there are no procedural rights, the non-extinguishment principle applies and compensation is payable for the effect on native title. In addition, issues raised by the review of a sample of historical administrative decisions relate to the consideration of decision-making criteria prescribed in the *Water Act 2000* (Qld). The review did not identify any failure to comply with the notification requirements of the *Native Title Act 1993* (Cth).

Sub No.	Submitter	Clause	Section/Initiative	Key Points	Departmental Response
			Amendment to definition of environmental purpose under *Acquisition of Land Act 1967*	CYROs oppose the amendments to the *Acquisition of Land Act 1967* with regard to the definition of environmental purpose as that future vesting of areas of prime waterfront to local government associations will impact on native title rights and interests.	In relation to amendments to the Schedule 1 of the *Acquisition of Land Act 1967* - the amendments extend environmental compulsory acquisition powers including for the management, protection or control of the seashores, estuaries and land adjoining the seashore and estuaries. -Where native title is impacted through the exercise of this amendment, in order for native title to be wholly extinguished under the Commonwealth *Native Title Act 1993* all interests must be acquired, including native title rights and interests, and are subject to compensation.. Further, the native title party's right to compensation is protected under the Commonwealth *Native Title Act 1993*.
		116, 1232 128	Validate decisions made regarding later work programs and later development plans	CYRO oppose the amendment to validate later work programs and development plans on the basis there has been no assessment on the way in which this may affect native title.	Confirming the validity of the later work programs and later development plans under the relevant resource legislation does not give the holder of the resource interest any additional rights in relation to the land to which they already hold under the existing resource interest, as later work programs and later development plans simply set out the resource interest holder's program of work for a certain period, e.g. 4 years. Native title will have been addressed for the grant of the resource interest under the Commonwealth *Native Title Act 1993*.
		11-21	Forest consent areas under the *Forestry Act 1959*	CYROs oppose the amendments to the *Forestry Act 1959* as: • where native rights and interests exist on term leases, those rights may well extend to a right to access and use forest products; and • the amendments make no provision for the possible effect on native title, or compensation.	DAFF and DNRM note the opposition to the amendment in the Land and Other Legislation Amendment Bill 2014. DNRM will however continue to follow due process in regard to conversion of tenure applications and where an application is supported, the applicant will need to appropriately address native title before the application is progressed and the land is converted to freehold land.
13	Capricorn Conservation Council		Land tenure reform initiatives	Capricorn Conservation Council opposes the extension of leases as it removes the opportunity to review the most appropriate use and tenure at renewal time and purpose of a lease. It also considers that Great Keppel Island's natural values are under assault and are at risk if the rolling lease term provisions are introduced. Capricorn Conservation Council is concerned that the removal of the renewal provisions will remove the ability to assess the lessee's management of the leased land. Further, that pastoral lessees being able to get into tourism is usually inhibited by native title rules.	The consideration of most appropriate use and tenure for the land contained in the current *Land Act 1994* renewal provisions were primarily intended to enable the closer settlement of the State. However, this created a situation where management agencies would wait until the renewal of a lease to allocate land for public purposes such as environmental purposes. If a government entity considers part of the leased land is needed for a public purpose including environmental purposes, it may be acquired by the government entity under an acquisition law including the *Land Act 1994* at any time, rather than waiting (potentially a significant amount of time) until the lease is due for renewal. The environmental issues the Capricorn Conservation Council seeks to address through enforcement are primarily matters for planning and environmental legislation. In any event, the Minister administering the *Land Act 1994* still has powers under the *Land Act 1994* to require a land management agreement for any rural leasehold land (regardless of the size) where the land is degraded or is at risk of land degradation or the lessee is not fulfilling their duty of care for the land. Extension of the term of the lease does not mean the lease may not be forfeited for the failure of the lessee to comply with duty of care and that where the lease may so be forfeited the Chief Executive may enter into possession and sell the lease. As with any land or resource dealing, native title must be addressed in accordance with the Commonwealth *Native Title Act*
14	North Queensland Land Council, Native Title Representative Body Aboriginal Corporation (NQLC)		General concerns as to native title and consultation	NQLC expressed concern that the Bill only reflects the aspirations of only some stakeholders and not all, and is not in keeping with the spirit of the Commonwealth Native Title Act 1993. Further that there was inadequate consultation on the Bill. NQLC also stated that the provisions of the Bill do not adequately address compensation for native title holders and that the methods proposed to ensure viability under the land tenure reform will impact significantly on native title.	DNRM welcomes the submissions and participation of NQLC in this committee process. In summary: • The State must and will comply with the Commonwealth *Native Title Act 1993* when doing acts affecting native title under the provisions of the Bill. • It is not necessary to repeat the requirements of the Commonwealth *Native Title Act 1993* in the Bill as the Commonwealth *Native Title Act 1993* applies irrespective of the provisions in the Bill, or any other state legislation. In relation to extinguishment of native title, the Commonwealth *Native Title Act 1993* sets out when native title is extinguished, or instead suppressed, and provides compensation rights for any effect on native title. In developing the Land and Other Legislation Amendment Bill 2014, DNRM took into account previous submissions made to the State Development Industry and Infrastructure Committee's to inform the development of the Bill. However, as stated in the Government response to the Parliamentary inquiry, not all issues would be addressed as part of phase 1 of the land tenure reforms which is the focus of the Land and Other Legislation Amendment Bill 2014.

