



The Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

Re: Aboriginal and Torres Strait Islander Land (Providing Freehold) Amendment Bill 2014

The LGAQ welcomes the opportunity to provide feedback about the State Government's *draft Aboriginal and Torres Strait Islander Land (Providing Freehold) Amendment Bill 2014* (Bill). The State Government's commitment to ensure that Aboriginal and Torres Strait Islander communities have the same access to freehold land tenure as available in all other communities in Queensland is commendable and supported. In providing this support, the LGAQ acknowledges that providing freehold land in Aboriginal and Torres Strait Islander communities is both a significant and divisive subject and, in itself, is not an assurance of economic development.

Land administration matters in Aboriginal and Torres Strait Islander communities are complex. This complexity is considered to be a significant impediment to economic development. In support of this view, the Regional Australia Institute, in their document *Rethinking the Future of Northern Australia's Regions*, states:

regional development ... particularly for Indigenous communities, is confounded by the complex and unique [land] tenure arrangements that exist over much of the landscape. In addition, unresolved claims for Indigenous ownership and disputes over the ways to achieve a balance between economic development, conservation and traditional use constrain the ability to connect land resources with sustainable economic opportunities.

This position is also held by the Federal Coalition. In the Coalition's *2030 Vision for Developing Northern Australia* they state:

growth is being hampered ... due to land tenure arrangements that are complex and restrictive, with significant duplication of rules and regulatory oversight across the various [spheres] of government.

The LGAQ understands that the State Government is eager to move forward with improved land tenure arrangements in Aboriginal and Torres Strait Islander communities; yet cautions that this must proceed at a pace whereby all stakeholders are well-informed and at ease with the process

The LGAQ would like to draw attention to the long-held position of our members that an overarching land administration strategy within the Aboriginal and Torres Strait Islander communities is necessary. Our members believe that the plethora of incremental adjustments to existing regulatory regimes and the interplay between the constantly-evolving State and Federal legislation over recent times would support the development of a fresh and contemporary overarching strategy that allows all affected parties to move forward in an improved environment of regulatory and land tenure certainty.

The Regional Australia Institute suggests, to facilitate the economic and wider development of Aboriginal and Torres Strait Islander communities, such a strategy should focus on:



- Resolving the complex impediments to using leasehold and Indigenous land and water as a flexible economic asset, and
- Reforming the governance of public investment to provide these communities with greater responsibility and say over their future.

The LGAQ supports a genuine, participatory approach to the broad land administration program that empowers both local governments and their community members to develop appropriate solutions and make their own decisions. Additionally, the Association and our Aboriginal and Torres Strait Islander members have a strong interest in continued engagement relevant to the implementation of this landmark legislation.

Should you have any questions or concerns in relation to the above, please feel free to contact Tracy Haynes, Principal Advisor – Planning & Development by phone (07 3000 2291) or email (tracy_haynes@lgaq.asn.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Greg Hoffman', written in a cursive style.

Greg Hoffman PSM
GENERAL MANAGER - ADVOCATE



**Aboriginal and Torres Strait Islander Land
(Providing Freehold) and Other Legislation
Amendment Bill 2014**

Submission

**Local Government Association of Queensland Ltd
16 June 2014**

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individuals' needs. The LGAQ has been advising, supporting and representing local governments since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

1. Introduction

The LGAQ welcomes the opportunity to provide feedback about the State Government's *Aboriginal and Torres Strait Islander Land (Providing Freehold) Amendment Bill 2014* (Bill). The LGAQ understands the policy objectives of the Bill are to:

- Introduce the option of ordinary freehold title into Aboriginal and Torres Strait Islander communities;
- Simplify the leasing framework that applies to Indigenous land to reduce the regulatory burden on trustees and lessees;
- Amend the *Land Valuation Act 2010* to enable Indigenous Local Government Areas to be subject to statutory valuations;
- Provide for the repeal of the *Aurukun and Mornington Shire Leases Act 1978* upon transfer under the *Aboriginal Land Act 1991* of the remaining shire lease land; and
- Amend the *Land Act 1994* to provide the Minister with power to declare, on a case by case basis, a conditional right of public access over private land where, due to erosion, the access along the area of beach has been compromised by the private ownership of the beach area.

