AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

Members present:

Mr IP Rickuss (Chair)
Mr JN Costigan MP
Mr SV Cox MP
Mr DF Gibson MP
Mr JM Krause MP
Ms MA Maddern MP
Ms J Trad MP

Staff present:

Mr R Hansen (Research Director)
Mr M Gorringe (Principal Research Officer)

BRIEFING—ABORIGINAL AND TORRES STRAIT ISLANDER LAND HOLDING BILL 2012

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 18 OCTOBER 2012

Brisbane

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Committee met at 9.58 am

CHAIR: Welcome, ladies and gentlemen. I declare the meeting of the Agriculture, Resources and Environment Committee open. I would like to acknowledge the traditional owners of the land on which this meeting is taking place. I am Ian Rickuss, the member for Lockyer and chair of the committee. I would like to introduce other members of the committee here today. There is Jason Costigan from Whitsunday, Sam Cox from Thuringowa, David Gibson from Gympie, Jon Krause from Beaudesert, Anne Maddern from Maryborough, and Jo Miller from Bundamba. Thank you, Jo, for coming along. Our deputy chair, Jackie Trad from South Brisbane, will be joining us shortly. She has other parliamentary commitments. We apologise for any of the members of the committee who are not here.

Please note that this meeting is being broadcast by the Parliament of Queensland website and the meeting is also being transcribed. So it is all on the public record. We have called this meeting to hear from people representing communities that have been directly affected by the Aboriginal and Torres Strait Islander Land Holding Bill 2012. The bill was introduced to parliament on 24 August by the Hon. Andrew Cripps, the Minister for Natural Resources and Mines. The committee has been given until Monday, 29 October to examine the bill and report back to parliament. Just for the information of people who are interested, that does not mean that the bill will pass through parliament on 29 October. That is just us reporting back to parliament. So that is not the final say on it. I will ask the department to give us a briefing.

CARSE, Mr Ken, Principal Policy Adviser, Department of Natural Resources and Mines

LUTTRELL, Mr Andrew, Director, Policy, Native Title Policy and Legal Services, Department of Natural Resources and Mines

ROBSON, Mr Chris, Assistant Director-General, Department of Natural Resources and Mines

SMITH-ROBERTS, Ms Meg, Principal Adviser, Land and Indigenous Services, Department of Natural Resources and Mines

CHAIR: I invite Chris Robson to start off, please.

Mr Robson: Good morning. Firstly, I would like to acknowledge the traditional owners of the land on which we are meeting today and those of you who are traditional owners of other lands who are here today. Today we will present a brief outline of the bill that is before the committee, but I thought before doing so I might make some introductory remarks based on commentary and concerns that we have seen about the bill. That might address some of those up-front. Obviously, people who wish to present on those may wish to make comments about those as well.

I would like to make some general observations about the bill and then I will go into the detail. The first thing I would like to highlight—and I have noted that there have been some concerns expressed—is that the bill in some way affects native title. The bill does not provide for the extinguishment or diminution in any way of native title. The bill complies with the Native Title Act of the Commonwealth. It does not take people's rights away, but it does provide the tools to meet people's legally enforceable rights that were provided for under the 1985 landholding act.

There are some other misconceptions that appear to be about the bill, which I would like to refer to. In saying that the new laws could diminish native title rights by giving the minister the power of veto over Indigenous land use in particular—and they are the provisions that relate to Indigenous access and use arrangements on rural leasehold land—under those arrangements the registration of an Indigenous cultural interest on title will rely on an application being made by the lessee and the minister approving the lodged Indigenous access and use agreement or, if there is an ILUA, an Indigenous access and use agreement for the interest and the lease. That is laid out in the bill. It is an agreement and it is specifically about not native title; it is about access and use. It cannot possibly negatively impact upon the native title that may exist on that land. The access and use agreement is, as I said earlier, about access and use. Native title can only be affected by agreements made under the Commonwealth Native Title Act. Indigenous rights and interests will be established by the Federal Court native title determination. The registration of an Indigenous cultural interest is about how these native title rights and interests interact with a pastoral lessee's rights under their lease. We cannot take away their native title rights under the agreement.

There have also been some comments and concerns raised about the registration of an Indigenous cultural interest if the approved agreement for an interest is amended or replaced in some way and the minister refuses to approve the change and that no compensation is payable by the state for the removal

of the interest. The first comment to make is that there is no removal of an interest by the minister. This is simply that the state is not going to compensate parties who replace an approved agreement with one that the minister does not approve. In that case the state will not be compensating anyone. There will be no reduction in native title rights or interests by this action. This is not about compensation payable under the Commonwealth Native Title Act. We are, again, highlighting that this is about Indigenous access and use on state rural leasehold land.

The lease entitlements are approved or authorised by the bill. Once an application for a lease was approved by the trustee, it became an entitlement to receive a lease. This was clearly evidenced in Justice Dowsett's declaration in a case. I will table these notes to help you, because there is a bit of detail here which I am trying to skim over as I a talk. His Honour declared that, upon the Yarrabah council's approval of a landholding act lease application, upon such determination the said parties became entitled to a lease in perpetuity of the said land and that upon such determination the title of the said land was divested from the Yarrabah shire council, such land becoming Crown land within the meaning of the Land Act, and as subsequently amended and that the said parties are, accordingly, entitled to a grant of a lease of such land in perpetuity. They had a legal entitlement.

This case was about an Aborigines and Torres Strait Islanders (Land Holding) Act lease application—the lease entitlements, as we call them under this bill. It is quite clear that the processes in the bill regarding lease entitlements are wholly consistent with His Honour Justice Dowsett's declaration. The lease entitlements are, therefore, called pre-existing right based acts under section 241B of the Native Title Act. A pre-existing right based act must be either a legally enforceable right created by any act done on or before 23 December 1996 or in good faith the giving effect of an offer, commitment, arrangement or undertaking made or given in good faith before 23 December 1996. These lease entitlements fully fit the requirements of section 241B. Further, I note that the Native Title Act sets out in section 241D(1)(b) the effect that the conferral of a right based—a right of exclusive possession—which is that the act extinguishes any native title in relation to the land or waters. So additionally, section 241(1)(d) provides that compensation is payable.

There was concern that the bill is making proposed changes that would affect residents generally. The bill provides tools to resolve issues that have occurred since people had their applications approved or leases granted. As we have talked previously, it is a limited number of people as per the schedules—the granted leases and those who have lease entitlements. The current legislation does not provide the tools to deal with those issues and that is the fundamental purpose of this bill.

Primarily, the bill relates to the leases and lease entitlements, not to other residents. It is for those who have lease entitlements and where there are granted leases where there might need to be boundary changes or amendments to those, none other. In resolving those lease entitlements and issues, as I said, there may be issues arise, as we have talked about in terms of boundary issues, which then may involve other parties such as the local government, such as the native title parties if in fact it requires changes or an approval for a lease on land that is addressed by a native title claim or a native title determination, but only in those instances. So we do not expect that there will be any effect on other residents in resolving or working through the lease entitlements and those issues of boundaries on granted leases.

There was a concern that the hardship certificate will validate existing land uses. The hardship certificate provision in clause 26 of the bill provides that the chief executive may determine that the value or cost of the land for the purposes of a residential lease to be granted by the trustee under the Aboriginal Land Act or the Torres Strait Islander Land Act is nil in specific circumstances. Those circumstances are where a person who believes that they were entitled to a lease under the landholding act acted in good faith as if they had one, can demonstrate in some way that they have done that, but they are actually not entitled to one—there is no evidence in terms of them having a lease entitlement. There is then, as we said before, scope for them to seek a hardship certificate. It does not pre-empt either the trustees' or the native title holders' consent to the grant of a lease under the Aboriginal Land Act or the Torres Strait Islander Land Act. It simply provides that the purchase price for a homeownership lease can be set to nil. The trustee cannot do that under the current legislation. If and only if the trustee and where native title survives, native title holders consent to such a lease, that is all the hardship certificate does.

There was some concern that the legislation would affect 60 existing leases. The bill in itself does not affect the rights of any existing granted leases. The bill does provide tools to resolve issues with those granted leases that I have mentioned before, for example, where buildings have been built partly on the lease, off the lease or other buildings are encroaching onto the lease area. These issues will be resolved as per the process proposed in the bill, but where that is not possible then the Land Court is the place where those matters can be resolved. So in terms of the rights, it does not affect the existing rights; it provides a process to deal with those rights fairly.

There have been concerns expressed that it somehow affects the rights of relatives of original leaseholders and people on adjoining lands and councils. The bill does not affect the rights of relatives, original leaseholders, neighbours or councils. The bill is about the rights of people who hold valid entitlements to obtain leases—those who are entitled to a lease. It does provide, as I said, a clear legal process to determine succession arrangements where applicants are deceased. It does not affect the rights of adjoining landholders where there are problems with boundaries, such as location. The bill

provides a process for resolving the problems. It does not take away their rights. It simply provides a process to try to resolve those issues. It does not affect councils other than by resolving tenure anomalies on the land for which they are trustees, thus more readily allowing future development on council land.

There are a number of comments that we have noted in media commentary and the like which I thought would be useful to put before the committee up-front. No doubt people who are presenting today may wish to explore those issues further. At this point would you like me to table these comments for you?

Mr COSTIGAN: That is good.

Mr Robson: And those comments are reflected in some of the feedback and commentary that the department did provide to the committee yesterday on their submissions that you have received. In those comments there is a lot more detail than I have just mentioned. With your permission, I can go through the bill briefly.

CHAIR: Yes.

Mr Robson: In doing so, I would like to initially table three documents also. One is an overview of the bill, two is a summary of the lease entitlements and three is frequently asked questions.

CHAIR: I have them.

Mr Robson: I have tabled these before. If you are happy not to have them tabled again, that is fine. I would add that there are copies at the back for people who are here today if they wish to avail themselves of those. We have a number of maps and the like here today which we can make and use during today's proceedings.

I would just go back a step and quickly describe again the background of land tenure in Indigenous communities in Queensland as it is today. Queensland's remote and regional Indigenous communities are generally located on a land tenure type called an Indigenous deed of grant in trust, or DOGIT. Some specific exceptions to this are Mer Island in the Torres Strait, which is a reserve; Aurukun, which is located on a special type of lease called a shire lease; Mornington Island, which is wholly located on Aboriginal freehold; and Hope Vale, where the town area is located on the DOGIT and the non-township areas are on Aboriginal freehold as a result of transfer under the Aboriginal Land Act. Trusteeship of these community lands, excluding Mer and part of Mornington and Hope Vale, is held in trust by the Indigenous local governments or councils. The state is a trustee of Mer and the native title prescribed body corporate appropriate to the area holds the balance of Mornington Island and Hope Vale areas.

These land tenure types in remote and regional Indigenous communities are administered under a number of current pieces of legislation which include the Land Act 1994, which established the deed of grant in trust and their trustees—in fact, it was the Land Act previous which actually established most of these DOGITs because they were done in the 1980s; the Aboriginal Land Act 1991 and the Torres Strait Islander Land Act 1991, which provide for the grant of Aboriginal land and Torres Strait Islander land as freehold land held communally for the benefit of the Indigenous people and provides for the leasing of that land in Indigenous DOGITs and reserves; the Aborigines and Torres Strait Islanders (Land Holding) Act 1985, which provided for perpetual leases for homeownership and special leases for commercial purposes to be granted in Indigenous communities. This act is the one that we are proposing will be repealed by the bill currently before the committee. There is also the Aurukun and Mornington Shire Leases Act 1978, which provided for shire leases over these lands with the local governments as the lessees. Mornington Island has subsequently been transferred as Aboriginal freehold under the Aboriginal Land Act. Aurukun continues to operate under that Aurukun and Mornington Shire Leases Act 1978 but is the subject of work in terms of potential transfer under the Aboriginal Land Act as well. We also have, obviously, the Commonwealth Native Title Act 1993, which ensures that rights of native title parties to the land are protected. As I said earlier, this bill in our view does nothing and seeks not to do and nor can it in any way impact negatively upon those rights. The bill delivers on four separate and fairly independent initiatives: the first one relates to the landholding act initiative, and I will ask Ken Carse to give an overview of that.

Mr Carse: Under the Aborigines and Torres Strait Islanders (Land Holding) Act 1985—we refer to that as the landholding act and other people, as you may hear, refer to it as the Katter act and Katter leases—a resident of an Indigenous deed of grant in trust, a DOGIT, or Indigenous reserve could apply for a perpetual lease for residential purposes or a special lease for commercial purposes. The residential lease was limited in size and was perpetual; the others could be a larger size and they were limited to up to 30 years. Following the introduction of the Aboriginal Land Act and the Torres Strait Islander Land Act in 1991, no further applications could be made. However, there were a number of applications on hand. Only 214 perpetual leases and nine special leases were granted and we know of 697 applications. I think one of the documents that we have previously tabled has all those details. It is a point that has come up in some of the committee hearings that we have had. They are the ones that we know about and there has been an intensive process to search both our records and council records. The council approved them. They may not have been forwarded on to our department or the former departments. To the best of our knowledge that is what we know of.

Mr GIBSON: Just to interrupt at this point, if someone was to present documentation that was neither held by council nor by the state government to show that they had, in their opinion, an approved lease, that would be recognised even though it was not picked up?

Mr Carse: If they had the sufficient material, yes. They could show that they did actually have a lease, which I think would be extremely unlikely because if they had a granted lease we would have had records of granting it. What could happen is that they could show material that they had an approved application that neither the council nor the state held. If they had that evidence it would go onto our list of known applications. We would look at whether it was validly approved and either it would go into a legal entitlement or it would be an invalid. We would still continue to process those.

Mr GIBSON: Is there a time frame on individuals presenting that information or is it something that needs to be done within 12 months of the bill passing?

Mr Carse: At the moment there is no time frame, but the bill does include a time frame for that. One of the processes under the bill is that as the state goes through it we are going to publish each single lease entitlement notice. That is for individual leases. They go to the trustee and we will keep those and they will go on a website. Once the state has gone through and we believe we have identified all the lease entitlement notices for what is called technically a trust area, but we are talking a community here, we will publish a trust area notice which is sort of ringing the bell saying, 'These are all we know. Bring out any others that you may have.' And there is an 18-month period from that trust notice date.

Mr GIBSON: When you say 'publish', allowing for the fact that many of these are remote communities, how will that occur? It is acceptable to say it will be up on a website in the south-east corner of Brisbane because access to the web is easy, but if we are talking about the Torres Strait or some of the remote communities that may be difficult. How will you publish?

Mr Carse: The bill only specifies that a lease entitlement notice must go on our website. We will obviously notify the trustee. In the trust area notice we must notify the trustee and may request that they put them up on the community noticeboard. That is the minimum requirement that the bill provides. Obviously we do want to get that information out. We will most likely put ads, for example in the Torres Strait, in the *Torres News,* or we will be requesting the trustee put up notices on their board and notify the community that way. Generally we find that it is the councils in these communities that are the best place to get the information out. We can go in with their own meetings, but it is hard to get everybody in. The best places are the community noticeboards, which are good, and radio. We have not put all that into the legislation. Each community may be different as to the best way to get the information out. Clearly we want to get that out, but we will probably be taking advice from the trustees, the councils, as to the best way to get it out.

Mr COX: Just on that, do we have a way of knowing that everyone has been contacted?

Mr Carse: Not every individual, no.

Mr COX: There will be no way of knowing that every single person has been notified?

Mr Carse: There would be a number of deceased people. There will be people who are outside of the community. We could have people in Perth, for instance, or overseas. They will not be registered in the local government electorate. They could be elsewhere. As we have said, sadly, for the entitlements probably about 50 per cent may be deceased. We do not know who their relatives are to notify them. In my experience, what we have found in the communities is that through word-of-mouth, if a family knows this is going on, it will get out far quicker than we could possibly get it out ourselves. Our view is to make sure the community knows and then they will spread it through to their family members because it is important to them.

Mr COX: We cannot actually confirm whether they have or not, but we are going to do everything possible to make sure they are notified, which is all we can do really.

Mr Carse: Most councils have newsletters, which is a great way to get it out. There is the *Torres News* up there. Less so for the mainland for newspapers. There are a couple, but they are probably not as often published. Radio is a very good way, too.

Mr KRAUSE: In relation to the entitlements noted under the landholding act, just for my clarity would you be able to briefly explain what is constituted by an entitlement? Is it an entitlement to be granted a lease?