					The Government response also stated that native title processes would be addressed in parallel to the phase 2 of the land tenure reforms. In terms of consultation, the department will work with interested parties in developing an improved approach to native title negotiations. In particular, in relation to the Committee's recommendations about Indigenous land use agreements (ILUAs), the Government's response noted it supports the need to reduce transaction costs of native title resolution for all parties, will work with key stakeholders to develop template ILUAs to facilitate streamlined agreement-making, will work with all interested parties to consider an improved approach to native title negotiations, including examining incentives to enhance how consents are obtained. Consultations will commence later this year.
	3 and 118	Compulsory acquisition of non-native title rights and interests –Amendments to the Native Title (Queensland) Act, supported by amendments to the *Acquisition of Land Act 1967*	NQLC support the amendment in clause 3 as it is only when all interests in land are compulsorily acquired that extinguishment of native title can take place. It appears that non-native title rights and interests will be able to be taken without taking native title interests as the situation demands, but if this is not the case then this amendment is completely opposed because it would mean that native title would be taken where there is no need for this to occur.		The amendment to the Native title (Queensland) Act 1993 (supported by amendments to the *Acquisition of Land Act 1967*) regarding the compulsory acquisition of non-native title rights and interests, will not operate on its own to extend the reach of a compulsory acquisition Act to acquire non-native title rights and interests unless native title is also being compulsorily acquired under the same compulsory acquisition Act.
	6	Amendment to definition of environmental purpose under *Acquisition of Land Act 1967*	NQLC expressed concern that the expansion of the definition has the potential to further diminish land available to be claimed by native title claimants.		The amendments extend environmental compulsory acquisition powers including for the management, protection or control of the seashores, estuaries and land adjoining the seashore and estuaries. Where native title is impacted through the exercise of this amendment, in order for native title to be wholly extinguished under the Commonwealth *Native Title Act 1993* all interests must be acquired, including native title rights and interests, and are subject to compensation.. Further, the native title party's right to compensation is protected under the Commonwealth *Native Title Act 1993*.
	23, 24, 31 and 46	Land tenure reform initiatives	NQLC expressed concern about the amendments to provisions under the Land Act 1994 in regard to the potential for infringing on native title rights and interests from: • disposal of reservations and the ability of the public to continue to use the land; • conversion of unallocated state land to freehold tenure, as detail of how the sale of the land will occur is going to regulation and the regulation has not been provided; • term of the extension of a lease and that this may result in long periods restricting the exercise of many native title rights and interests as there is no limit on the number of extensions		DNRM notes NQCL's concerns on the land tenure reforms introduced in the Land and Other Legislation Amendment Bill 2014. The Bill is deliberately silent in relation to the effect of the reforms on native title and also in relation to compensation. Such silence cannot be construed that the Bill is seeking to over-ride the Commonwealth *Native Title Act 1993*. The Bill cannot override the Commonwealth *Native Title Act 1993*. It is silent on these matters as they are dealt with under the Commonwealth *Native Title Act 1993*. There is no need for the State, and nor should it, re-enact the protections and provisions of the Commonwealth *Native Title Act 1993* in state legislation or limit the types of land and resource dealings it can carry out as the Commonwealth Act ensures that native title is protected through compliance under the future act regime. When doing acts that affect native title, it is the Commonwealth *Native Title Act 1993* that sets out the requirements for addressing native title, the effect on native title, the relevant procedural rights and compensation for the effect on native title. It is the Commonwealth *Native Title Act 1993* which allows the States and Territories to validly proceed with land and resource dealings subject to the requirements of the Commonwealth Act. It is important to note that the State cannot cause extinguishment of native title, or otherwise affect native title, unless that is the outcome provided under the Commonwealth *Native Title Act 1993*. In relation to compensation for the effect on native title, as noted above, there is no need for the Bill to deal with native title compensation as compensation for the effect on native title is dealt with under the Commonwealth Native Title Act. It is a matter for the native title party to bring a compensation application forward in the Federal Court unless agreement is otherwise reached in the form of a registered Indigenous Land Use Agreement (ILUA).