The following sections of this submission outline the LGAQ's policy position where relevant to each of the above identified objectives.

In principle, the LGAQ supports the objectives of the Bill. The State Government's commitment to ensure that Aboriginal and Torres Strait Islander communities have the same access to freehold land tenure as available throughout the rest of Queensland is commendable. However, the LGAQ acknowledges that providing freehold land in Aboriginal and Torres Strait Islander communities is both a significant and divisive subject and not an assurance of economic development. The LGAQ understands that the State Government is eager to move forward with improved land tenure arrangements in Aboriginal and Torres Strait Islander communities, yet suggests this must be undertaken at a pace whereby all stakeholders are well-informed and at ease with the process.

In order for the Bill's proposed reform program to be clearly understood by all stakeholders, the LGAQ advocates for an overarching land administration and housing strategy to be developed. Such an overarching strategy would guide all activities, legislative and otherwise, related to the land tenure; land administration; and housing program, and should be binding on all spheres of government and in partnership with the relevant trustees. It would also articulate the linkages between individual land administration and housing projects as well as identify the long-term goals and objectives for the Aboriginal and Torres Strait Islander land reform agenda.

2. Option of Freehold Land Tenure

The opportunity for Aboriginal and Torres Strait Islander communities to be empowered to determine the appropriateness of converting existing land tenure arrangements to ordinary, individual freehold land tenure in a manner suitable to them is supported in principle by the LGAQ.

The LGAQ suggests that trustees, whether also a local government, or a Registered Native Title Body Corporate (RNTBC), are not adequately resourced to perform a comprehensive engagement process. Where a local government is the trustee, it is likely any needed resourcing will be met by the local government at a time when they are experiencing a reduction in their general purpose funds and when eleven (11) of the sixteen (16) Aboriginal and Torres Strait Islander local governments have been identified by the Queensland Audit Office as being high risk with respect to financial sustainability.

To achieve suitable participatory community engagement, the LGAQ favours a local government facilitated program that is sufficiently flexible to meet the needs and aspirations of each Aboriginal and Torres Strait Islander community. In addition, such a program will require financial assistance and support from the other spheres of government to ensure local governments are suitably resourced and have the capacity to undertake this work.

Further, the LGAQ suggests that an Indigenous Land Use Agreement (ILUA) will be a key early step in any freehold land model or process. An ILUA is also considered particularly valuable in assisting a council carry out regular local government service delivery and meet legislative obligations. As such, the LGAQ recommends an ILUA to be negotiated and developed for each of the sixteen (16) Aboriginal and Torres Strait Islander local government areas.

3. Simplified Leasing Framework

The LGAQ supports the simplification of the leasing framework in Aboriginal and Torres Strait Islander communities. The restrictions and requirements currently associated with the granting of leases in these communities will be consolidated and three (3) broad lease categories created under the Bill. These lease categories are identified as:

- A home ownership lease, for private residential purposes;
- A non-residential lease, for commercial, public infrastructure and social housing purposes; and
- A townsite lease, for perpetual use by a local government.

The LGAQ considers the inclusion of townsite leases particularly valuable for Aboriginal and Torres Strait Islander local governments. The LGAQ suggests that either during the negotiation of an ILUA for a township area or as part of establishing a freehold instrument, all land that a relevant local government has an interest in (e.g. land containing local government infrastructure) be systematically identified and made subject to a townsite lease.

Further, the LGAQ understands that the objectives of the *Land Holding Act 2013* were intended to resolve some of the outstanding issues of land tenure in Aboriginal and Torres Strait Islander communities. Based on feedback from our Aboriginal and Torres Strait Islander council members, the LGAQ emphasises that there continues to be limited understanding of the holistic land tenure framework in Aboriginal and Torres Strait Islander communities. There is also limited capacity to effectively utilise the provisions of the *Land Holding Act 2013* to resolve outstanding lease issues.