Mr Carse: Yes.

Mr KRAUSE: So an application has been made, but the lease has not actually been granted?

Mr Carse: No, the process under this act is different to other leasing processes. For example, the Land Act is primarily an act that governs leasing. Under this act it was split up. It was DOGIT land, so it was community land. The application went to the trustee, which is appropriate. When the trustee approved it the land fell out of the trust land at that time, which is unusual, it became unallocated state land. Under the legislation there was no ability or provision for the minister to say no to the application. So that is why we say it was a legal entitlement. Once the trustee had approved it—presuming it was validly approved; part of that approval was that they had notified it in the community for 28 days—there was no ability for the state to say no. We had to grant it so that is why we say it was a lease entitlement.

Mr KRAUSE: Why is that not considered as a perpetual lease?

Mr Carse: The lease had not been granted. Once the lease is granted it would be a perpetual lease. The state actually has to grant it.

Mr KRAUSE: But that was not done?

Mr Carse: No. A number of these were not provided to the state or provided to the minister of our department or the former department. I draw your attention in the bill to clause 9. It actually defines the meaning of a lease entitlement. I will not read it out.

Mr KRAUSE: Would it be possible for that entitlement to be converted into a perpetual lease at this time?

Mr Carse: That is one of the key points of this bill. Parliament would have to pass legislation to prevent that. At the moment we must grant. We are still currently granting these leases from time to time as they come through. What we will find is, because of the time that has passed, there will be problems with them. These will come forward, and we have collated them. There will be problems with a number of them, such as construction is slightly off the lease or entitlement area, and we have to resolve that.

Mr KRAUSE: You mentioned before that maybe 50 per cent of the people holding entitlements could be deceased.

Mr Carse: Yes.

Mr KRAUSE: Is there an entitlement to children or grandchildren to hold those lease entitlements?

Mr Carse: They pass on in the normal manner. The problem we have here is that many people do not have wills identifying who it is, but there is a special process that we are utilising. There is also an area within the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, the community records section, where we are using their skills to identify who may be the descendants and trying to contact them. Ultimately we can actually grant the lease entitlement to a deceased estate and then just allow succession laws to take care of how that passes on. The entitlement is actually dealt with, there is certainty about where the lease is and the rights et cetera that relate to it. Who is entitled to that through succession is not actually a matter for our department and it may take some time to resolve that because, as I said, there is a lack of wills, people do not have wills, or it may be contested. They are not really matters that our department deals with.

Mr KRAUSE: The entitlements that the department knows about, could there potentially be other entitlements you do not know about in the records of the councils?

Mr Carse: Potentially, yes. For example, we hear stories that there are these landholding act leases in Hope Vale. We have records of none. The council has no records of any. But it is not beyond belief that somebody may have in the bottom draw somewhere that their father or grandfather had one. If it comes forward we are fine, we will put it in the list and it will be dealt with. Our intent is to grant as many of these as we can; those that are valid we will be granting. They have a legal right to them.

Mr KRAUSE: I will just ask one more question. I do not know if you are going to address it further on in your address or not. Why were some of the applications invalid? What was wrong with the applications and can there be any further action taken on those applications?

Mr Carse: There are a number of reasons they may not have been valid. The council may not have approved it, they may not have signed it and we have a copy of the application and that has been sent forward to the state without council approval. They may not have notified it. There was a public notification of 28 days. They may not have notified it for that full time or at all. In some cases they may not have even identified the area. It will not make it invalid, but it certainly makes it impractical. So there could be a whole range of reasons.

Mr Luttrell: Theoretically it might be possible to cure some of these under the existing legislation, but it would be of itself a very complicated exercise. There is an interaction between the way these applications were approved in the Native Title Act—that is, the Native Title Act says in certain circumstances when you had a legally enforceable right prior to 23 December 1996 you get the benefit of that right as if native title did not exist. So this is where we get into an area which is called the pre-existing right based act. Where the legal entitlement arises pre 23 December 1996, when the state grants the lease we do not have to go through another native title process. If the application was cured—that is, by the council—it would not have the benefit of that native title outcome. The minister then could not actually grant the lease unless there was an Indigenous land use agreement.

Having considered that, the bill does not allow for the rectification of the process but does provide in those circumstances effectively the same outcome, which would be that the person could make the application to the trustee. The trustee could grant a 99-year lease under the Aboriginal Land Act but, in those circumstances, you would need an Indigenous land use agreement for that lease to be granted. So it is the interaction that even if you could cure it under state legislation you would still be in the same situation.

In those circumstances the parliament of 1991, by introducing the Aboriginal Land Act and Torres Strait Islander Land Act, made that the principal land legislation for these communities. So in those circumstances it would be an odd result to go back and fix it up under a previous piece of legislation which would still have the same issue associated with it; namely, you would have to address native title.

CHAIR: Just on that—and I will let you finish in a minute, Ken—the one that is really of concern to me is Iama Island. There were 33 applications—not one of them has been granted and not one of them is valid. On most of the other islands some have been granted and some classed as entitlements. On Iama though—I do not know what the population is but I would imagine it is fairly small because most of the islands have only 200 people or whatever—there were 33 applications. So nearly every family has put in an application but not one of them has been classed as an entitlement or a granted lease.

Mr Luttrell: Yes, and that would be because when we had a look at the applications and compared them against the process that the current legislation provided either the application was not in the correct form or the council did not go through the correct process. In some circumstances it would be perhaps nice to be able to go back and cure everything, but in those circumstances there is a consequence.

The option that would exist at the moment is for those persons to make application to the Torres Strait Island Regional Council. What you also have to recall is that at that time the trustee would have been the local island council. I think it was in mid-2000 when there was the amalgamation of the island councils into the Torres Strait Island Regional Council.

The other aspect of that is that we also get a sense that a decision that the council may have made or the trustee may have made in 1985 to 1991 might now be a different decision if the council were now asked to make that decision today. So that is the other thing that I think needs to be taken into account.

CHAIR: That invalid application, though, has not done away with native title. So native title now kicks in.

Mr Robson: Native title still exists.

Mr Carse: The land has not dropped out of the deed of grant, either. It does not exist as far as the tenure is concerned. I will just add a couple of things to make it clear. Andrew is talking about rectification of current applications. As we said before, no new ones could be made. The 99-year lease that Andrew mentioned has a statutory right of renewal. So if they use it for residential purposes it is, in all practical effect, a perpetual lease. So they could get an equivalent type of lease.

On the islands in the Torres Strait the determinations of native title have been made, so there is a PBC for each island. A prescribed body corporate holds the native title on trust. So if we want to deal with native title and need to do an Indigenous land use agreement, we would actually do it with the PBC. It is a far easier process than where there is no determination. If those people were actually seeking new leases, the process for them would presumably be relatively easy because, if they are traditional owners, the PBC would know this and we simply need the PBC to agree to the leases. Whilst it is not so simple, it is not as bad as it could be. They could go through that process.

Mr GIBSON: Just for clarification, Andrew, so we could have a situation where a family believes they have an active lease, a granted lease, but for a technical reason—say, council only displaying it for 26 days and not the 28—it is deemed to be invalid and therefore native title would be enlivened should we go through the process of formalising it.

Mr Luttrell: No. It is not the enlivenment of native title. We need to address native title in granting that lease.

Mr GIBSON: So they believe they have a lease granted to them but for a technical reason it is not.

Mr Luttrell: I am not sure to what extent people would believe that they had a granted lease. They may well believe that they made an application and the application was approved and they would have got a letter from the council saying, 'We approved your application.' That is probably the extent of their knowledge because, again, under the process under the existing legislation that application then was forwarded to one minister and then it was forwarded to another minister and then that minister, the lands minister, would then grant the lease. So in granting that lease in those days there would have been a lease instrument, a piece of parchment, that would have been created, and that would have then been provided to the person at the address of the application.

That is another issue I think which was identified earlier—that is, how do we make sure that the applicants know where their application is? In many circumstances the address for the application is simply 'care of the post office'. So we could send it to the post office but, again, even in those circumstances I do not think we could be confident that the post office person would necessarily know who those persons were, given that application is potentially 20 to 25 years old.

Mr GIBSON: So we have a situation where they have an approval but not a granted lease because the council advised them of such but, because of a technical breach—

Mr Luttrell: Probably a failure to comply with the legislation.

Mr GIBSON:—a failure to comply with the legislation, it has not been granted.

Mr Luttrell: No. It can't be granted.

Mr GIBSON: It can't be granted, but the people have built on that property believing they have an approval in place.

Mr Luttrell: Yes.

Mr GIBSON: So the situation now, then, is that, with regard to native title, we can move to a 99-year lease for them but we have to deal with the issue of native title?

Mr Luttrell: Yes.

CHAIR: Ken, do you want to continue?

Mr Carse: As we said, there are over 200 lease entitlements identified and these must be resolved. As we mentioned before, there is a broad range of current and historical issues that may arise with a number of those in resolving them. There may be boundary description issues. They did not need to lodge a survey plan. So it could have been a sketch or it could have been a verbal description which makes it difficult to now survey it. There may be encroachments onto the entitlement area. They may have built their buildings partly off the entitlement area. If we just granted the lease over that entitlement area, we would be creating further problems. We want to resolve those first. There are succession arrangements. As we said, we need to as much as we can try to resolve that.

The other one is social housing. Again, this act was fairly unique. There may be social housing on these leases. People may have entered into tenancy arrangements with the state on that housing. We grant the lease. The house would then go to the lessee as owner. They may not wish to have that because of the high cost of maintenance. They may wish to continue social housing. They may be located in social housing that is on a different block. There may be somebody else in the social housing on their lease application. So simply granting them straightaway is going to cause more problems.

So we have to look at all of that and the bill, as I go through, does provide the tools. That is probably the biggest thing the bill does. We can grant many of these leases now but we do not have the tools to resolve the issues that that would cause or the issues that are there preventing us. The bill is really about providing tools to resolve these issues.

CHAIR: Excuse me, Ken, for interrupting you. With the perpetual leases that are granted—60 on the islands and then there are another 151 granted to Aboriginal councils—do people know that they have them? Do they understand that they are granted?

Mr Carse: I could not answer that. I presume most of them do. People move around. If there is social housing—

CHAIR: As much as they are listed in all of our documentation, you are not actually doing anything with those perpetual leases, are you, because they are already granted?

Mr Carse: Not with the lease unless there are problems with the boundary encroachments or in some cases with those leases—and it is another unusual aspect of the 1985 act—they could end up owning the social housing by paying the rent. They had to enter into an agreement and then I think the Governor had to approve it at the end. We believe that in a number of cases that has occurred. But those people may not know that they own the house. We will be identifying this on a case-by-case basis and letting the people know. They may not wish to own the house. So that is on granted leases, which you would think would be simple. We believe that there are at least nearly 60 people who may fall into this category of actually owning the house. They have been paying social housing rent during that time but then the state or the council has been maintaining the house for them. So it is six of one or half a dozen of the other. We will be going through that case by case, identifying each entitlement and grant, what issue is there, how do we resolve it—

Mr Robson: If there is an issue.

Mr Carse:—and the bill will provide the tool that they could actually rent that house through a sublease back to us and maintain it as social housing.

CHAIR: So, from what Chris is saying, if there are no issues there they are virtually left alone.

Mr Robson: They are left alone. It is really only if we identify boundary issues or, as Ken is saying, through lack of knowledge of the full extent of the granted lease there might be a road or some encroachment that has happened, then we will deal with those. Otherwise they remain as they are.

Mr COSTIGAN: Mr Robson, if the boundaries on lease land have to change, will the people who hold those leases be entitled to some form of compensation for any losses or any extra costs they incur?

Mr Robson: That would have to come into the assessment. That is correct.

Mr Carse: It is in the bill.

Mr Robson: It is in the bill so they are entitled to it. In terms of paying compensation, it would depend on the way that is negotiated—what agreements can be reached as to how that satisfies their compensation right.

Mr Carse: The bill provides that we can change those boundaries by agreement. As Andrew said, if the boundaries moved outside of that area, native title may come into it, but if it is within it and we can do it by agreement we will and that may include compensation. If the parties do not agree then it is contested and it goes to the Land Court and the Land Court will determine compensation. So if their land reduces they may well say, 'I have lost some of my land. I want to be compensated,' and they are entitled to ask that and that is fair enough. As in any other Land Court matter or land matter, there may be a difference of opinion about what that compensation is worth. In that case the Land Court can decide it if it cannot be reached by agreement.

A simple case may be that a person has a lease and there is a constructed road over that lease. They may have always thought their boundary went to the constructed road and they may be quite happy to pull that boundary back. They may not. That may then be a matter for the council to resolve because they built the road. It may be for the council to pay compensation, compulsorily acquire, reach agreement or move the road. But the tools are there—where we can do it by agreement we will or, if not, through the Land Court.

Mr GIBSON: You were talking about social housing. My understanding is that there are also situations where we have government leased premises on DOGIT land. In those cases would we have a situation where the state government would then be required to pay a lease payment for those premises on that land. And who would they be paying it to—the trustee?

Mr Carse: That is outside of the landholding act. Presumably we would not have any government premises other than social housing on landholding act leases. But we can build on a DOGIT with the trustees' permission. Normally we have reserves within the DOGIT. They are excluded from the DOGIT but we can build outside it. Since the 2008 amendments there has been a requirement that the state obtain a lease and pay a fair rent, which is a minimum of $6,000 per individual lease lot. So if the state was going to build a new police station on a deed of grant in trust—and we are dealing with this all the time at the moment—we would seek a lease, there would be rent paid at a minimum of $6,000 and native title would most likely need to be addressed. If it survives in that area, we would address it. So that would require an ILUA.

Mr GIBSON: But there are situations where pre that date we have government premises on a lease that perhaps rent is not being paid.

Mr Carse: Correct. It would be a minimal rent.

Mrs MADDERN: Just to go back to the leases that have actually been granted, if there are no issues—such as if there are no road encroachments or building encroachments—will there need to be a change in the documentation to give them a real property description or some kind of a description other than what they currently have which may be 'left from the tree and 10 yards down the road', that sort of thing?

Mr Robson: What we will be doing is, as Ken said, looking at each of the granted leases as well as the lease entitlements. If, in fact, the description that sits currently on the granted lease can be improved—and there is surveying work being done in all of these communities as part of the work of the Remote Indigenous Land and Infrastructure Program Office—and it does identify a modern form of surveying, we will do that.

Mrs MADDERN: Thank you.

Mr Carse: We would not be giving it a separate description at the moment, because we do not have the ability to subdivide a DOGIT. That is one of the other initiatives in the bill. If the bill is passed as is, we will be able to give them separate title descriptions.

CHAIR: Would any of those invalid applications—and I particularly go back to those 33 on Mer Island—come under the hardship provisions?

Mr Robson: Yes, and most likely they have built houses or it could be social houses on their blocks, which may not necessarily be a hardship for them.

CHAIR: Chris, I think you acknowledged that they have to pay rent. They cannot have nil rent; they have to pay some rent.

Mr Robson: What we were saying there was—sorry, for a lease or for a hardship certificate?

CHAIR: I have written 'nil peppercorn'.

Mr Robson: Okay. That is a perpetual lease. To be a lease it has to have a value. It cannot be nil.

CHAIR: So it can be a peppercorn, though?

Mr Robson: It can be a peppercorn—$1.

Mr Carse: Currently, the landholding act leases are peppercorn rents for the lease. The house is a different matter through social housing.

CHAIR: That is right.

Mr KRAUSE: Is it possible that people who have been granted perpetual leases or who were entitled to be granted leases—and I am talking about residential areas specifically—would no longer be residing on those lots?

Mr Carse: Correct.

Mr KRAUSE: Does the department have any idea of what level of departure there has been in terms of people living on blocks that have been granted to other people or were entitled to be granted to other people?

Mr Carse: Not at this stage. We know that may likely be the case. As to the extent of that, we do not know. But as I have said before in looking at whether people own their house, we were discussing in the implementation of this that we will be looking at each lot—creating a case file for each lot—looking at who is there, who applied for it, who is living there now. So until we go through that process on an individual one, we will not know the extent of that. Somebody could have moved away and not be a resident. The

council—a trustee—could have taken forfeiture action under the current act. However, that was one of the requirements, that you remain a resident. You needed to be a resident to be a holder of one of these leases. So if you left, you were no longer a resident, you were no longer entitled and the trustee could take forfeiture action. That, to my knowledge, has never occurred. But as soon as the trustee announced this, they could quickly come back and so fulfil the residency requirements.