Sub No.	Submitter	Clause	Section/Initiative	Key Points	Departmental Response
					Where native title is not wholly extinguished over the relevant land, land dealings done under the land tenure reforms under the *Land Act 1994* are subject to native title being appropriately addressed in accordance with the Commonwealth *Native Title Act 1993*.. To provide some specific examples: (a) in relation to the rolling term leases, the department's position is that these extensions can proceed under section 24IC of the NTA (subject to meeting the relevant requirements).. As the extended term cannot be longer than the original term then the extension of the term is not a longer term and therefore will not trigger the right to object process under section 24MD(6B) of the Native Title Act. Under section 24IC, there are no procedural rights but compensation is payable for the effect of the extension on native title. The department view is that under the proposed rolling term lease provisions are no greater effects on native title rights as result of the extension. (b) the actions of freeholding unallocated State land, allowing term leases to go directly to freehold or the grant of a perpetual lease where a term lease and perpetual lease is amalgamated cannot simply extinguish native title unless that is the outcome provided under the Commonwealth Native Title Act. As noted above, the State cannot over-ride the Commonwealth Act and not appropriately address native title. For example, the freeholding of unallocated state land or a pastoral holding will likely require an Indigenous land use agreement which is a voluntary agreement in which the native title party must consent to the surrender of native title. Where an ILUA is the only option, there can be no extinguishment unless the native title party consents. The amendment to clauses 23 and 24 relate the reform to remove all operational detail about land rent and purchase price provisions to regulation. This amendment does not affect the process for the disposal of reservations by sale. Further, these clauses amend sections in the *Land Act 1994* that relate to the reservation of land in a title that is not available for use by the public. The amendment to clause 31 relates to the reform to remove all operational detail about land rent and purchase price provisions to regulation. This amendment does not affect the process regarding the conversion of unallocated state land to freehold.
		132	Validation of water licensing decisions	The validation provisions operating retrospectively in relation to water licences are opposed on the basis that if the decisions were initially invalid any native title cannot be impacted or extinguished by the grant of an invalid interest. This legislation has the potential to change the impact on native title.	The validation amendments regarding water licences under the *Water Act 2000* are valid in relation to native title under section 24HA(1) as it is the amendment of legislation relating to the management or regulation of water. Under section 24HA(1), there are no procedural rights, the non-extinguishment principle applies and compensation is payable for the effect on native title. In addition, the issues raised by the review of a sample of historical administrative decisions relate to the consideration of decision-making criteria prescribed in the *Water Act 2000* (Qld). The review did not identify any failure
		116, 123, 128	Validate decisions made regarding later work programs and later development plans	As per the comments for the validation under the Water Act 2000, the validation provisions regarding validation of later work programs and development plans are also opposed.	Confirming the validity of the later work programs and later development plans under the relevant resource legislation does not give the holder of the resource interest any additional rights in relation to the land to which they already hold under the existing resource interest, as later work programs and later development plans simply set out the resource interest holder's program of work for a certain period, e.g. 4 years. Native title will have been addressed for the grant of the resource interest under the Commonwealth *Native Title Act 1993*.
15	Wildlife Preservation Society of Queensland		No specific section	WPSQ are concerned about potential reduction in environmental protection as a result of amendments in the Land and Other Legislation Amendment Bill 2014 relating to: • state land tenure reforms including the introduction of rolling leases, removal of requirements for land management agreements, flexibility for leases amalgamations, and removing restrictions that limit the number of type of rural leases;	The consideration of most appropriate use and tenure for the land contained in the current *Land Act 1994* renewal provisions were primarily intended to enable the closer settlement of the State. However, this created a situation where management agencies would wait until the renewal of a lease to allocate land for public purposes such as environmental purposes. If a government entity considers part of the leased land is needed for a public purpose including environmental purposes, it may be acquired by the government entity under an acquisition law including the *Land Act 1994* at any time, rather than waiting (potentially a significant amount of time) until the lease is due for renewal.