The LGAQ recommends that a communication and engagement strategy be developed that includes information and/or guidance targeted at each of the various stakeholder groups, such as local government, trustees and lessees, community reference panels, and individual residents. It will be appropriate to include information suitable for culturally and linguistically diverse (CALD) individuals. Such a strategy should enable all stakeholders affected by this Bill and other Aboriginal and Torres Strait Islander land reforms demonstrably understand the process and participate accordingly in making informed decisions.

4. Statutory Valuations

It is entirely feasible, if not necessary, to legislatively enable the relevant local governments to set rates when introducing freehold land tenure as an option in Aboriginal and Torres Strait Islander communities. The LGAQ is supportive of this policy objective that creates greater equity between the role and responsibilities of Aboriginal and Torres Strait Islander local governments and other local governments throughout Queensland.

The expectation of a relatively small initial uptake of the freehold land tenure option will not produce revenue that will sustainably fund the establishment of the administrative and supporting systems and the human capacity to maintain such systems. The LGAQ recommends that the State Government establish a funding and support program in order for Aboriginal and Torres Strait Islander local governments to implement a suitable rating system.

5. Beach Access

The LGAQ supports the policy intent underpinning the Beach access reform provisions under the Bill. The LGAQ also commends the Department of Natural Resources and Mines (DNRM) consultation process in relation to beach access matters. The following general comments are specifically in relation to *Part 3B Making land available - for public use as beach* of the Bill.

5.1 Local Government Obligations

The LGAQ seeks clarity on what local government must “maintain” access means when it is also proposed that local governments are not obliged to undertake any works to protect boundaries in practice. For example, if the access area is eroded would a local government need to undertake State Government approved protection works to ensure beach access rather than protect boundaries? The LGAQ suggests that to avoid ambiguity it should be clarified that the creation of a statutory right of access will not oblige the State or local government to undertake any work to protect or maintain structures or landscaping works located on, above or below the declared beach area.

The LGAQ also seeks clarity on the roles and responsibilities where local government does not want to be the manager but where the State Government proceeds to require local government to be the manager. This question is particularly pertinent in relation to maintenance and compliance etc.

5.2 Liability

The proposal that the State Government intends to assume occupiers liability is welcomed by the LGAQ. However, in the broader liability context, a number of important issues have been identified that would benefit from clarification.

An increased risk associated with maintenance activities where private infrastructure may be present has been identified. To address this, it may be appropriate for the local government be granted a right to decline the maintenance obligations for a declared area, or veto a proposed declaration, if council considers that the maintenance obligation will be unduly onerous, taking into account the quantity and position of private infrastructure or improvements within the proposed declared area. Alternatively, a statutory indemnity for local governments relating to claims for personal injury or property damage within the declared beach area, arising from local government obligations to maintain oceanfront private land, which may contain private infrastructure and improvements, should be considered.

The LGAQ acknowledges that the new obligation for councils to maintain a beach access way over private land is consistent with local government currently undertaking responsibility for beach maintenance, or maintenance of public areas, such as an unformed esplanade traversed by the public. However, while in some instances this might be the case, the proposal needs to consider the potential for increased risks to local government posed by the uncontrolled existence of privately owned improvements and existing infrastructure within the declared beach area.

The Bill seems to treat the existence of private structures within the declared area as a matter for conditions regarding the use of the beach access way. While this is a suitable matter for conditions of use, that is not the end of the matter. The impact of these structures on potential liability for local government arising from a local government’s obligation to maintain the declared area appears to be a significant feature of the proposal and needs to be taken into account when imposing the maintenance obligation upon councils.

While councils are at liberty to bring a local law into existence to govern access, this will not in itself address liability issues. There are significant differences between the potential risk of legal claims arising from the maintenance of a public beach, and the maintenance of private land on the foreshore. The LGAQ seeks clarity on how this distinction will work in practice and would appreciate further information on this matter.

5.3 Community Awareness

Some resources will be required to implement the reforms proposed under the Bill. For example, signage and enforcement of local laws and State legislation will be necessary. The LGAQ is of the view that due to the inherently overlapping State and local government responsibilities upon commencement of these proposed reforms, the State should provide resources to assist with the initial implementation of the reforms.