Mr KRAUSE: So is there a plan or a process which will be established to deal with those issues?

Mr Carse: That is where we are going case by case, looking at each one—

Mr KRAUSE: It has been quite a long time since these have been granted.

Mr Robson: Yes. But the bill will give us the process to do it. That is the framework.

Mr Carse: But we are changing that residency. We have several acts that relate to Indigenous land. Over time they have had slightly different standards of who can apply, who can hold it. The Aboriginal and Torres Strait Islander land acts have one, we had the Aurukun and Mornington Shire Leases Act that had a different one, there are DOGITs, we had the landholding act. So through this bill the landholding act leases—the requirements for that—are changing from that residency requirement to the same as the Aboriginal and Torres Strait Islander. So residency does not come into it; it is 'Are you an Aboriginal or Torres Strait Islander person?'—or married to, or formerly et cetera.

CHAIR: We will just halt questions there. Have you got anything more that you would like to summarise?

Mr Carse: I am still on page 1. It is much better to do it this way to hear what people want to know about it. I will briefly go through the rest of it. We have gone through it before. From our perspective, we are trying to achieve five broad objectives with this bill to address these circumstances. The bill will repeal the existing act and replace it with a new one. It is just too difficult to amend the previous one. The existing leases will continue. The outstanding lease entitlements will be finalised under the new act, which gives us the tools to do it. The leases will be aligned with leases granted under the Aboriginal and Torres Strait Islander land acts to the extent appropriate. So we are not changing the terms, but we are building in other things such as mortgage and forfeiture that are similar to homeownership leases. So we are trying to get a similar sort of land management arrangement that puts in place processes to resolve those entitlements by agreement wherever possible and also resolve issues with the granted leases. The Land Court has jurisdiction to resolve disputes. The Land Court is clearly the appropriate jurisdictional court. It has great experience, the Land Court, certainly in Indigenous land tenure matters. It is perhaps less formal and certainly cheaper than the Supreme Court and it has that knowledge.

I will just go through a number of the key parts of the bill. The first step will be to fix the holes in the trust areas. As we have said in the discussion, up until now, upon the approval of the application by the trustee, the land fell out of that existing tenure and it became unallocated state land. So in these entitlements cases, for the last 20-odd years they have been unallocated state land, which comes under the control of the government through our department. However, in practice, as it was uncertain where they were and where they were at—no doubt the trustees have been managing that land—there has been social housing on it, and it is problematic. We could have moved ahead without filling in those holes, but we know that, in many cases, there will need to be shifts in the land or resolution of that. We would have been using different processes. The Land Act would have applied on one part of the land and this act would have applied on the other part. So to simplify it, if we can get the one tenure underneath it, there will be one manager, one trustee of the land and one set of laws applying to it. As I said, the existing leases will continue. We are not affecting those leases. However, there are tools there where the boundaries are a problem.

The minister can establish a community reference panel for the trust area. This panel will include the directors-general of the relevant departments—for example, our department, or Housing and Public Works, or social housing and the trustee. That panel can invite other members as required on to it to help resolve issues. This panel will be working with any parties to resolve issues with the lease entitlements and could be providing advice back to the minister. So if it looked like boundary changes are needed to be made, which would go on to land where native title survives, obviously the traditional owners—the native title holders—would be needed to be involved. We would be expecting that that panel would be consulting them and involving them in it, because, ultimately, we would need an Indigenous land use agreement.

In some cases, a community reference panel may not be required. If you look at Kubin, there is one entitlement. We may not go to the extent of creating that reference panel, but the minister, through the director-general, may consult with the same group people. But there may not just be a need to set up a panel.

As I said, the bill provides for lease entitlement notices. So with every outstanding application, we will go through that and then provide a lease entitlement notice, which will set out all the details. That will go on our website. We are not intending to put it in the newspaper as such, but we will notify the trustee of it. That may take some time. So we will be doing that for each one as it comes up. It could take six months or a year to do it all. So we do not want to go into the paper every time. Once we think we have done them all, that is when we do the trust area notice, which will be the broader publication of that.

Mr GIBSON: Can I just pick up on the community reference panel? Some of the submissions have raised concern about who would be on these community reference panels. How would people request to be on them? How would they be advised of that? Can you take the committee through that?

CHAIR: Native title particularly.

Mr GIBSON: Yes. Could you take the committee through the community reference panel establishment, because, as you have indicated, they are not mandatory. How would you see that process occurring?

Mr Carse: The minister will make the decision to establish one. As I said, one entitlement may not. It is important to remember that this is about resolving a legal entitlement for an individual to obtain a lease. If they are not going outside that boundary, it is not really a matter that involves public involvement as to whether they should get it. We are not going back to reinvigorate or reconsider the original decision. We know that if they have a legal entitlement to it we are going to give effect to that. So we are not intending to have a public debate about it.

In the first case, the trustee will know most of the information there, the best place to get information about the community—'There may be an issue there, because that person is not living there, or there are these others that we are aware of.' So we will be relying on the trustee and the relevant agencies that work in that community through Housing or Aboriginal and Torres Strait Islander and Multicultural Affairs. If, in looking at it, there are issues there—that is, the person living on that lease is not the person who applied for it—we have to obviously involve that person in any decision about it. If we are moving the boundaries, as I said before, that would then mean that native title is a consideration and we know that, ultimately, we would need an Indigenous land use agreement. So there is no point in waiting until the last minute. In that case, we would expect the panel, in order to give advice to the minister, in the cases where there is a PBC, to consult with the PBC about it to give advice to the minister. So we would be relying on those people to identify the other parties that need to be involved.

Mr GIBSON: I am just trying to get that clear. So once the need for a community reference panel is established, the department would be identifying those individuals and bring them together based on the advice that they would get from council and from other parties—

Mr Carse: The council would be one of it. So the minister establishes it. It is the directors-general and their representatives and the trustee who would look at the matter and see who is involved in it. So we are not going to seek people to come in who are not involved to resolve it. So when they look at it they would say, 'Here are the practical obstacles.' That would be the key to looking at it—'The practical obstacle is we need to move the boundary. Who would be involved in that? We need to get them involved in this.'

Mr COX: Council.

Mr Carse: Yes, and it may be at the adjoining owner. As I said, if they have to go outside to the native title holders, we need those. So we have the council, we have the state and then if you are looking at other issues—who are those parties?—we would be expecting them to come back.

Mr GIBSON: I think the challenge, certainly from my perspective, is when you hear the term 'community reference panel', by its very nature you are thinking of a much broader panel that is going to represent the community and not just have that narrow focus. So there may be some challenges. Should the bill pass, there may be a view that if a community reference panel is being established it should represent the whole community.

CHAIR: A reference panel might be a better description.

Mr GIBSON: Perhaps a reference panel.

Mr COX: It seems like anyone can be involved in that.

CHAIR: We will have to keep moving or else we are going to get bogged down here. Do you have anything else?

Mr Carse: I think we have covered everything else in the comments we answered.

CHAIR: Could I just ask Chris one question here. Has the department looked at what they feel this could cost the department, the councils and/or the landholders and the leaseholders?

Mr Robson: Yes. In terms of cost to the department, Ken has been describing the processes that will require departmental input. We have been working with our colleagues in the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs to establish a small team of people to do the implementation of this bill, if passed. So it will be a progressive process up-front. We will be working on this for some time. Obviously, some of the processes involved will take time. So there is a team that is being established to work on this, on the assumption that the bill passes, and start work—in fact, they are working now in anticipation. It will be subject to the normal budgetary constraints of government.

CHAIR: I know some of this work started in 2009, 2010 and 2011. Have you looked at how much cost will be shifted to the councils?

Mr Robson: In terms of the local governments, given the work that is also happening with local governments, particularly in terms of things like the social housing program and the work that the program office is doing in terms of rolling out leases for that, a lot of the work will get mixed in with this, because, in fact, the program office is looking for a resolution of quite a few of these to enable them to move forward with some of their leasing and road network surveying infrastructure as well. It is actually going to fall into a fair part of their work program as well and therefore with councils. In terms of cost to councils themselves, I do not envisage that will be a high cost at all because it is largely the state that will be administering most of that.

CHAIR: It should be reasonable, you feel. What about the landholders?

Mr Robson: To the affected parties, say a lease entitlement holder, there is potentially a cost for them if they wish to go through to the Land Court and contest.

CHAIR: Not so much that, but are they going to have to get that block surveyed?

Mr Robson: The state will be covering the cost of survey.

Mr COX: I have a two-part question. There have been some concerns expressed that the consultation period may not have been long enough or in-depth enough or whatever. I know it has been going on for a long time and there has been quite a bit, but those are people's feelings. Firstly, as a department do you feel you have had enough consultation? Secondly, I notice that the bill requires a review within five years of its commencement. What is going to trigger that review?

Mr Robson: In relation to the first part of your question, we believe we have done a fairly extensive job in consulting on the bill. An exposure draft was circulated last year. Certainly we have worked pretty heavily with particularly the trustees and the local governments to get the information that they hold in the way of lease entitlements and therefore coming up with the list you see before you in terms of what are recent entitlements and invalid applications. In terms of the knowledge individually in the community, that is probably low. We accept that. The bill designs a process to draw that out through the notification process that exists in the bill. What was the second part of your question?

Mr COX: The second part was the review and when it commences. It says within five years, but what will trigger or determine whether it be in six months or three years?

Mr Robson: I will defer to Ken and Andrew for any comment on that. Basically I think we put that in to establish if, in fact, the processes we have designed are working effectively and if there is any streamlining that we should be doing on that. Because ultimately our goal is that we conclude all the work required under this bill, should it be passed an act, and that the act can be actually repealed.

CHAIR: Would you like to give a brief summing-up?

Mr Robson: There are three other parts of the bill which I will quickly note and that we have not touched on that are not to do with the landholding act leases arrangements. One is a proposal to enable subdivision of a DOGIT, which I note from the submissions received seems to have general support. It is basically to simplify and ease land administration in those DOGIT communities. Another element is to enable and give certainty to local governments that on transfer of land under either the Aboriginal Land Act or the Torres Strait Islander Land Act that the local governments, in delivery of their municipal services where they have infrastructure, would be confident and be able to continue to provide those services on land that is transferred. That, in principle, is a sensible amendment. It gives effectively the same or very similar provisions to what the Commonwealth and the state already have.

The fourth element is about the introduction of provisions in the Land Act in particular about how rural lessees and native title parties could go about establishing Indigenous access and use agreements on rural leasehold land, which at the moment in this state covers about 50 per cent of the area of the state. That is introducing provisions there which identify the ways that people can go about doing it. Currently the Land Act does not give a framework on which those can be done. That then contributes, if people can agree—and I have to say that is subject to the parties agreement—if they can establish Indigenous access and use agreements then there is incentive provided in there for the leaseholders to get a discount on their leasehold rent and also on the basis that they would withdraw if they are a party to a native title claim.

CHAIR: We will have to move on. We have someone on the phone waiting for us. Thank you very much for that briefing. We would now like to hear from the Aboriginal and other mainland stakeholder representatives who are with us today. We invite you to tell us any of your concerns about the bill. We will first hear from Ms Jessica Naimo from Chalk and Fitzgerald Lawyers via teleconference. I would like to welcome any of the other members of the communities who have turned up. Thank you for coming along this morning.

NAIMO, Ms Jessica, Senior Lawyer, Chalk and Fitzgerald

CHAIR: Jessica, it is Ian Rickuss here. I am the chair of the Agriculture, Resources and Environment Committee. You have a room half full of people waiting to hear your comments.

Ms Naimo: Hi everyone. Thank you for inviting me along. Just by way of background, I act for the Kaurareg people, who are mainly concerned about the effect of this bill on Hammond Island. Initially, their main concerns are that they feel that there has been a very short notice period in relation to the bill and on the ground in the community, in the Kaurareg community at least, there is a sense that there has been very little consultation with people about the bill and the changes that it proposes.

In relation to Hammond Island, the context of that island is perhaps unique in that the Kaurareg people are widely acknowledged as the traditional owners of that island, however they were displaced from there in the 1920s. So although they make up a relatively small number of the population currently on Hammond, they consider themselves the traditional owners and they have a registered native title claim over the area. Hammond Island itself contains a number of important sites, particularly story sites, which are central to their spiritual beliefs, and founding myths so it is a very important issue particularly in parallel with the DOGIT issue because the majority of Hammond Island is DOGIT land.

In relation to the bill, there is an appreciation that there are real issues that need to be resolved, particularly in relation to these leases that go back many years and have not been resolved yet. There is this feeling that there has not been much consultation on how the process is to occur. There has been consultation more in relation to the DOGIT process, and the Kaurareg people are concerned about this lease process being I guess thrown in early before the DOGIT transfer is dealt with. In their view, they have been waiting quite some time for the transfer of the DOGIT and there is a sense that under the bill there is a lack of an obligation to consult them as native title parties because they are not currently the trustee of the DOGIT. That is really the main concern.

Just by way of background to my involvement, I was actually only made aware of the bill and this issue for my clients I think on 5 October. I was told that submissions were due in by 10 October. I was in quite a flurry trying to get together everything and read through all the documentation. I sent through a submission, which is dated 9 October, where I was concerned about native title issues in relation to the entitlement. Since sending that through I have had more of an opportunity to read through in detail the documentation and I have explained to Stephanie this morning that I have sent through a revised submission where I have withdrawn those issues in relation to native title and the lease entitlements. I apologise for that. I am not sure if you have been able to get the revised submission in time.

CHAIR: Yes, thank you very much. We do have the revised submission. I will ask someone to move that the revised submission be published as well.

Ms Naimo: If I could ask that the revised submission be published alone.

CHAIR: Unfortunately, we have already accepted to publish the other one. We will publish this one as well. Moved Jason, seconded Sam.

Ms Naimo: But really the concerns of my clients stem from issues involving, I suppose, what could be them being locked out of a process, particularly in relation to the community reference panel. I note that the community reference panel is not a mandatory obligation and it is envisaged that the minister and the trustee will be involved and that they might then, if one is established, be able to invite other parties who they consider would have relevant concerns and who would need to give input into it. However, there is a concern on behalf of my clients that in the case of Hammond Island, for example, where they are the native title party and also will be making a submission to have the DOGIT transferred to them as trustee, they will not have any involvement in these panels unless they are invited. That is the No. 1 concern. There is really a desire for them to be included in that in the bill and for there to be a provision for the inclusion of native title parties in those panels.

CHAIR: How many Kaurareg people are actually on Hammond Island; do you know at all?

Ms Naimo: I am not sure of the exact numbers. However, I do know that there is a desire for some of the Kaurareg people living on Horn and TI to move back to Hammond. I understand that it is a bit of a tense situation. I know that my clients, for example, did move back from TI to Hammond and were told, 'This is not your place anymore. This is our place now.' I can understand that there is a complex history in relation to Hammond Island so there is some community tension. Resolving the leases will also I think resolve some of those tensions, so I can appreciate what the department is trying to do and that it is a complex process. But at the moment I understand that the Kaurareg people on Hammond are a minority of the population there.

CHAIR: From our information, there are roughly 220 people living on Hammond and there have been 50 applications for leases and about 22 of those applications are valid or entitlements. There are about 30 that are invalid. Just from logic, I would say if there are 50 applications, that is four per application at least. You would think every family on the island has made an application for a lease. That is just what I was curious about.

Ms Naimo: I am not sure if the other people who have given submissions to the committee have information about the lease applications themselves. All I have is those statistics that were in the explanatory notes. I do not have any more information, I am afraid.

Mr GIBSON: Just reading through your latest submission, under the heading of 'Hardship provisions' you make reference to concerns with clause 26 of the bill that would allow for situations where unauthorised buildings erected in unsuitable locations on Hammond Island would be validated. For the benefit of the committee, do you have any information from your clients as to what those unauthorised buildings are?

Ms Naimo: I understand that they are houses on what are now fairly large parcels of land. I understand from what I have been told that they are on the northern coast of Hammond. There is concern from my clients that areas have, I suppose, been claimed through an invalid process where they simply have been built upon. Perhaps it is on the understanding that there was a lease granted, I am not sure. I do not have the details of whether or not it coincides with a proposed lease entitlement or whether it is simply an area that has been built on and then may be the subject of a hardship certificate.