Sub No.	Submitter	Clause	Section/Initiative	Key Points	Departmental Response
				• flexibility for resource tenure holders; • acquiring land for public and environmental purposes.	While this Bill removes the link between most appropriate use assessment and land management agreements at lease renewal, it does not prevent the land management agreements being used at other times for rural leasehold land irrespective of the size of the term or perpetual lease, e.g. if the land is degraded, is at risk of degradation, or the conditions of the lease not being met. The Department uses a range of methodologies in its auditing, monitoring and compliance activities including, desktop, remote sensing, and on ground evaluation such as land condition assessments. These compliance tools, available to the Government to ensure the appropriate, productive and responsible use of leasehold land. The Bill improves state land tenure arrangements which underpin agriculture and tourism activities across more than 60 per cent of Queensland. A healthy agriculture and tourism sector will attract increased investments and increased employment opportunities in Queensland. As part of the implementation aspects of the Bill, guidelines for assessment will be developed to administer the rolling lease provisions as they relate to the *Nature Conservation Act 1992* and associated lands. Providing flexibility to resource tenure holders by amending the criteria for applying to change the production commencement day for petroleum leases does not provide the lease holders with additional rights in relation to the land to which they already hold under the existing resource interest, as later work programs and later development plans simply set out the resource interest holder's program of work for a certain period, e.g. 4 years.
16	Cassandra McMahon		No specific section	Ms McMahon expressed concern that the proposed rolling term lease extension did not meet the expectations she had after Mr Seeney's public statement. Ms McMahon expressed disappointment that a lessee would not require to do anything to have their leases extended.	An application may be made for lease extension 20 years prior to the expiry of the original term. An example of this would be a term lease issued for 30 years may apply for extension within the last 20 years effectively allowing long term planning with the surety of 50 years. Further, there is no limit on the number of times that the term of the lease may be rolled over.

Clarification of leases to which the corporation and aggregation restrictions under the *Land Act 1994* applies

In the department's first briefing to the committee on 2 April 2014, the department stated that the current restrictions on corporate ownership of leases and restrictions on aggregations of leases applied to pastoral leases.

The *Land Act 1994* states under Chapter 4, Part 2, Division 2, that the restrictions apply to:

a) perpetual leases issued for grazing or agriculture purposes;
b) grazing homestead perpetual leases;
c) grazing homestead freeholding leases; and
d) subleases of leases mentioned in paragraphs (a), (b) and (c).

The phrase 'pastoral lease' has a specific definition under the *Land Act 1994*, meaning a pastoral holding, preferential pastoral holding, pastoral development holding or stud holding issued under the repealed Act (the *Land Act 1962*).While a pastoral lease is not specifically affected by the restriction on eligibility to hold land, once the pastoral lease is converted to perpetual tenure it is often given a grazing or agriculture purpose at which point in time it would be captured by the restriction on the eligibility to hold provisions.

Clarification about section 144 of the *Native Title (Queensland) Act 1993*

The department also wishes to clarify the following points in relation to the amendment to section 144 of the *Native Title (Queensland) Act* 1993 which may assist the Committee's understanding of this amendment under the Land and other Legislation Amendment Bill 2014.

- This amendment is not related to the land tenure reform parts of the Bill, and does not facilitate the addressing of native title for those land tenure reform amendments. It is a separate amendment to assist in meeting requirements under the Commonwealth Native Title Act 1993. It simply provides another option for how to deal with non-native title rights and interests at the same time as when native title is compulsorily acquired under a compulsory acquisition Act.
- In extending the reach of a compulsory acquisition Act under section 144 of the *Native Title (Queensland) Act 1993*, whether it is in relation to native title (as it does currently) or non-native title rights and interests being compulsorily acquired under that same Act (as proposed by the Bill), the compulsory acquisition must still be one that is authorised under the particular compulsory acquisition Act in terms of purpose including any third party powers.
- Non-native title rights and interests include a leasehold interest, a resource interest, a licence or a permit.

LAND AND OTHER LEGISLATION AMENDMENT BILL 2014

DEPARTMENT OF NATURAL RESOURCES AND MINES

Response to the State Development, Infrastructure and Industry Committee regarding Fundamental Legislative Principles Issues

Date: 6 May 2014

Land and Other Legislation Amendment Bill 2014 Potential fundamental legislative principles issues			
Clause	**FLP issue**	**Committee's comments**	**Department's response**
15	**Rights and liberties of individuals** – section 4(2)(a) *Legislative Standards Act 1992* Does the Bill have sufficient regard to the rights and liberties of individuals?	The significance and proportionality of the fines (in regard to new section 53A of the *Forestry Act 1959*) are bought to the Committee's attention.	The proposed maximum penalty provisions under new section 53A of the *Forestry Act 1959* are the same as the maximum penalty provisions that apply, for example, under existing sections 53 and 54 of the *Forestry Act 1959*, which cover similar and other tenure categories where the forest products are owned by the State and administered under the *Forestry Act 1959*.
116, 123, 128, 129 and 132	**Rights and liberties** – section 4(3)(g) *Legislative Standards Act 1992* Does this Bill adversely affect rights and liberties, or impose obligations, retrospectively?	The clauses identified amend several Acts, and clause 132 in particular, potentially breaches the fundamental legislative principle about retrospectivity. However, the committee may consider the justification provided in the explanatory notes for each of the clauses, which indicates their retrospectivity, will not impinge or adversely affect the rights and liberties of individuals, and that where they may be affected, adequate safeguards in place.	The potential fundamental legislative principle issue with these clauses are addressed in the explanatory notes. The department has nothing further to add.
48	**Delegation of administrative power** – section 4(3)(c) *Legislative Standards Act 1992* Does the Bill allow the	This amendment provides that the Governor in Council may approve the conditions of an application for conversion to freehold of a term lease issued for tourism purposes, where the lease is an offshore island.	In delegating the powers of the chief executive under the *Land Act 1994* (the Land Act), the chief executive of the Department of Natural Resources and Mines is first satisfied that the officer receiving the delegation is appropriately qualified.