Mr GIBSON: Jessica, you refer to it as housing. Are you aware if that is social housing that has been constructed or private housing?

Ms Naimo: It is private housing, as far as I understand from my clients.

Mr GIBSON: Thank you.

CHAIR: Is there anything else you would like to raise with us, Jessica?

Ms Naimo: I did have a concern about the notification provisions. I note that you have said that, given that it will be an ongoing process—it is not a quick fix; it will be going possibly for over 12 to 18 months—there is a proposal to not have any notification published in local newspapers. There is a concern that some of the clients we deal with are elderly people who are not necessarily techno savvy and might not be able to access the information on the website. So I am just wondering what the objection to publishing in the newspaper was? Is it simply that it would be too much of a burden to do so?

CHAIR: That question was asked this morning of the department and the answer was that that would be the minimum that would be happening. They feel there would be some publication in newspapers, particularly through the council. They would definitely be working with the council. If you would like to look at the transcript, which will be out probably early next week, it will clarify that issue for you a bit.

Ms Naimo: Thank you.

Mr COX: Jessica, in your submission you talk about archeological sites, grave sites and things like that. Are these documented? It says here that this process started in 2011. Have these been documented now? Is that report finished?

Ms Naimo: What happened was that that process was initiated in response to a proposal to upgrade the sewerage system on Hammond which has long been needing an upgrade, I think. There was a preliminary archeological study done, so those were the findings of the preliminary study. It was never finalised because, unfortunately, there has now been a delay to the sewerage project so everything in that sense has been put on hold, including funding to pursue any final reports. But that preliminary report certainly did show that there are a number of grave sites particularly along many of the road areas on the island. I refer to the fact—and I alluded to this in the submission as well—that a finalised town plan, as I understand it, is still pending and there are a number of surveys that are yet to be done. I think road surveys are partly completed but, as far as archeological sites are concerned, that preliminary study will have shown what my clients' consultant has found. However, I am not sure if that is a final report.

Mr COX: Is it accepted within the community that those areas notified will remain there? Is it accepted within the whole community that those sites are there?

Ms Naimo: It is certainly accepted by my clients. Whether it is accepted by the whole of the Hammond Island community, I am not sure.

Mr COX: That is fine. Thank you.

Ms Naimo: We did raise the issue at a meeting with the regional council. There seemed to be an acceptance on behalf of the representatives who attended from the regional council. However, I am not sure whether that is indicative of the whole community.

CHAIR: Thank you, Jessica. Do you have anything else you would like to raise with us?

Ms Naimo: No. I think that covers most of it and it sounds as though the issues about the community reference panels and notifications have been raised earlier, so it will probably be beneficial for me to read through the transcript.

CHAIR: Thank you very much for your participation. I now call witnesses from the Local Government Association of Queensland.

GOODE, Mr Tony, Workforce Strategy Executive, Local Government Association of Queensland

HAYNES, Ms Tracy, Principal Adviser, Planning and Development, Local Government Association of Queensland

CHAIR: Welcome. Would you like to make an opening statement?

Mr Goode: Thank you. We will probably rely primarily on our submission in relation to this matter. As it indicates, we generally support the bill. We understand, particularly in relation to the Katter leases, the efforts by the department to try to fix these longstanding matters once and for all, and that is welcomed. I would like to add to two points in our submission and they relate to the communication strategy and in particular the overarching strategy for the government in relation to land tenure.

When this bill first came out we had a number of discussions with our members, and the overriding impression we were given by our members was one of confusion on this whole issue of land tenure, land reform and homeownership. We were actually confused ourselves, so we commissioned some research to try to bring it all together into a single source so that we can get an appreciation of it. We will hopefully get our report some time next week.

What has already been identified is something like at least 10 pieces of legislation. You have a multitude of government agencies both state and federal—whether it be departments or other agencies set up by the departments—all dealing with this issue of land tenure and land reform. While each of those agencies is very comfortable and able to define its narrow perspective on what its charter is, at a council level we have all of these things coming together and there is confusion about how they are linked to each other. As a result, when a new bill comes out there is a question mark sometimes over whether this is in lieu of something else and how it impacts upon that. There is even on occasion a couple of reports to us where people are starting to wonder whether there is some conspiracy going on: 'Are we being coerced to go one way? Are we being pushed in a certain direction? Is this linked to the other? If we don't do that, will this happen?'

What seems to be lacking, in our view, is an overarching government strategy in relation to land tenure, land reform, homeownership and social housing in relation to the Aboriginal and Torres Strait Islander communities in Queensland. We believe that if we had that overarching strategy, when legislation came through people would easily understand and know exactly where it fits in with the overall strategy and how it is linked to some of the other reforms that are going on. We think that would go a long way to minimising some of the confusion. It takes away any suggestion of hidden motivations behind some of the legislation.

This particular bill makes genuine, good common sense in so many respects. Yet the first question some people ask is: what is really behind it? Again, we would argue that that is probably linked to the absence of an overall strategy, where you would be able to see where this particular bill fits into that overarching strategy. So our strong recommendation is for the government to consider developing that overarching strategy so that when any legislation is introduced, particularly as it impacts upon our Aboriginal and Torres Strait Islander councils, everybody is very clear right from the word go where it fits in and how it is linked to all the other initiatives and reforms that are going on at the time.

The second matter—and from listening to your earlier comments as I was sitting in the audience you have probably addressed it—is that we are somewhat concerned with the current communication strategy when it comes to matters like this and how it impacts people on the ground in the community. Because of the multitude of legislation, the multitude of reforms that have been going on for some time, when these matters come out—again, while it is very easily explained and understood by the public servants and some of us involved in this—to the actual person on the ground who is not exposed to this all the time there is often confusion and misunderstanding and again that fear of 'What I am doing? Am I going to do something I am going to regret in a few years time?'

What we strongly propose is that in matters such as this, particularly as they affect our councils in our remote communities, significant thought is put into the communication strategy and that it be drafted in a way that takes into account the people at the end. So it is not drafted by state public servants here in Brisbane who are communicating generally with people in Brisbane, but it is drafted in a way that make sense to the audience it is intended to address. That might mean a different strategy for people in the Torres Strait Island Regional Council as opposed to the people on Palm Island as opposed to the people on Bamaga. We think that is a significant area that is sometimes lacking in state government policies when they start to roll them out. As a result, the actual quality of the policy itself is sometimes undermined by the lack of a proper effective communication strategy.

CHAIR: They are very fair comments that you make, Tony. On the overarching policy issue, I noticed that Andrew Luttrell, who is the representative of whole-of-government policy, was taking a lot of notes down while you were saying that, so I am sure Andrew will be looking at that. It is important that we have those issues raised because I know one of the other committees, the planning committee, is also looking at this issue at the moment.

On the communication issue, that is also fair comment. Because of the concerns about the communication, I actually asked the committee secretariat to post out a letter to everyone on the electoral roll in the Torres Strait. People on the mainland seemed to have a bit more of an idea. They seemed to got more notification. But the people in the Torres Strait were really struggling with advice about this. So I sent out direct mail to everyone who was on the electoral roll in the Torres Strait. We sent out about 1,600 letters.

Mr Goode: Excellent.

CHAIR: In the letters we cut and pasted some of the information from the Torres Strait Island Regional Council website to say, 'Talk to your local council area about DOGIT issues if you have any issues with that.' So that was to enliven the debate in the Torres Strait. We are not trying to hide anything about this. We want to be upfront and we want this information out there.

Mr Goode: We appreciate that. I acknowledge that DERM had meetings with us. They put on a special briefing session, which we appreciated. We would like to see more of that. I welcome that type of advice. We would like to see that same type of process expanded right across local communities if possible.

CHAIR: I think there could be some difficulty in getting some of the survey work done up there.

Mr Goode: Yes. I will ask my colleague Tracy to talk about this in a bit more detail because this is not in my area of expertise. What is emerging is the absence of survey material up there. We understand that the program office is currently going through a process of systematically rolling out surveys. I have a background in DERM myself. I worked for DERM for a very short while, not necessarily as a cartographer but in a different environment. What was brought home to me was that any information that we capture in relation to land is information that is absolutely useful for years to come. A lot of its benefits are yet to be realised. You do a survey today for a specific purpose but once that information is captured and recorded it becomes an invaluable asset for government regardless of when it is going to be used.

We believe that there is an overriding need now for the government to commit to getting surveys done across all of the Aboriginal community lands and all of the Torres Strait Island Regional Council land at cost to the government. While it will have a direct benefit for some of the people involved in this particular exercise, we believe that that data captured will be extremely valuable for years to come. We understand that the program office is currently doing it in some areas. We would like to see, as a proper government initiative, a commitment to roll that out right across the entire area covered by all of our 17 Aboriginal and Torres Strait councils. I will ask my colleague to comment in a bit more detail about that with much more expertise than I have.

Ms Haynes: I think you have articulated that fairly well. I suppose my understanding of the surveying work that the program office is doing is that it is mainly focused on existing infrastructure and existing state government infrastructure as opposed to a comprehensive survey of an entire DOGIT or an entire Aboriginal or Islander community. I suppose—and, Mr Chair, this is following on from your comments in Cairns—it can be very expensive and sometimes difficult to get a survey in remote communities in particular. I would suggest that, if there is surveying work being done in these communities as part of a state government initiative, it may be more cost-effective to simply have them survey the entire community and potentially increase that work to consider new lots that may be appropriate or outlining where new residential lots may be appropriate as part of what would now be an appropriate process or a new process that would be undertaken if this bill commences, because now DOGITs, as part of the bill, would be able to be subdivided. So it is an extension of work that is already being undertaken that we think would be very beneficial and then alleviate potentially some of the individual responsibilities on a resident in that community being required then to confirm or shore up any lease arrangements that they would have to do a survey themselves.

Mr COX: Just on that, I understand that and we did talk about that in Cairns. When you talk about going on to new work, I think we have to appreciate that, as the last person we just had on the phone hook-up said, we have town planning processes. Who is going to come in for these councils? They may need time to determine that. I appreciate what you are saying, but I think it is going to be impractical in some cases because, once we sort this out—and this bill is about giving the tools to do that—that is probably something that is going to come later. Is that what you were talking about—that you were recommending that happens later or as this process is happening?

Ms Haynes: I suppose it really depends on what has been achieved so far with the planning schemes and the program office in terms of what has been surveyed. I have no access to a report or an update on the progress of how far those planning schemes have gone. I know that three were recently announced that they have gone to public consultation, which is a real benefit. But until there is some understanding of what surveying has been achieved and what gaps there are, I would not suggest that it is really appropriate for me to comment on whether it comes at this point or a later date.

Mr COX: That is fine. Thank you.

Mr GIBSON: Tracy and Tony, on paper it is a sensible suggestion to say, 'Do it now and you will get the value into the future.' For the benefit of the committee, though, can you give us some tangible examples of what that value would be, because I am sure the response from the department will be, 'Yes,

we would love to, but that is gold plating and we just do not have the funds to be able to do that now.' If we were looking at a cost-benefit analysis, what are the benefits to this cost of doing the full surveying at this opportunity?

Ms Haynes: I suppose, as a question back to the committee, is there any other location in Queensland that does not have a comprehensive survey other than on the DOGITs? Is that an equity issue, then?

Mr GIBSON: Our focus is on this bill. While we could argue that remote councils should have a whole range things that they do not, while the intention is there—

Ms Haynes: There is traditional ownership, there are ILUAs and there are the DOGITs themselves. There are a lot of layers of land tenure types going on in these areas. I would suggest that land tenure there is more complex than anywhere else in this state. So to me, that right there provides a benefit to have an understanding of what infrastructure is where, what lease agreements are where, where DOGITs are covered versus reserves and a comprehensive understanding of all of those layers. I think that would assist and hopefully alleviate any future problems, such as Katter lease issues versus some of the other things that arise.

CHAIR: Thank you. We are running out of time. Can I just advise Tracy to maybe have a look at the committee hearing that we had on Friday, the 12th. The minister did speak there about greenfield cadastral mapping and that sort of thing that the department is looking at. So have a look at what the minister said on the 12th. It will be in the *Hansard*. It might be worthwhile just seeing if it is going to be of any benefit to some of the local communities. Thank you.

Ms Haynes: Thank you.

Mr Goode: Thank you.

MUNDRABY, Mr Vince, Private capacity

CHAIR: Good morning, Vince.

Mr Mundraby: Good morning, Chair.

CHAIR: Just state your name and title for the Hansard record.

Mr Mundraby: Vince Mundraby, Mundingulpai Yidinji person, Yarrabah.

CHAIR: Thank you. Do you want to say a few words about your submission? You have a very comprehensive submission.

Mr Mundraby: First off, I would like to thank the traditional owners for giving us the time to talk on the land and also the committee for giving me 15 minutes to talk to my submission. I would like to give a bit of background about myself in regard to this submission. I have been involved with the native title claim in Yarrabah for over 20 years. We had a consent determination that covers the whole of the DOGIT. There were two consent determinations: one last year in November and another just a month ago.

Having said that, I would like to talk about some points that I made in my submission. The first point is the native title issue. I believe that native title has been addressed in the Yarrabah DOGIT due to the number of ILUAs that have been agreed to. That actually goes along with the consent determination. To give you an idea of the ILUAs, we have block holder ILUAs, in which people who are parties to the claim for the last nine years have reached some sort of an agreement and have an ILUA and a lease. I would just like to talk about the type of lease further on.

I believe the area of land that I referred to in my submission falls within the township area. The Yarrabah council would be the trustees to the township area of the DOGIT—one of the local government ILUAs that was signed off in Yarrabah. The area has been surveyed and also had site clearance by traditional owners in regard to cultural values. This lease, in my view, should be a commercial lease. There are no commercial leases issued at Yarrabah at this point. So to have it granted as a commercial lease would assist in addressing some of the welfare reforms and the processes that we are trying to normalise down on the ground at Yarrabah by way of having economic development in the community. It is my view it should be a commercial lease because we are land locked. We have a population of 4,000 people. A sustainable population would be identified through the proposed town planning scheme. That may be in or around 15,000 people—a sustainable population. So it is imperative that we have land set aside for commercial purposes within Yarrabah whilst we are coming through the issue of homelessness and what have you through the welfare reforms. May I just say that it is going to be the first time we are going to have homelessness in Yarrabah ever—over 120 years—due to the fact that the town planning scheme that is proposed would put people in categories. We have 300 houses in Yarrabah and we have a population of 4,000 people.

If I could just move on to housing. A lot of the housing is social. There is very limited private housing and the rest of the community lives in humpies. Whilst we are going through the town planning process to basically implement the ILUAs and to bed down the ILUAs in our community that we have been negotiating over 20 years, the community reference group is a good concept. I feel that the make-up of that should be the local government, traditional owners, block holders who were involved in the process over the past nine years and also service providers in Yarrabah—Child Safety, things like that. Due to some of the underlying problems that we need to go through when we are looking at town planning, we may have individuals in humpies who have not been declared to Centrelink. So those issues would need to be worked through. Some humpies may be in areas where they are not legal under the town planning act. So we are going to have a category of homeless people in Yarrabah who have nowhere else to go.

Having said that, the community also would need to have an extra consultation period. I heard one of the speakers talk about the minimum requirement. This is the first time town planning is happening in a DOGIT community—in Yarrabah. Our people need assistance in the cognisant capacity to assist them through the process. We are going to have a critical mass of the community in a holding pattern in which they would need to find interim accommodation. Those individuals would have families attached to them also.

With that, I feel that the review of the bill should fall in line with the ILUAs that have been agreed to at Yarrabah. Those ILUAs have a time period of around about five years. That would also give three years to bed down the transfer. There also is a transfer ILUA from local government to traditional owners for areas outside of the township area, or areas that do not have local government infrastructure. So the transfer would occur in around about two years. That would give us sufficient time to have a look at the bill—if it is actually working—with the major stakeholders, the traditional owners and local government. That would be a good time to sit down and review and see how we go forward. I envisage that the town planning would come to a point in time at which we could have a measured way on how we can develop and go forward and whether we are going to be amalgamated due to the fiscal formula that is used for the local council.

Through this welfare reform process, it has identified that they would need to have a bit more dollars in their kitty to operate as a local government in moving away from the normal roads, rates and rubbish and picking up the lease component. That may take a bit of time. It would have a seesaw effect. People have to pay the rate and to get a rate you need to get a block and to get a block you need to have an

identified block that is not on a cultural site or in a protected area. Yarrabah is between the Great Barrier Reef and the Wet Tropics World Heritage area. Whilst we have a look at the planning schemes that may be developed or implemented within the area, we have limited or no area for further development.