Land and Other Legislation Amendment Bill 2014 Potential fundamental legislative principles issues			
Clause	**FLP issue**	**Committee's comments**	**Department's response**
	delegation of administrative power only in appropriate cases and to appropriate persons?	Section 167 of the Land Title Act 1994, - *provisions for deciding application* – provides provisions the chief executive must consider in deciding whether or not to offer to convert a lease, the conditions on which the offer is made and, if the offer is for a lease, its imposed conditions. Notwithstanding section 167, the committee may wish to satisfy itself that the power delegated to the chief executive officer is appropriate in the circumstances, whereby a deed of grant for conversion of land to freehold title may be issued if the Governor in Council approves the conditions on which the offer is made.	Section 167 of the Land Act lists the matters the chief executive must consider before deciding whether to offer to convert any lease to some higher form of tenure (freehold land or a perpetual lease). For example, would it be more appropriate to allocate some of the land the subject of the conversion application as a State forest, road or a local government controlled reserve for park and recreation? In each case, the consideration would be made only following an evaluation of the most appropriate tenure and use for the land and, as supported by section 16, that evaluation will take account of State, regional and local planning strategies and policies and the object of the Land Act. With regards to leases for tourism on offshore islands, the Government is aware of their uniqueness and, for this reason, section 167 is being amended to ensure that any offer to convert such a lease will need the prior approval of the Governor in Council and, if it is decided to freehold the land, the offer to convert the lease to freehold contains any conditions imposed by the Governor in Council. Section 171 of the Land Act confirms that no offer is accepted until the lessee fulfils all of the conditions of the offer. And, for an offer to freehold, section 172 confirms the freeholding of the lease cannot proceed until the offer is accepted.

Land and Other Legislation Amendment Bill 2014 Potential fundamental legislative principles issues			
Clause	**FLP issue**	**Committee's comments**	**Department's response**
118	**Aboriginal tradition and Island custom** – section 4(3)(j) *Legislative Standards Act 1992* Does the Bill have sufficient regard to Aboriginal tradition and Island custom?	Given the amendments broaden the reach of the compulsory acquisition of rights and interests related to Aboriginal and Islander people, the committee may wish to satisfy itself that there has been sufficient regard to Aboriginal tradition and Island custom.	Whilst this amendment is linked to the compulsory acquisition of native title, this amendment is actually about the acquiring of non-native title rights and interests and providing a more administratively efficient and streamlined way forward. Section 144 of the *Native Title (Queensland) Act 1993* (NTQA) already provides the power to extend the reach of a compulsory acquisition Act to acquire native title rights and interests. Whilst the amendment supports a requirement under the Commonwealth *Native Title Act 1993* (NTA) about the need to acquire all non-native title rights and interests to achieve an extinguishment outcome (required to ensure a valid subsequent land allocation), the amendment itself does not affect native title.
4, 7, 118	**Clear and precise** – section 4(3)(k) *Legislative Standards Act 1992* Is the Bill unambiguous and drafted in a sufficiently clear and precise way?	The committee may consider it appropriate that the terms *'non-native title right or interest'* and *'non-native title rights and interests'* are defined within the *Acquisition of Land Act 1967* and the *Native Title (Queensland) Act 1993*.	The department currently considers there is no need for a specific definition. The Office of the Queensland Parliamentary Counsel is of the same view. This is because section 5 of the NTQA provides that words and expressions used in both the NTA and the NTQA have the same meaning as in the NTA unless specifically defined or the context or subject matter indicates otherwise. The NTA also does not define "non-native title rights and interests" but only "interest".
60	**Clear and precise** – section 4(3)(k) *Legislative Standards Act 1992*	The committee's attention is drawn to: (1) the broad as opposed to narrow drafting of this provision; and (2) the absence of qualifying terms	Land management agreements have been used previously to apply to all term leases for agricultural, grazing or pastoral purposes that cover an area of 1000 ha or more, being rural leasehold land. The Government

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Clause	**FLP issue**	**Committee's comments**	**Department's response**
	Is the Bill unambiguous and drafted in a sufficiently clear and precise way?	such as 'reasonable' and 'relevant', which respectively convey different meanings to the term 'appropriate'.	considers they would be more appropriately used as a form of compliance. Rather than forfeit the lease for the lessee's failure to exercise the duty of care, or give the lessee a remedial action notice, the Government will seek to enter into a land management agreement with the lessee with the primary aim of working with the lessee to resolve land degradation issues affecting the lease. The amendment introduced by clause 60 should be understood in that light. The amendment to section 176W of the *Land Act 1994* does not introduce a new provision but omits paragraphs (a) and (b) of subsection (1) and uses, as a continuation of the wording of subsection (1), the wording of paragraph (b). Section 176W as amended will confirm that a land management agreement for a lease may include any matter the Minister considers appropriate to achieve the purposes of a land management agreement. In considering those matters, the Minister must have regard to the reason(s) why a land management agreement is required (section 176UA) and the relevance to the lease of the purposes of a land management agreement as listed under section 176V. For example, taking into account the purpose listed under section 176V(d), the Minister would need to be satisfied the land suffered from land degradation. If satisfied, the Minister may require the lessee enters into a land management agreement and considers it appropriate that the agreement contains clauses relating to improving the degraded land.