Whilst we understand that some of the houses at Yarrabah on these blocks may be social housing, some of the people have the capacity to purchase a house outright. My neighbouring block holder, who has an ILUA through being a party to the claim, has a residential lease. He would like to purchase the house. He has the capacity. It is just that the council would need to hold on to that due to the fiscal formula that is used for Indigenous local government.

CHAIR: Could I ask one question of you, Vince. In our records Yarrabah has 13 perpetual leases granted, no entitlements and 56 invalid applications. Have you had anyone who has put in an invalid application speak to you about it at all? Do they know they have put in an invalid application?

Mr Mundraby: There is a plethora of people over at Yarrabah who have not got the capacity or the resources to actually bring some of their applications to light. which is why I feel that that could be actually identified through the existing agreements in the ILUA framework that has been agreed to and also with the assistance of the committee, the reference group, so that we could actually walk people through and discover this information that may be at the bottom of the drawer.

CHAIR: Those 56 could be hardship entitlements. There is provision in this bill that could allow for some of those people to get those entitlements.

Mr Mundraby: That is right. I am actually trying to negate the conflict. Some of those entitlements may be on a culturally significant area that has already been agreed to between the council and the traditional owners. However, over the 20-year period that we were actually negotiating the ILUAs in Yarrabah there was no community consultation process for the community due to the confidentiality of the native title claims process. So we have a very large critical mass of people in Yarrabah who have not been involved with the native title claim or negotiations over the last 20 years or more if they were not a party to the claim over the last nine years. We have that group of people who have been left in limbo.

CHAIR: Are there many people in the community who are not entitled to the native title claim? You heard about how the original native title claimants on Hammond Island were dislocated. Has that happened in Yarrabah or is the community still made up of people who can claim it?

Mr Mundraby: Mr Chair, the community has 48 language groups in Yarrabah. Our people actually come from Saibai Island in the Torres Strait to Cherbourg down in the south, to Cunamulla. We have a very small component who are native title holders. The critical mass of the population actually outweighs traditional owners. We are sort of like East Timor with the major percentage of that under the age of 18—they are youth. In light of having some of the individuals actually go through a process over the last 40 years who are still in situ within their block, and I acknowledge that they may not have wills to actually pass on, however, I feel that the existing framework and legislation that we do have may address that.

Mr GIBSON: Can I pick up on that last point you made. In the committee's hearings up in the Torres Strait, one of the points that was made was that the current succession laws that we have are not necessarily reflective of what occurs within Indigenous culture. Would that be accurate from your experience as well? Could we have situations where the law might require from a deceased estate for it to pass through certain people, but culturally it would be seen as being very different?

Mr Mundraby: Yes. The various acts are a divide apart, especially in regard to recognising Aboriginal custom and tradition and island custom and tradition. There is a difference in regard to that. If I could just make a point that in the north they do bury their loved ones in the yard with the house. We cannot do that over at Yarrabah. There are a lot of issues in regard to homeownership. If we are going to go down to it, we would not ask to own another house with another deceased's loved ones in the yard. At Yarrabah we would like to do it. However, we would need to get to the first point of having a house and land. There is an impediment. Some of the leaseholders who are party to the claim have got social housing but due to issues out of their control they cannot purchase their house even though they own the land. I know that there is one individual who is going to send an invoice to the local government. He acknowledges that the local government owns the house; however, he has got a valid lease. So if the invoice is higher than the rent, there may be a situation.

CHAIR: Thank you very much. That was very comprehensive. As I said, your report was also very comprehensive. Thank you for your representations.

Mr Mundraby: If I could tender these by way of information.

CHAIR: Thank you. Leave is granted.

BURNS, Mr Shannon, Policy Leader, Cape York Institute for Policy and Leadership

SALEE, Mr Robbie, Deputy Chairman, Cape York Regional Organisations

STINTON, Ms Marita, Senior Legal Officer, Cape York Land Council

CHAIR: Thank you very much for coming this morning. It is important that we hear from the Cape York regional organisations. If you would like to start, Robbie, thank you very much.

Mr Salee: Thank you, Chairman. I would just like to acknowledge the traditional owners and the committee for inviting us to make our submissions here. I represent the Cape York regional organisations, which are the Cape York Land Council; the Cape York institute, under the direction of Mr Noel Pearson; and the Balkanu Cape York Aboriginal Corporation, which is headed by Mr Gerhardt Pearson. I have my two colleagues here to assist me.

Mr Burns: My name is Shannon Burns and I work for the Cape York institute. At the outset we certainly support that the landholding act should be amended. We support a lot of the proposed provisions in the bill, but our main concern, similar to what was voiced by the Local Government Association, is that the progress of this bill is out of context with other policy development processes going on within the Queensland government, in particular the broader consideration of land tenure which is under consideration by the State Development, Infrastructure and Industry Committee, which is currently conducting a similar inquiry at this very moment. We are concerned that we are going to end up with two different parliamentary committees reporting to the Legislative Assembly in the near future with two different sets of recommendations about what happens to land tenure on the same area of land—that is, Aboriginal land within Aboriginal communities. We concur with what the Local Government Association was saying, that there should be greater coordination and an overarching Aboriginal land tenure process in place rather than these two separate inquiries happening which seem to be arriving at different conclusions about what should be happening. That is our main point.

Having said that, we do support that some aspects of the bill proceed but that the bill needs to be amended before it proceeds any further just to deal with what it should deal with at this point in time and those other aspects around broader land tenure issues should be postponed until a later date probably following the SDII Committee's recommendations to parliament.

I will start with some specific comments around the landholding act. We think that, generally speaking, the provisions in the act which are concerned with identifying who should hold an entitlement and exactly where that entitlement is located should proceed, but there are some finer details of those provisions which we do think require amendment. I would like to ask Marita to talk about some of those specific issues with the bill which are addressed in attachment A of the submission that we provided.

CHAIR: Welcome Marita.

Ms Stinton: I am conscious of the time that we have available today so I guess what I would like to do is rely primarily on the submissions that we have made. As Shannon has mentioned, the specific concerns in terms of the process of identifying interest holders we have set out or summarised in attachment A. I might just very quickly touch on each of those issues. Firstly, the concern in relation to the way in which parcels of land will be dealt with once the interest holder and the area have been resolved is tied up with this point that we have made about the need to ensure that the amendments in terms of the ultimate tenure are dealt with as part of a broader overarching policy. At the moment the bill proposes that the land that underlies the existing or new leases would be folded back into the surrounding DOGIT land. We are not sure of exactly what the rationale is for that happening and we believe that there may be adverse impacts on the rights of the interest holders if that occurred.

CHAIR: Could I interrupt for one second. We have some DOGIT land here and it is mentioned in the bill. I will give you a copy and get you to indicate what areas or communities the Cape York Land Council does represent.

Ms Stinton: The Cape York Land Council and the associated Cape York regional organisations represent constituents who are from the northern peninsula area, so that includes Bamaga and New Mapoon on the front side. In terms of the Aboriginal councils perpetual leases Kowanyama, Lockhart River, Napranum, Pormpuraaw and for the special leases Pormpuraaw and Kowanyama.

CHAIR: Thank you. Sorry to interrupt you.

Ms Stinton: Back on the point of the ultimate underlying tenure of lease land, one of the examples that we have identified of potential difficulties is that if that was to occur, if the land was to be folded back into the surrounding DOGIT land parcel, lessees would lose the right to apply for conversion of term leases to perpetual leases and the right to apply for conversion from perpetual leases to freehold.

The second point is that the arrangements that are proposed would mean that existing leases are taken to be leases from the trustee of the DOGIT. However, for new leases that are proposed to be granted as a result of this process, the grant would be by the minister. We think it is a fairly radical departure from the fundamental rules of property law in Queensland that you would have interests being granted by someone who is not the owner of the land. We think the bill should be amended so that the actual grant of the land is by the trustee or the owner of the land rather than by the minister.

The bill proposes that for perpetual leases the eligibility criteria in terms of who can hold such a lease is to be amended. At the moment, there is a qualified person criteria, which basically has a residential and Indigenous component to it. The first difficulty is that the current restriction would still apply for the term leases. We think that, whatever the eligibility criteria is, it should be the same for both the perpetual leases and the term leases. But for both of those we believe that there should be some greater discretion allowed for the trustee or the owner of the land to determine what the eligibility criteria should be. I think this is an issue that is coming up in the context of the other land tenure inquiry. Certainly, we think there should be the ability of the communities to decide whether they want to restrict eligibility for the lease interests to Indigenous people or to people resident in the community, or basically whatever criteria they decide is appropriate. On that basis, it would enable the communities to adapt over a period of time. So what they decide is appropriate now might be different in five, 10 or 50 years.

Mr COX: You talked about the trustee and that the bill does not let the land go to freehold. It is my understanding that this bill—and I take note of what you are saying, because it has been brought up before—is going to make the process happen after it is passed. You are saying that you think the bill should go right to that point and make it happen. But my understanding is that it is just cleaning up all the mess so those things can happen.

Ms Stinton: Yes. We think there are difficulties with that. As Shannon said, we think it is entirely appropriate for the bill to deal with who has an interest—to identify people—and to identify the area of land concerned. But we think it is premature to be talking about these other issues. So for that particular point, our preference would be that the bill does not deal with it at all at the moment, but if it were to proceed along the current lines then we think those amendments are necessary.

Mr COX: Thank you.

Ms Stinton: The next point relates to the current application of section 60 of the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act, which, as our submissions indicate, we think violates section 10 of the Racial Discrimination Act. Our submissions have indicated that we believe that that particular provision should be repealed and replaced with appropriate references to the Succession Act so that Indigenous people are basically in the same position as other people in Queensland in terms of what happens if there is an intestate estate.

I am aware of a question that was asked of the previous speakers. It is probably a point that we have not given a great deal of consideration to in terms of whether the Succession Act appropriately reflects traditional law and custom. But we would certainly submit that it would be appropriate perhaps for the Succession Act provisions to then be looked at to ensure there was the ability to factor in those potential differences. We think there is a real problem with the current arrangements where it is an administrative process where people would otherwise have an entitlement to assert an interest simply given the ability to do that.

CHAIR: This was particularly raised in the Torres Strait where their succession laws are a bit different. They can jump a generation. It also happens with their adoption laws, too, of course.

Ms Stinton: That would be very similar in a lot of Cape York communities as well.

CHAIR: Thank you.

Ms Stinton: Quickly moving on, in terms of the actual processes for establishing a lease entitlement and obtaining a lease, we think they appear to be generally workable. I have a couple of very quick points. We think it is going to be very difficult for individuals to work through this process unless they are basically given any information that is available. We think there should be an obligation on the state and the councils to provide documents, if they have them, to individuals so that they are able to make the necessary applications to have their interests recognised.

The second point is that we do not accept that all of the applications that we understand have been deemed to be invalid are necessarily invalid. It is my understanding—and I have not been able to check this, and this was a point that was raised earlier this morning—that the hardship provisions do not cover applications that were duly made by an applicant but which were not then progressed by councils. We understand that there are certainly examples out there of people who have gone ahead and, for example, built a residence on a parcel of land on the understanding that they have put their application in. They are not aware of the fact that the council never considered it and therefore it is invalid. As we understand it, under this bill there is no provision for what happens in that instance.

CHAIR: I see one of the DNR staff nodding his head there. So I assume he is in agreement with what you are saying. It is probably a question that needs to be asked.

Ms Stinton: Yes. The second part of that point is that we understand that the hardship certificate provisions apply only to leases of less than one hectare in area. We think those provisions should equally apply to leases that are greater in area. I understand that might be quite a small number, but we think it is still important for there to be consistency.

In terms of the community reference panels—I know there has been some discussion about that as well this morning—we submit that there should be a representative of native title holders on those panels and we think they are an important element of the process.

Lastly, in terms of the provisions for surrender of a lease interest, the bill provides for surrender of an interest to the state. We think that is inconsistent with what the bill is proposing. If the bill is proposing that the land goes back to the DOGIT, then we do not understand why there would be a provision for surrendered land to go to the state. So even though we do not agree that the land should go to the DOGIT, whatever happens we think the surrender provision should be consistent.

Mr Burns: Thanks, Marita. That covers our main concerns with the amendments to the landholding act. As we say, our main concern is that, from the SDIIC and from various statements made by the Premier and Deputy Premier et cetera, it looks like the intention of the government is to move land within Aboriginal village areas to freehold. So we are just wondering why there are proposals in this bill to revest it as DOGIT and put leases on top. It seems to be inconsistent with other processes.

Our next comments are on the amendments to the Aboriginal Land Act and the Torres Strait Islander Land Act which are about ensuring that local governments continue to have access to the land from which they deliver their services. Obviously, that is a fairly logical and well-supported intention and we support that. But again, because of this whole thing that the future land tenure and ownership of land within Aboriginal villages is under consideration through other processes, we think you should be looking at the outcomes from that process to determine just what sort of tenure councils may continue to have on land from which they deliver services.

Just picking up on a point that the Local Government Association raised before about the extent of survey occurring within communities, we support their proposal to do a comprehensive survey of all discrete land parcels within the community. At the moment, the survey program is restricted to those lots where social housing infrastructure is going to be located—landholding act leases and roads and some other state government interests or areas of land use, which is probably 90 per cent of the community. So we are wondering why not finish off the job? Whilst you have the surveyors on the ground and you have the whole process underway, for a fairly minimal extra expense you could get a far greater outcome. One of the outcomes would be to support this provision to identify the land where municipal services are delivered from. Currently, the survey program does not pick up the council offices, or the sewage treatment plant, or the dump or various other pieces of land being used by the local government. If you were to do a comprehensive survey you would then enable this provision of the act to be able to identify exactly where local government services are delivered from.

CHAIR: Shannon, I suggested before at the Cairns meeting that I honestly feel that it would be a great opportunity for the local councils to get some good training for their staff, because with a hand-held GPS most people can do a bit of a rough survey, anyway. So it is probably not a bad opportunity while the surveyors are up there doing work for the government. So could you liaise with the government departments about that to see if you can get some people trained in the local councils? Just on that, you mentioned social housing. Is there a lot of housing in these communities?

Mr Burns: Yes, 99 per cent of the housing in these communities is social housing. As you are aware, I am sure, under the National Partnership Agreement on Remote Indigenous Housing, which is a bilateral agreement between the state and the Commonwealth government, there is a move to bring all of those houses under the one social housing system through a 40-year lease. It is a Commonwealth requirement that any investment under the remote and Indigenous housing program is done on a lease so that the government investment is secured by that lease. Most councils have agreed to lease most houses to the state. Therefore, most house lots are being surveyed.

But we are also saying that, in those cases where there is private housing or where the council has not agreed yet to lease the housing to the state, you should be surveying those lots anyway so that in future, if there is a move to lease them to the state, or if an individual from the community wants to become a homeowner and use the provisions of the Aboriginal Land Act to take out a 99-year lease, a homeownership lease, if all the houses were surveyed then all of that land administration work would already be done. Therefore, the lease could be issued by the council with the minimum of extra effort. But if that lot has not been surveyed, it then puts the obligation back on the person who wants to be the homeowner to get a surveyor to fly up from Cairns and just do the individual lot that they are interested in. Obviously, that is a very expensive and time-consuming and difficult process. It is probably sufficient in most cases to deter a person from proceeding with a homeownership application because it is just too hard. But by doing the comprehensive survey, which would also include land that could be used for commercial purposes, that also enables economic development because, obviously, people need security of tenure to make an investment in a business. But again, if that person then hears that they have to survey the lot before they can take out a lease on that lot, then that in some cases is enough to discourage a person from proceeding with their economic development proposal because, again, it is too hard and too expensive.

So if the government did this sort of proactive work to facilitate economic development and homeownership leases, then we think that will set up the communities to be able to move into homeownership and economic development in a fairly simple and straightforward process.

CHAIR: All right.

Mr COX: Mr Chairman, I just have one question. The whole process, I gather, has been going on for quite a while with consultation and in some areas more than others. In your area I believe you have been involved for quite a while. While you may not be 100 per cent happy with the process, do you feel that you have had reasonable consultation with this process?

Mr Burns: With the bill?

Mr COX: With the bill, yes.

Ms Stinton: I think our answer to that has to be no, we are not happy with the consultation on the basis that, yes, Land Council employees have been aware of the bill for some time, particularly because it is in much the same format as the bill that was introduced by the previous state government and we did have some time to consider the bill then. I guess our main concern is that Cape York Land Council is funded primarily to pursue native title claims on behalf of native title claim groups. We do not have additional funding to, for example, go and consult with people who are affected in the communities by a bill like this. A lot of the information that we rely on is what we have gathered over a period of time of working with people. We certainly have not had an opportunity to go and sit down with people in these communities and say, 'This is what is proposed. What do you think about it?' Having Robbie available today has been great because we have been able to talk through all of these issues with him. But it is a concern, as the Local Government Association representatives indicated. I think if you went out to people within the communities they really would not have a clue what all of this is about and I think there are probably unexpected consequences that nobody is aware of because those people have not had the opportunity to have a say.

Mr COX: Robbie, that is your opinion, too?

Mr Salee: Yes. I heard on the radio last week in TI they were talking about this stuff, what is happening up in the Strait. So, yeah, I don't know.

CHAIR: Thank you very much. Have you got anything you would like to summarise?

Mr Burns: A couple of quick final points. We support the proposal to amend the Land Act to enable subdivision of DOGIT. We think that can proceed because, regardless of the tenure, where the land remains DOGIT or becomes Aboriginal freehold or ordinary freehold, the lots created through the subdivision of the DOGIT at this stage will continue to be lots under any future land tenure regime. So we are happy for that subdivision process.

CHAIR: That is a positive, isn't it?

Mr Burns: Yes. Then an important point further about the Land Act is the proposed amendments for the Indigenous agreements on state leasehold land. I will pass back to Marita to cover that.

Ms Stinton: Again just very quickly, conscious of time—our submissions do provide the detail—we strongly oppose the proposed amendments. Our understanding of the background to these amendments is that there have been negotiations between the state, the pastoralists and two of the five Queensland native title representative bodies, not Cape York Land Council. There has been no consultation with Cape York Land Council or our constituents about that aspect of the bill. Whilst it may be that the proposals are appropriate for other areas of Queensland, we do not believe that they are appropriate for Cape York pastoral land. We believe that if the amendments proceed it is not going to make life any easier for people negotiating native title outcomes on the ground. We think it will make life more difficult. We do not think any of the Cape York native title groups will be prepared to enter into ILUAs of the type that are proposed here. We think it minimises the native title rights that exist on Cape York pastoral properties and we think it will effectively disincentivise agreement being reached, because if our clients do not agree to this proposed ILUA in the form that will be prescribed then the pastoralists cannot access the incentives that they would otherwise be entitled to. We do not believe that it is an appropriate outcome for Cape York. We cannot speak on behalf of the rest of Queensland.

CHAIR: Thank you very much, Marita. Thank you, Robbie, for coming down and Shannon. AgForce is going to talk in a moment. There will be probably be some interesting comments you will hear from them about Cape York land access. It would be worthwhile staying for 10 minutes, if you can.

STEWART, Mr John, Senior Native Title Officer, AgForce

CHAIR: Good afternoon. Thank you for making yourself available. Undoubtedly you have heard some of the comments that have been made. This is an interesting process that we are trying to clear up. If you would like to give us some comment it would be most appreciated.

Mr Stewart: Just very quickly, my background is managing cattle stations in the Kimberleys, Northern Territory and North Queensland. I was a member of the Queensland Aboriginal Land Tribunal for eight years from when it was first instituted and I have been a native title officer for the UGA and then AgForce since 1996. So I have been doing this for some time.

My submission was actually very brief because we read through the bulk of the act and our people agreed that it covered the issues that needed to be raised. Our main point of interest, of course, was the reduction in rent, which I will come to in a minute. However, just briefly, AgForce used to represent 1,500 respondents to 88 native title claims. Over a period of time a number of those claims have been struck out and very few of them have been finalised, and I will mention that in a minute. We now have 633 respondents to 52 native title claims. So you would think we are reducing it, but the point I need to make here is that from June this year to August this year there were another seven new claims that came on that were notified and there are another six now in the pipeline. So you get rid of some native title claims and then you have got more taking their place et cetera.

From the initial Native Title Act in 1994 to 2010 we actually had two pastoral native title claims settled in Queensland. One was Wik. The beautiful thing about Wik is that it was settled in 2004, but that was only Wik part A. Wik part B has just been settled in the last fortnight. So Wik is now finalised. Since 2010 the process has gradually gathered momentum. From 2010 to June 2012 we settled seven pastoral claims. Between 1 July this year and 31 December this year we will settle another eight. And if we have funding, and I will talk about that in a minute, we estimate that we will settle 17 claims in 2013. This is a huge process of get moving and getting things done.

The quick reasons we have improved this process are funding from the federal Attorney-General for respondents, decisions in the Federal Court and the High Court that have set out parameters on various issues—in the last couple of years the Federal Court has been the driver of native title rather than the Native Title Tribunal—and, of course, this template ILUA. I was a bit interested in what the lady from Cape York Land Council said. The land council were actually invited to be part of the discussions which took us nearly 18 months to finalise, to be part of that process, and they decided that they would not be part of it. To now say that it is of no use to people in Cape York, well, we are settling native title claims around the rest of Queensland using the template ILUA.

I think you probably need to know that currently the federal Attorney-General intends to cease respondent funding for native title claims as at 31 December this year. In relation to native title officers, which I am, and legal representatives, there will be no more native title officers, and legal practitioners will only receive disbursements for travel et cetera. So how are you going to get lawyers to represent respondents to native title claims when they are not even going to be paid for doing their work? This is a huge problem. I happen to chair the National Farmers Federation Native Title Taskforce and we have made a submission to the Attorney-General as to why respondents need this, because all the states in Australia are huge areas representing a whole lot of people.

CHAIR: That is interesting. I am sure, as fairly good lobbyists, AgForce and the National Farmers Federation will take that issue on board.

Mr Stewart: Yes, okay, fine. What I actually have to say is that the template ILUA was the mover that led to this suggestion that there be a 25 per cent reduction in the rent for people who signed ILUAs and withdrew from native title claims. We worked through this because we always had a problem with public liability insurance. The lessee had to have public liability insurance anyway. When we were developing the template ILUA, whenever we talked about public liability insurance we were always told that the Aboriginal groups would not be able to afford public liability insurance, which we accepted. We negotiated with the government through the department and eventually we came up with this idea where if a pastoralist wanted the Aboriginal group to have public liability insurance then the pastoralist would pay for it. There are a number of other reasons, of course, supporting why the pastoralist should get some assistance. Here we are in Queensland where there is no statutory access to land. The access to the land is the responsibility of the lessee. The lessee pays rent to the state to use the land. Then we have a native title claim which changes that position somewhat. That is why we have an ILUA, of course, that allows for negotiation and access et cetera.

We just think this is a step forward. The other thing that pastoralists did agree to was that the ILUA would become tied to the actual lease so that if the property was sold you would not have to go through an ILUA again, which was going to save the government time. They are basically very limited reasons as to why we support that.

CHAIR: Does anyone have any questions? No. We are going to break for half an hour now. As both you and the Land Council are here, there is a nice cafeteria where I am sure you could sit down and have a cup of tea or coffee and have a talk about maybe some reasons it should work. Please do not close the door on further consultation.

Proceedings suspended from 12.28 pm to 1.02 pm

STEPHEN, Mr Napau Pedro, Mayor, Torres Shire Council

CHAIR: Do we have Councillor Pedro, Councillor Yen, Councillor John, Councillor Allan and Councillor Willie?

Mayor Stephen: Good afternoon, it is Mayor Stephen here. I would like to register the apology of my other colleagues. We have actually had advice from our legal advisers that virtually the Torres Shire Council has no direct responsibility on the DOGIT so the Aboriginal and Torres Strait Islander Land Holding Bill and also the Katter do not directly affect us, although many of our constituents on Thursday Island and surrounding islands have direct affiliation with their customary land on the outer islands that have been identified. So one of the most important things for us was to work very closely with the communication strategy with our sister council, the Torres Strait Island Regional Council, regarding their unwrapping of the Katter leases and also the DOGIT in terms of keeping our constituents informed, and most of our elected members have affiliation with their customary land on the islands that have been identified with this bill.

CHAIR: Would you like to make a bit of a brief comment? What is the feeling of the community up there about the bill, Pedro?

Mayor Stephen: I think the community largely support it because virtually it has been for some years now that we have had different tenures that are confusing. I know that in the eighties, when the DOGIT was introduced, the concern from the community was a clear understanding between responsibilities of existing organisations—whether they are the trust body, whether they are the prescribed body corporate—and also in relation to the council, the elected council. So, it is that sort of concern that has been raised that everyone's support of the bill will be that it is tidying up a lot of existing land tenure—

CHAIR: The ownership issues?

Mayor Stephen: Yes, the ownership issue. There will be a much more clear pathway because people have being talking with, say, the Department of Housing regarding homeownership. Council itself has actually stepped forward to release about 24 blocks under an affordable housing scheme on Horn Island. I actually heard some of the comments that were made earlier this morning regarding Horn Island and also comments that were made by the LGAQ and also Cape York Land Council regarding that there needs to be greater coordination between the reviews that are currently being undertaken by the state but also a greater coordination between the state and the Commonwealth.

CHAIR: Is Thursday Island included in your shire council? That is not in the regional council, is it, or not?

Mayor Stephen: The introduction of the bill identified that Torres Shire Council is not an Indigenous council. We have been trying to explain it to the parliamentary committee that was undergoing all the reforms and the reviews since the nineties, and even we had a lot of hardship, I suppose, trying to explain to the green paper process prior to amalgamation in 2008. Virtually my understanding in talking to the minister, the current local government minister, is that the boundary of Torres Shire Council starts at 11 degrees, which actually encompasses the five communities that are now sitting under the Northern Peninsula Area Regional Council, and right up to the international border now where Torres Strait Island Regional Council sit. Since the introduction in 1985 of the Community Service Act, the reserve islands, we have a similar status like the Cook shire where Cook shire had 16 Aboriginal councils sitting under their reserve in their jurisdiction. We had 17 island councils sitting under our jurisdiction. The 15 island councils in the Torres Strait have now become the Torres Strait Island Regional Council and the two island councils sitting in the northern peninsula area which is actually Bamaga and Seisia. The other three Aboriginal councils came under the jurisdiction of the ACC and the Island council came under the jurisdiction of the ICC. Even trying to explain it to you I am getting a bit confused.

CHAIR: I think we have the gist of that, Pedro, thank you very much.

Mayor Stephen: The actual concern for us in the Torres here is actually the talk about the unallocated state land and reserve land. Where we have jurisdiction we actually have a quarry lease, a sand lease, and we have assets on these lands. We want some clarity that if an organisation can actually lease that land then how can we still have access to our assets?

CHAIR: That is a good question.

Mr GIBSON: Can I just get a little bit more clarification on that. Can you enlighten the committee on the current arrangements you have in place? Do you have a lease for those assets or is it just an understanding that has been in place for some time?

Mayor Stephen: We have a lease that was actually identified in 2006 when we actually had the confirmed Indigenous land use agreement with the Kaurareg people of the inner island of Torres Strait under what they call the Kaiwalagal boundary. So, yes, we actually have a standing arrangement that we do have a lease run for about 25 years on the quarry and we also have a sand lease that has a similar time frame.

Mr GIBSON: Is that a commercial lease that you have in place?

Mayor Stephen: No, it is not a commercial lease. We had that quarry primarily for material for the roads, for council works, but since I think five years ago the sister council has been buying products from us through Main Roads to actually upgrade.

Mr GIBSON: Is that quarry in a key resource area, a KRA? Has that been identified by the state?

Mayor Stephen: We pay royalties to the state.

CHAIR: Any other questions? Anything else you would like to bring up, Pedro?

Mayor Stephen: No. I think it is just the time factor for us to get our legal advice around the bill and how it actually relates to us. Like I said before in my opening statement, the complication has always been since the nineties the relationship or the status and responsibility of the Torres Shire Council and also the Torres Strait Island Regional Council. So it is always about talking about boundary alignments and stuff like that, and that is why it is really important for us to still be on the forefront, to actually gather information, so that we can feed that information back to our constituents to keep them posted on really what is actually happening on the DOGIT land and what is happening on the actual Katter leases. Many of our constituents that I know of have moved from the islands to Thursday Island because of employment and for schooling for their children but they still have that connection back there. I think it was mentioned earlier this morning that many of our original families or our forefathers that have actually applied for these leases have gone and there is a question, because we do not have wills in place, about how we have that connection back to our community.

CHAIR: All right. Thank you. That is noted.

Mr GIBSON: Councillor Pedro, can I just pick up on that. There has been some discussion about the best way to get the information through your shire and your adjoining shire with the Torres Strait Island Regional Council. What advice would you give to the committee and to the department in wanting to communicate decisions that have been made and making sure that people are aware? What is the best way to engage in that?

Mayor Stephen: We have a regional native title office here, which is under the authority of the Torres Strait Regional Authority, which is the federal arm. But the information coming directly back to our council, we have newsletters and we have our own network that goes directly to our NGOs and to our community organisations. The council is facilitating a lot of our networking through our community plans.

Mr GIBSON: Can you provide some advice for the committee with regard to the consultation on this bill? Do you believe it has been effective or otherwise?

Mayor Stephen: No, it was not effective. I have stressed that to the committee, because when the committee did come up and had a face-to-face community meeting on Thursday Island, it clashed with our cultural festival for the region. A lot of people came in from the outer islands. I think the committee thought it would be an opportune time for people to attend these consultation meetings, but because of the activities they did not have a lot of people participating in those forums. Whilst probably people were aware of the bill being introduced, I think they were much more concerned about a lot of the other stuff that the department of housing was doing in terms of homeownership and stuff like that. I think it has needed more time for people to get across what was happening and also to provide their feedback.

Mr GIBSON: Thank you.

CHAIR: Okay, Pedro, is there anything that you would like to summarise at all?

Mayor Stephen: I would just acknowledge the awesome responsibility that the committee has and also you, Chair, in terms of your initiative to write to every constituent. We did get our letters. We got our letters a bit later than the mainstream, but it is a demonstration of the committee seeking broad consultation right up to the individual to provide feedback. I just want to congratulate the committee and certainly pass my sentiments on to the government to take the awesome responsibility to tidy up all the land tenures, especially in Aboriginal and Torres Strait Islander communities.

CHAIR: All right. Thank you very much. We definitely did make an effort to try to get some community involvement. This bill will not be passed immediately, Pedro. So as much as the consultation period has stopped, please, if you have any issues contact the department and I am sure that people like Ken Carse will still listen to any issues that you have. Thank you very much for your participation today.

Mayor Stephen: All right. Thank you.

CHAIR: We have a few minutes. We might call on the group that has come down from the St Pauls community. Come on up to the front.

FISHER-WARE, Ms Grace Alvina, Private capacity

Mr Mam: Excuse me, I need to say that she is representing St Pauls. I am representing Mer. I am representing Murray.

CHAIR: You wait until Grace finishes. We have another phone call coming in then, so you will have to wait until that one is finished. Right. Grace, would you like to make some comment, please?

Ms Fisher-Ware: Thank you very much. Thank you, Mr Gibson, and thank you, Chairman. I am here because my sister rang from St Pauls. I am living down at Woodridge because of unemployment, because of frustration with the community back home. Nothing can be done for the community, because everything stops at the level of all the leaders and the organisations and people are just in the dark of whatever is happening. In light of this, you only get information from the so-called leaders from the island. There is no difference to the community in regard to this major common-sense bill for the benefit of the people and working in partnership together to make it happen for both sides.

So she rang and she told me, 'You have to go there and see what it is all about and share our concern.' So I am not only representing my family but the community—the traditional owners of land—whether the family is on the island or the mainland. Mr Mam left the island a long time ago—in the 1950s—because of unemployment but the land is still there. All the council previously until now knows exactly family land, but the responsibility they have for local government and tradition is like this. There is a gap. They do not even know how to communicate. They do not know how to pass on the information—nothing of the sort. So people are in the dark. So that is why I am here. I am representing our families back home. For my family, it is four generations. We built on the same land. It was set aside for Pacific Islanders in the 1800s, and on going to DOGIT the leaders at that time sold us out.

CHAIR: Did your family apply for a lease under the DOGIT or not?