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Clause	**FLP issue**	**Committee's comments**	**Department's response**
23-25, 27-29, 31, 32, 44, 51, 70, 72, 86, 89-97 (relocation of provisions from the Act to a Regulation) 100, 101 (transitional provisions)	**Scrutiny of the Legislative Assembly** – section 4(4)(b) *Legislative Standards Act 1992* Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?	The committee may wish to consider whether including such information in the Bill, rather than subordinate legislation, would enhance the legislative scrutiny process and, therefore, have greater regard to the institution of Parliament.	These amendments to the Land Act will move land rent provisions that are day to day management matters to subordinate legislation. The amendments also elevate departmental policy on the method of determining unimproved value/purchase price into regulation. The amendments to the Land Regulation 2009 (Land Regulation) resulting from introduction of Part 4 of the Bill will be by subordinate legislation and, as a result, be subject to disallowance by the Legislative Assembly under section 50 of the *Legislative Standards Act 1992*. Clauses 23, 25, 27, 28, 29, 31, 32, 51, 89 ('the clauses') – the provisions being amended by the clauses that relate to purchase price/unimproved value are not being 'relocated' to regulation; the provisions are amended but will remain in the Act. The only exception is that the definition for unimproved value as provided by section 434 of the Land Act (Clause 88) will be omitted from the Act and moved to the Land Regulation. The amendments will ensure that the method of determining the purchase price/unimproved value will be defined by regulation. Currently, the method for determining purchase price/unimproved value for the provisions amended by the clauses is through departmental policy. This departmental policy will now be elevated to regulation through these reforms, and so provide better scrutiny by the legislative assembly. Clause 24 – the amendment of section 26A of the *Land Act 1994* (Land Act) is a consequential amendment and takes into account the move of rental provision section 184 from the Land Act to the Land Regulation (clause 64).

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Clause	**FLP issue**	**Committee's comments**	**Department's response**
			Clause 44 does not omit a provision from the Land Act but clarifies the referred to 'category' in section 162(3) of the Land Act is a 'rental category'. Clause 86 amends section 422 of the Land Act and clarifies that a decision made under the Land Act and mentioned in schedule 2, and a decision made under a section of the Land Regulation that provides for an appeal against a decision made under the section, will be, in the first instance, subject to an internal review. The amendment takes into account the movement of land rent and purchase price provisions from the Land Act to the Land Regulation and ensures people affected by decisions made under the amended Land Regulation will continue to be able to appeal against an 'original decision'. Clauses 91, 92 and 93 do not affect the purchase price for freeholding leases under the Land Act but take into account the fact that the deferral for hardship provisions under the Act are being moved to the Land Regulation (clause 64). Clause 100 lists the matters for which a regulation may be made about the payment and collection of rents and instalments under the Land Act and Land Regulation. The listing is not exhaustive but is meant to illustrate the regulation making power under section 448 of the Land Act (clause 90). Clause 101 omits reference to sections of the Land Act being moved to the Land Regulation as a result of the omission of the rental provisions of the Land Act (clause

Land and Other Legislation Amendment Bill 2014 Potential fundamental legislative principles issues			
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			64) and changes to references in sections in the schedule that have been renumbered as a result of the amendments made to the Land Act by the Bill. A schedule to the Land Regulation will list the sections of the regulation against which an appeal may be lodged under the Act. These sections will include the sections of the Act omitted from the Bill and moved to the Land Regulation.
Explanatory Notes	Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. This includes *'a brief statement of the extent to which consultation was carried out in relation to the Bill'*.	The lack of consultation with key Indigenous stakeholders in the preparation of the Bill is drawn to the Committee's attention. It is also noted, that consultation conducted by the Department of Natural Resources and Mines as part of the executive arm of government, is separate to submissions sought by the State Development, Infrastructure and Industry Committee (the committee) of the Parliament of Queensland, as part of the legislative arm of government. In addition, submissions sought by the Committee in 2012, prior to the development of the Bill, would not have been focused on the legal effect of specific provisions about native title and non-native title rights and interests that appear in the current Bill. Consultation aside, the notes are otherwise fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.	The Department notes the comments made by the Committee. Native title is protected under the Commonwealth *Native Title Act 1993*. The State must and will comply with the Commonwealth *Native Title Act 1993* when doing acts affecting native title under the provisions of the Bill. There is no need for the State, and nor should it, re-enact the protections and provisions of the Commonwealth *Native Title Act 1993*, as the Commonwealth Act applies irrespective of the provisions in the Bill, or any other state legislation. It is stressed that the amendments to the *Land Act 1994* (the Land Act) made by the Bill are part of the first phase in land tenure reform in Queensland and the department will be actively working with Indigenous stakeholders as part of the second phase of land tenure reforms. The department will work with interested parties in developing an improved approach to native title negotiations. In particular, in relation to the Committee's recommendations in the "Inquiry into the future and continued relevance of government land tenure across Queensland" report regarding Indigenous land use agreements (ILUAs), the Government's response noted it

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			supports the need to reduce transaction costs of native title resolution for all parties, will work with key stakeholders to develop template ILUAs to facilitate streamlined agreement-making and will work with all interested parties to consider an improved approach to native title negotiations, including examining incentives to enhance how consents are obtained. With respect to the concerns raised about consultation with Indigenous stakeholders on the amendments to the Land Act by the Bill, the Committee is advised that the provisions of the Bill, particularly rolling term lease provisions, were expressly written to safeguard existing native title rights and interests in leasehold land. Specifically in relation to the section 144 *Native Title (Queensland) Act 1993* amendment, no specific consultation was undertaken. Given that non-native title rights and interests can already be compulsorily acquired or extinguished under various state compulsory acquisition legislation in various circumstances, this amendment simply ensures that a particular non-native title right or interest can be acquired under the particular compulsory acquisition Act being used to acquire native title rights and interests.

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Statement of Reservation

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Mr Bruce Young MP
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Dear Chair,

I write to lodge a statement of reservation on the State Development, Infrastructure and Industry Committee's report on the *Land and Other Legislation Amendment Bill 2014*.

At the outset I would like to acknowledge the work of the Committee and Parliamentary staff in addressing many issues with this bill.

As the report sets out the previous consultation by the Committee should not be used as a substitute for consultation by the Department of Natural Resources and Mines on this bill and reference to media reports as a justification for the bill's introduction are weak.

I note that recommendation 3 (if accepted), will provide a reference point in the second reading speech to resolve ambiguity and uncertainty on native title by clarifying that the intent of rolling term leases is not to create perpetual leases.

However, I am not satisfied that the Committee report addresses all the concerns of both the Cape York Land Council and the North Queensland Land Council relating to native title.

If the Minister were to also include the following in his second reading speech it may address these concerns:

- Clarification that the bill is not intended to change the native title position of an exclusive lease and;

- An assurance that a right to object as required under the *Commonwealth Native Title Act 1993* will remain when amalgamating a term lease to a perpetual lease including access to the indigenous land use agreement process.

I also have a reservation with the removal of legislative requirements for land management agreements in the absence of regulation or any guidance on how and when the Minister will use his legislative powers to ensure that land is not degraded. The advice from the Department that it will be *"more a compliance tool"* is insufficient. This is with particular reference to the submission from the Great Barrier Reef Marine Park Authority that:

> *"The bill and explanatory notes are not clear on how the Queensland Government will monitor and manage catchment condition for the long-term health of the Great Barrier Reef World Heritage Area without dedicated leasehold land management tools in place."*

The Opposition will be providing further detail on these and other matters during the second reading debate.

Yours sincerely

Tim Mulherin MP
Deputy Leader of the Opposition

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