Ms Fisher-Ware: Say that again?

CHAIR: Can I just help you out, Grace. My records show that about 240 people live in the St Pauls community and there have been 26 applications for DOGIT land for Katter leases and 25 are entitled.

Ms Fisher-Ware: That is just over my head.

CHAIR: So 25 people have applied for a lease on the land.

Ms Fisher-Ware: For my own traditional land and other families and all of those for lease, there is native title. We are traditional owners. The thing is for my family and others, traditional family land, the same like Murray Island, is marked by boundary, by traditional garden and customary law. Why I say that? Because when the sewerage went through my land, plus all the other families, and road, the council should have known better in regard to traditional laws, customary laws, but because of the generation gap it has not got an ounce of communicating with people—family—whether on the mainland or back there in regard to land. So that is a big gap in itself. DOGIT to them—the people on the ground—is giving these councillors a head knowledge of 'I'm the big boss. I'm the man in charge. I'm the man for land. So if you want to put sewerage through, or boundary, we just put it whether the family knows or not.' That is the attitude on the ground.

CHAIR: Do you talk about Katter leases on the ground there?

Ms Fisher-Ware: I do not know.

CHAIR: Do you know Katter leases?

Ms Fisher-Ware: I do not know about Katter leases. I am just old, but traditional. The other concern is our home was built in the 1880s. It was before my forefathers in the 1800s—late. We build on the land—my grandfather, my father, and myself on the same land—before town plan came in. Like I said, with traditional land, you have a mango tree there, you have a coconut tree here, you have this one over here, you have this one over there. So we build on the land in the 1880s. When the land town plan came in, we have already built on our land. So when they came in, without consent, they just put it straight through the land: 'This is going to be the road. This is going to be the sewerage'. Family trees, food, mango trees—everything—went down. That is the attitude of the ones who are in charge of the DOGIT. For them on the island, it is going to their head. They are the kingpin. It does not matter traditional, customary laws—that is out the window. And so people are ignorant, because what you are trying to change with the bill is not coming through. Even they do not know themselves. That is the confusion part there.

CHAIR: How did your sister hear about it? Did she hear about it on the radio?

Ms Fisher-Ware: Yes, word of mouth through the cultural festival, but no-one has been to the island itself. It is only on Thursday Island. That is the other thing. The problem is that any new government that comes in goes to the same people. The same people give input time in, time out. You do not go out of the boundary to seek out the community. That is the other problem that we have. Because our home was built before the town plan came in, the sewerage went through and the road went through. The council previously put their family on our homeland, but when we find out, because of family we just said, 'That's all right. Just stay there and build.' But the thing is it is compensation, because the council just do what they want to do. So sewerage went through my land. When I say mine, others as well. Sewerage went

through. I just want to tell you also it is a mickey mouse set-up of sewerage. It is not the best. They got their money's worth but the people got nothing out of it. Seek compensation for land or property boundary—realignment—because council did not seek consent from me, family, to build road and sewerage over family traditional land, because the new town plan does not recognise traditional customary land boundary.

CHAIR: What is the name of your family who is living there, just so that can give us some assistance in tracking them down? You are Mrs Grace Fisher-Ware, but what—

Ms Fisher-Ware: It is given to me. You were talking about there is no will, no family, no. Customary law is handed down through family.

CHAIR: That is what I am saying, but if some of the department people want to go up and have a look at the St Pauls community and this land, who are the family members who are there now? Is there any family member?

Ms Fisher-Ware: Mrs Isobel Stephens.

CHAIR: Thanks. That might make it easier.

Ms Fisher-Ware: The other one is that the state must ensure there is an appropriate mechanism in place to sort out compensation and not leave or pass on this financial and administrative burden to the local community and landowners. Lastly, state land law must adhere to traditional law as in land law.

CHAIR: Thank you. Would anyone like to ask a question or comment?

Mr COX: Are there any issues at all—we asked this earlier—regarding cultural or heritage sites, whether it be graves or anything else? Are there any issues like that that are going to affect you, do you think, or is that already covered under the council and those areas are noted?

Ms Fisher-Ware: That is not an issue.

Mr COX: That is not an issue. That is okay.

Ms Fisher-Ware: Yes, because where St Pauls was situated Mualgau was given to our grandfathers for the Pacific Islanders to live.

CHAIR: Thank you very much, Grace.

Ms Fisher-Ware: Thank you.

Ms TRAD: Sorry, Mr Chair, but I have a couple of questions. Hello, Ms Fisher. Thank you very much for coming in. Just in relation to the surveying of your sister's property, so your traditional plot—

Ms Fisher-Ware: It is mine now with the family, yes.

Ms TRAD: Yes, yours. In terms of covering the cost of this exercise, is that something that your family could bear—the surveying? So plotting the actual lines of the area?

Ms Fisher-Ware: Sorry, but can you explain it again?

Ms TRAD: Part of this bill is actually about fixing up all of the leases and making sure that all of the unallocated land or current leases that are on public land are reconfigured or captured correctly. So they want to draw lines on the land so people can see whose plot is whose, but it costs money to get surveyors in so that they can do all the measuring and get that plot done.

Ms Fisher-Ware: Okay. That comes back to what I was saying—traditional land. What happens on the mainstream, you just cannot do that on the island.

Ms TRAD: Yes, I understand. So is there council recognition or TI recognition of whose land is whose?

Ms Fisher-Ware: They should know, but they do not contact the people—that is a concern—before they go ahead and do what you are trying to say, because it is like steamrolling. And family is on the mainland as well. So you cannot say, 'Leave the one on the mainland out,' because the land is still there, whether there is people there or not there. But there are trees and there are coconut trees. Families know their land. But the protocol is not being used for traditional customary laws—traditional land. Just like Murray Island, we are the same. It is just steamrolled, like the sewerage for instance. When they came through, the council did not have the audacity to come and talk to people. It just let these people with their mindset of the mainstream go and draw the line here, here and here and this, this, this, and that is not on. What can family do? Family can do nothing because it is steamrolling by the council saying, 'Go ahead and do it,' and the council is not even there to say prior to the planning to traditional owners on traditional land. It is not all the same as in a square. It is like putting a square thing into a round hole and trying to make us fit into your square in terms of the land situation. Leave your idea and come back to the people and start from the people and come up in terms of how sewerage needs to go through, how this needs to be done. It can be done, but in a way that the people are happy—not only on the land there now but here on the mainland because there is no work for us back home. We have to come. That does not mean to say that on that spare land council can just go and put public housing. No way! There are people on the mainland, people walking the street, people in the gutter; they have land back there. The council should be the key people to negotiate and talk and be more proactive with our people to get all these things done, but it is not there. That is all I want to say.

Ms TRAD: Ms Fisher, Katter leases came in in the mid eighties. So some people have entitlements that are still outstanding. Does your sister—

Ms Fisher-Ware: Entitlement to own the land?

Ms TRAD: Yes, to have a lease arrangement on the land.

Ms Fisher-Ware: What do you mean 'have a lease', because it is my native land? That is my family land and where is the lease coming in?

Ms TRAD: The lease is in an act. It is made possible because an act went through the Queensland parliament in 1985. So some people applied to get a lease on a plot of land.

Ms Fisher-Ware: Over their own native title land?

Ms TRAD: We are not sure. I think it is still being assessed. It was before native title, but—

Ms Fisher-Ware: Because, at the end of the day, it is still the family that owns the land.

Ms TRAD: Yes, but this is my question: is your family concerned—and this might not be the case because you are not aware of the Katter leases, which is what we are calling them—that there may be one of these entitlements over your traditional land? Would that be of concern to you?

Ms Fisher-Ware: My concern is they put the sewerage through, they put the road through and put the main pump for the sewerage on the land without consent. So that is what my concern is.

CHAIR: I am sure Grace would be concerned. Just from the way she has been speaking, I am sure she would be concerned about that.

Ms Fisher-Ware: Yes, it just needs compensation. That is all. I do not mind sewerage going through. I do not mind, but to put the main sewerage power station in front of your house and you can smell it when the wind comes from whichever direction from everybody in the village.

CHAIR: All right, Grace. Thank you very much for making your views heard today. Thank you very much, and say hello to your sister up there for us, too. At this time we were supposed to have Councillor Fred Gela, the Mayor of the Torres Strait Island Regional Council, but unfortunately Fred has not been able to come on to the phone today. We have invited him, but he has not been able to make it on the phone. I invite Mr Steve Mam to say something.

MAM, Mr Steve, Private capacity

Mr Mam: We must not walk on the ground that belongs to somebody else. This hand must not touch property that does not belong to me. When the case was won in the highest court of Australia, the only Torres Strait Islander that was present was me. My name is Beizam. I represent the Murray Island Council of Elders.

CHAIR: Take a seat.

Mr Mam: I am going to read from notes. I will not take too long, just to the point.

CHAIR: Okay.

Mr Mam: All those (inaudible) mentioned, I am listening. I have got ears. I am listening to all that you say to the committee. I want to thank the committee. I want to thank the committee for giving us time to do all of that. I have mentioned that. I am not privy to give you any explanation about my customary thing and do all of that, so I will just get to the point. I have a letter here that I have noted. I am not here to speak for Torres Strait. We the Meriam Council of Elders wrote to Gavin Shanks and Jim McNamara in June 2012 seeking answers to those documents which we are presenting here to the committee.

CHAIR: Would you like them tabled then for the committee?

Mr Mam: I want to table that for the committee when I finish.

CHAIR: Okay.

Mr Mam: The Meriam Council of Elders wrote to Gavin Shanks and Jim McNamara in June 2012—please note that—seeking answers to the Mer Island 40-year lease and the transfer to the Meriam Mir reserve. Put in your head the highest court of Australia that Mabo went to and I have always explained that I was the only Torres Strait Islander. Koiki died. I was the only one that was present there according to our statements (inaudible) in Canberra when the decision was made. To date we have received no reply. Those letters went to them. I did not have to cross the line and come in here. To date we have received no answer.

You say whatever excuses you want to the committee or those people and who you represent and all of that. Do whatever you would like to do. I am just thankful that I am here and you have given me a minute or so to explain that. If you want to ask me any personal questions, you can ask me—not stupid questions but questions that I can relate to. I tell you that I am a member of the council of elders. We have received no answer. Meriam elders noticed the *Torres News* in April 2012. Today this meeting is about the new Queensland land bill to all traditional landowners—proper access to proper land, land title and proper land management. My question is a reply for the two letters—make note of that, Chair—to DERM senior management.

We are still waiting for the response. Those letters are self-explanatory, committee. My question on behalf of the Meriam council is for a reply to the two letters to DERM senior management. We are still waiting. That is self-explanatory. We are still waiting for answers. The Meriam Council of Elders regards that the new land management system will affect the Meriam people Mabo land title when this land bill is passed. It will affect us. The Mabo High Court decision in 1992 is that Meriam title is not for sale. Make a note of that. Meriam council is not for sale. The land of Murray is not for sale. Those letters speak for themselves. I am here to answer any questions in this short time. (Inaudible) came in two language of the Torres Strait and thank you very much. Those letters are self-explanatory.

CHAIR: Steve, you might be able to answer this for us, then. With regard to the St Pauls community, 26 Katter leases were applied for, and 25 of them are entitled. Do you know of anyone who has applied for one? Do you know if any of the families have applied for them?

Mr Mam: This stand of mine is for Meriam, not for St Pauls.

CHAIR: Hang on.

Mr Mam: I am not here to represent St Pauls.

CHAIR: No. I am lost.

Mr Mam: You asked me a question, Chair.

CHAIR: I am sorry, Steve. I am a bit lost. Ken or someone might be able explain it.

Mr Carse: I think Mr Mam's title is wrong there. He is not representing Moa Island; he is representing Mer or Murray Island.

Mr Mam: I have nothing to do with all of that. I am not representing Torres Strait. That is DOGIT country.

Mr Carse: He is talking about Mer Island.

Mr Mam: I am talking about Mer and my name is Beizam.

CHAIR: This bill does not affect any land on Mer Island; is that right?

Mr Mam: I do not know. You have to tell me, committee. You need to answer the letter.

CHAIR: That is what the departmental people are saying.

Mr Mam: You need to answer the letter. I table all of that now. It should not have come to that.

CHAIR: I am not making any excuses for the letters—

Mr Mam: I understand English very well.

CHAIR: Steve, I am not trying to make excuses for letters not being answered. I will get them answered within a fortnight for you.

Mr Mam: We want answers with all of that because otherwise Mer is out of it. That is from the highest court. If you go against the highest court in your decision, Mer will be against that. I am standing as a Mer elder and we will be against that if we do not get a satisfactory answer. Mer will do all of that. You want people from other places—I can't answer for them.

CHAIR: No. Thank you for making those comments. I will chase that up and ensure that the department answers those letters.

Mr Mam: In English that letter is self-explanatory and do you know what else is self-explanatory? I do not know what dictionary to believe now. You have people that have that many dictionaries—you do not know. You contradict yourself. I learnt new manipulation when I lived for 50 years in Brisbane. I respect that, Chair, to you and to the committee. That is my respect in white man terms. That is my respect. If you want to talk to us—and I will table this—speak directly to us, the Mer Council of Elders. Speak directly to us.

But the thing is you talk about all these things—I don't want to go into that detail. The cutting of costs and all of that—that is your job, committee. You know that. You run the country. That is your decision. My decision is that I want an understanding before I can put anything to the council. You can turn around and say, 'Who are these people?' Do not ask me those questions. I am a member of the Mer Council of Elders. I am a member of the council. If I do all of that—you have heard from Grace. I sat there and listened to sister Grace say all of that. She might be talking in a lot of jargon. I too come from St Pauls. I was born on St Pauls. But I am here to represent Mer.

You talk about Bob Katter. I know Bob. Bob is the only minister who will carry my port to the plane. But I do not want to talk about him. This is not rubbish talk. Mr Chairman, ladies and gentlemen, I have said what I came here to say and thank you very much. So when all those things are done in the proper way—and I mean 'proper' in my terms—when you understand all of that you can talk about native title. Do not talk to me about native title. Mabo—if you understand the simple word in broken English; that word came out of the big High Court. It is not native title. Native title is your word and the government's word. That word was 'land belong me'. It is not native title and not anything. If you want to negotiate land belong me, the Council of Elders on Murray where the living is stable, it is going to affect us in some way. I do not want to listen to that rubbish. But we can communicate on all of that.

In principle we wrote and we got no answer. I need an answer. If those people you have nominated and do all of that in the way that you operate as a government or a committee, well you need to take them on and ask them to change it, or whatever they do. I am here to represent Mer. I am not going to say we will negotiate and use all of those words. I am not going to talk like that. We want an explanation from that letter and then we as the Mer Council of Elders, Chair, will say to you yes or no. It has interfered by using that name native title and, as I mention again, the High Court spelled it out, not in your language but in my word—'land belong me'. We are about land. We are nothing to do with native title. We are about land. Thank you very much. About the rest of the Torres Strait, I have made it very clear. In English I am not here to represent the Torres Strait. I am not going to say I am related to all of that. I am here as the member of the council of Mer. My name is Beizam.

CHAIR: Steve, thank you very much for that. I will get an answer to those letters for you. I will make sure the department answers those letters for you. I will give you a copy of this which might assist you. These are some of the communities that we are actually dealing with.

Mr Mam: You know I know those tricks belong to white man, too. Once you appear with anything you are part of that. Do not play those tricks with me. I know how you manipulate the system.

CHAIR: I am not playing any tricks with you, Steve.

Mr Mam: You give me no copy of all of that. I want to have nothing to do with that. If you want to meet with Mer, you will meet with Mer on our terms.

CHAIR: I will get a response to those letters. Thank you very much.

Mr GIBSON: Mr Chair, I am happy to have those documents tabled formally for committee proceedings.

Mr Mam: If you want to send correspondence, send it directly. I put my address there. I represent them. Send all of that to Mer because you are not answering Steve. You are answering me as member of that council. Thank you very much.

CHAIR: Thank you, Steve.

Mr COSTIGAN: I second the member for Gympie's motion.

CHAIR: Mayor Fred hasn't come on line yet? We have not heard from Mayor Fred Gela, so that is unfortunate. Would the department like to respond to some of the points that have been made? I now invite departmental officers back to the table.

CARSE, Mr Ken, Principal Policy Adviser, Department of Natural Resources and Mines

LUTTRELL, Mr Andrew, Director, Policy, Native Title Policy and Legal Services, Department of Natural Resources and Mines

ROBSON, Mr Chris, Assistant Director-General, Department of Natural Resources and Mines

SMITH-ROBERTS, Ms Meg, Principal Adviser, Land and Indigenous Services, Department of Natural Resources and Mines

CHAIR: Officers, would you like to respond to any points raised by the stakeholders? There have been a number of interesting points and quite valid points that have been raised this morning.

Mr Robson: Thank you, Mr Chair. I would open up by noting that we have provided the committee with a written response on the issues and the submissions that were tabled, noting that Chalk and Fitzgerald have submitted an amended submission. We have not been in a position to respond to that, so I will not make any comment about their amended submission as such. I will just make some brief comments on what our responses were and then invite any questions the committee might have of us further to that.

In regard to the submission from Mr Vince Mundraby, I would note that he raised specific issues regarding a group of residents from Yarrabah that are called share farmers in particular and that this group of seven families sought to negotiate what was called a certified lease agreement about 30 years ago that was not signed off, from any evidence that exists, by government or such. Mr Mundraby was requesting that the share-farming families be granted a 99-year commercial lease. The issues that he has raised unfortunately do not have any particular direct relevance to the bill that the committee is looking at. Whilst we note the issues raised, it is not a matter that this bill is dealing with. Let me keep walking through this. As I said, I will not comment about the Chalk and Fitzgerald submission.

Mr GIBSON: Sorry, just to pick up on their original submission, which is reflected in their amended one—and it was a question I asked—they raised a concern that the hardship provisions contained in clause 26 of the bill will allow for situations where unauthorised buildings erected in unsuitable locations on Hammond Island will be validated. Could you perhaps respond to that for the committee? It was in their original submission.

Mr Robson: I will ask Andrew to respond.

Mr Luttrell: Our view is that they have misconceived the purpose of clause 26. Clause 26 is effectively designed to allow the trustee to offer a 99-year residential lease at zero cost. That is the effect of it. To the extent that someone has relied upon what now appears to be incorrect information—that they are either the holder of a granted lease or a holder of a lease entitlement and they have acted to their detriment—then that provision is trying to put them in the best position we can. In the context of the Aboriginal Land Act and the Torres Strait Islander Land Act, those acts proscribe a value to that land. That clause is designed to reduce that value to nil so that we minimise the transaction cost if the current trustee decides to address the issue by the grant of a 99-year renewable residential lease.

Mr GIBSON: Andrew, are you aware on Hammond Island and perhaps anywhere else—but obviously the Chalk and Fitzgerald submission is particular to Hammond—where we may have situations where we have dwellings constructed where there is no lease or nothing has been in place at any point through time and it is just that at some point in history someone has put a dwelling there and said, 'This is my home and I am living there,' and they have never tried to formalise it in any way, shape or form?

Mr Luttrell: I think it gets back to a more fundamental proposition that there is no requirement for there to be a lease if you have the permission of the person who controls the land. What we have seen is that there are different views as to who is the person who can provide that permission and in some cases people will assert, consistent with traditional law and custom, that it is their land and they can do what their rights and interests are over that land. We then have various layers which we describe as land tenure. In certain circumstances if you want a land tenure from the state or the trustee you then have to go into certain legal processes. Those processes then separate or bring a whole lot of legal constructs to perhaps in some cases separate out the improvement or the house from the land. In the context of the land we are dealing with, there are usually at least three different layers of tenure or persons who you have to get permission from in some circumstances.

So it would not surprise me at all if there were circumstances where there is no grant or no entitlement in a legal sense from the state or from the trustee. But that is not to say that that person has not constructed something on their land. It depends from which window, I suppose, you are looking at it. In that context that could not be recognised, for example, on the DCDB, which is the state's representation of the rights and interest on that land. That is not to say that from a native title perspective that person does not have a native title right to construct on that land. So that clause is really trying to deal with a very specific set of circumstances where the legislation at the moment says there is a value that that person would have to pay. The effect of that clause is that the chief executive can reduce that value to zero.

Mr Carse: Just on that, if you could—

Mr GIBSON: I am trying to get my head around it and I am still struggling.

Mr Carse: The case you spoke about was where they have constructed straight on the land. If they have done that without applying for a landholding act lease, the hardship certificate does not apply and this bill does not apply to it. They have just built on DOGIT. They need to deal with the trustee under the Aboriginal or the Torres Strait Islander Land Act.

CHAIR: So they have to get the trustee to—

Mr Carse: If they want a lease, they will have to get the trustee to issue them a lease and everything applies normally. The hardship certificate only applies where they have made an application under the 1985 landholding act and then have constructed on the belief that they had—

Mr GIBSON: So where their submission talks about unauthorised buildings erected in unsuitable locations, without going through it, if there has been no application, the effect of this bill will not formalise any of that? It will not say, 'That building that has been constructed is now legally allowed to be there'?

Mr Luttrell: I think if we go to the other extreme, which potentially you can draw from that submission that that clause will somehow rectify—as against state land law, as against native title—historical things that have occurred on that land, then we do not accept that to be a correct understanding of that section. We have said elsewhere that, to the extent that the state is affecting native title, we are bound to comply with the Commonwealth Native Title Act. So this act does not allow us to do anything beyond the operation of that to the extent that someone has some infrastructure or a house on a DOGIT. There is no lease. We are not, under this bill, requiring them to enter into a leasing arrangement if they choose not to. There are certain advantages if you do, but if you choose not to—I guess the proposition is that there is some skulduggery perhaps built into the bill to try to deal with longstanding issues. To that extent there is none of that. What this is trying to do, in accordance with the law as it is at the moment—as the Native Title Act provides—is provide us with a set of tools, which would generally require us to engage with the affected persons in circumstances where we have a lease or a lease entitlement. It is fair to say that there are a number of other tenure issues in these communities. The bill is simply limited to leases and lease entitlements.

CHAIR: Yes.

Mr Robson: Mr Chair, could I just maybe take it back even a step further just to clarify here: under a DOGIT, it is communal land. By support and endorsement from, as Ken and Andrew were saying, the trustee, Indigenous people can build on that land without any form of tenure that we, in our normal course of business, would know. They do not have to do that. There is and there will be in many of those DOGIT communities such structure. I guess what we have here is the intersection, if you like, between what is a formal tenure system created by the 1985 act in this case and structures that may well have been put there with good intent and within normal practice, which people might think we are going to fix up. This act does not deal with those.

Mr GIBSON: Yes. Thank you.

Mr Robson: I hope that helps.

CHAIR: All right.

Mr Robson: I will keep going, then, if that is okay.

CHAIR: Yes.

Mr Robson: Sorry, are there any other questions on the Chalk and Fitzgerald one before I move off that?

CHAIR: Yes, there is one other question. Point 7 in the executive summary states—

There is no requirement for the Kaurareg people as registered native title claimants.

I realise you have answered it here, but can you explain the community reference panels a bit further for me?

Mr Robson: Sorry, I am just trying to find the right one.

CHAIR: They want someone on the community reference panel.

Mr Robson: Yes.

CHAIR: I would imagine somewhere that could be relevant is if there is a boundary realignment that is required that would go into some of the native title land.

Mr Robson: Yes, for sure. I would highlight—and I think we said this earlier—if there is a boundary adjustment required, which takes that potentially new lease, or adjusted lease, onto land which has a native title claim or a native title determination, there is a prescribed body corporate. Then by law under the Commonwealth Native Title Act there must be an agreement with the native title party before that lease can be issued. It requires an Indigenous land use agreement if the boundary adjustment requires that entitlement to go onto land which was not previously identified by the lease.

CHAIR: So—

Mr Robson: They are bound—

CHAIR: Any DOGIT or Katter lease that is encroaching on native title land has to have consultation with the native title?

Mr Robson: Where the boundary adjustments require us to go and do that; that is correct.

CHAIR: Yes.

Mr Robson: The law will require it. There will be no progress until that is settled.

CHAIR: Okay. Thank you.

Mr Robson: There is no point in asking, 'What's in the law?' because the law is the law and we cannot add to that. Does that answer that question?

If I can go on to the comments that came in from the Cape York regional organisations. Quite a few of their comments were very technical ones and I do not propose to talk about all of those, because in our submission we have sought to respond to those to our ability. I will raise a couple to assist there. One of the issues they raised was about potential concerns about vesting the unallocated state land that results from trustee approvals under the landholding act for a lease into vesting that land into the surrounding DOGIT—in other words, filing it back into the DOGIT, as you heard it described, to simplify tenure arrangements. At the moment, the land, as you have heard, drops out of the DOGIT and sits as basically state land and a perpetual lease, if it is allocated, is granted. If it is not yet granted but the council has made a decision then it is now unallocated state land; it is not in the DOGIT. The proposal in the bill to simplify the administration of that area under the land tenure arrangements is to file that land back into the DOGIT. So it becomes DOGIT land. It does not affect the granted leases. They still exist. It simply puts it on top of the DOGIT.

The reason for doing that is for future land dealings that may be relevant to that land. For example, if, in fact, under a perpetual lease for some reason the lessee wants to change the form of tenure they may hold there, then it can be done through the DOGIT framework. It is administered by the trustee. Otherwise, the state would be drawn back into that administration every step of the way.

Mr COX: One of the main points of this bill is to try to get rid of all of those layers so we are dealing with one body.

Mr Robson: That is right—put it back into one body.

Mr COX: I think it is important to note that. Whilst it is not perfect, that is the idea—to just to get it all back to one base. It may not be simple to do it, but we have to start somewhere.

Mr Robson: That is correct. I just point that out and we do say that in our comments. In regard to the comments outlining their objections and concerns, which they declared in terms of the Indigenous access and use arrangements—the amendments to the Land Act—I note that the proposed amendments provided for a rental discount as an incentive for lessees to resolve their participation in native title claims. That is in terms of rural leasehold/pastoral lessees. The outcome, where there is take-up—and we highlight that this is subject to an agreement; it does not happen except by agreement between both the lessees and the Indigenous native title parties for that area—is that the lessee simply withdraws as a respondent to the Indigenous native title party's native title claim while the lessee's interests under the agreement, the lease and the native title determination, are protected. We are not affecting that.

The agreement itself—and I highlight this—does not determine native title. The resolution of native title is done through the native title claims process and the decision in the Federal Court under the Native Title Act. The agreement itself does not override a Federal Court decision about what native title rights exist on the lease land. It simply provides an opportunity—and it is simply an opportunity—for the two parties to come to an earlier agreement than may otherwise have occurred through the native title claim process and, if they do come to that agreement, speed up the claims process. It is discretionary. It is a framework. You do not have to participate.

As the representative of the Cape York organisations has indicated, if their native title groups do not support it, then they do not have to do it. Through the discussions we had with the representative bodies that chose to participate, which cover about 80 per cent of the rural leasehold land estate, they are pretty confident. In fact, we know quite a number of them are already signing up in principle to the template ILUA such that, should this become law and come into practice, they will take it on. So we know there are people out there ready to do this. The concerns that were raised by the Cape York regional organisations were, in fact, concerns that were raised earlier in those discussions and negotiations by other representative bodies—both the North Queensland Land Council and the Queensland South Native Title Services—and through that discussion and negotiation we were able to work through their issues. So it has been designed with that in mind.

In terms of the issues raised by the Local Government Association and other parties about surveying, I will just make some comments about that as well. The Department of Natural Resources and Mines is working closely with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs through the Remote Indigenous Land and Infrastructure Program Office on a number of activities, but particularly and including that provision of surveying in 34 Indigenous communities. The survey program, as was indicated by, I think, the Cape York representatives, includes the road network, reserves,

existing and new social housing, dwelling leases and landholding act granted leases and lease entitlements. This is a funded program. The department and DATSIMA will continue to work together to implement the most cost-effective way of resolving those survey issues. It is an ongoing survey program. It is not yet finished. We anticipate that, subject to the work in terms of both social housing leases and the landholding act leases, that program should be completed within the next 12 to 24 months, but that is obviously subject to other factors as well.

We cannot comment on the other comments that were made by both the LGAQ and the Cape York organisations about the broader framework. In terms of issues of freeholding on Indigenous land and the like, that is a matter for the government. We are not going to comment on that. We were—

Mr GIBSON: Can you advise us—

Mr Robson: Sorry, I will just finish. We were very specific that the proposed bill is about dealing with legacy issues from an old act and dealing with very particular issues that, in fact, gives the framework for any further changes to occur.

Mr GIBSON: Understanding that, Chris, can you advise the committee that, as a result of this bill, there have been any discussions with the Department of State Development, Infrastructure and Planning to ensure that what progresses—whatever that policy position may be in the future—is done through the context of what this bill will provide, should it be passed?

Mr Robson: Yes. In fact, we are talking not only to that department but to the Department of Housing and Public Works and also our colleagues in the Department of Environment and Heritage Protection, where they are also working on particular issues in the cape, and DATSIMA and the Department of Local Government. So it is actually a multiagency approach.

Mr GIBSON: Okay.

CHAIR: In one of the submissions from the Torres Strait Island Regional Council there was something about the Commonwealth and state governments and territories national partnership agreement on remote housing. Has any of that discussion come into this conversation as well?

Mr Robson: Certainly, to the extent of that bilateral agreement, which is being delivered in Queensland directly by DATSIMA through the program office, who are delivering on the social housing leasing arrangements and the negotiations in the communities on that and through the department of housing also in terms of the provision of the housing. The issues in some of those communities in terms of the need to resolve the outstanding issues to do with the Katter leases are becoming a critical step in their program in terms of setting up the infrastructure for surveying the road networks and the leases for social housing. There is very much a combined effort on that. The program office is very close with us in terms of the surveying issues and will be part of the delivery mechanism. I can add that the bilateral agreement at the moment sets out the arrangements by which the surveying will occur progressively in the communities that this program covers.

CHAIR: So really, they do not want houses built on unsurveyed DOGITs?

Mr Robson: The requirement is to have 40-year leases before the houses will be built or renovated or rehabilitated.

CHAIR: So it is imperative that some of this survey work gets done.

Mr Robson: That is right. That is why it is funded under that program.

Mr COX: Chris, just going back to the review five years after this is brought in, considering that questions keep getting asked such as, 'Why isn't the bill going further?'—and I am slowly getting to understand that it is doing the job of providing the tools to make other things happen—in that review process will there be consultation with the stakeholders? Do you think that will help them go to that next step? We are in a situation now where people are feeling that they may not have had as much involvement or have had their say. Do you think in that review it is important—and I am jumping ahead a bit—that there be collaboration with those people as to how they can take the next step? I know that we have to wait. The review might show that this bill has not worked.

Mr Robson: I would suggest, probably as a general comment, that waiting five years before taking the next step is probably a long wait. There might be other opportunities to move on, not just waiting for this bill—or if passed, act implemented—to be delivered on. But certainly, if we are at that point where, five years or four years on we want to have a look at how we have been going, then certainly we would want to do that through an engagement process with the stakeholders.

Mr COX: And getting—

Mr Robson: Sorry, I will just add that, in implementing the bill, once passed, which does call upon basically another public notification process—18 months of input into terms of lease entitlement holders and clawing it out—we are going to get lots of feedback on how well this bill works, anyway, through its operation. So I think we will learn a lot as we go. If we find any problems with it, we will quickly try to deal with those.

Mr COX: As you learn as you go along, will that information get fed back?

Mr Robson: Absolutely.

Mr COSTIGAN: I would like to ask the assistant DG if he could clarify how the department is working with councils through the land reference panels and DATSIMA in relation to how the bill operates in conjunction with native title and applications that are deemed to be invalid.

Mr Robson: The land reference panels—can I clarify which ones?

Mr COSTIGAN: Sorry, the community reference panels.

Mr Robson: To the extent that the bill has been designed around that process to occur, which has not formally started, as I think you have heard today, those reference panels will be set up by the department with input from the trustees and with input from native title parties where necessary, if we require them. We will necessarily involve agencies like the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs because it is going to be very particular to their business in some of those communities. The reference panels will, by their nature, be dependent on each area and communities' particular cases. They will be looked at case by case by community. But you can be assured that it is in our interest as much as it is in the communities' interest to make sure that all relevant people—those directly affected—are given the opportunity to their have say.

Mr COSTIGAN: And traditional owners?

Mr Robson: And traditional owners where traditional owners in the sense of native title parties need to be involved. I say that not in a negative way but where it is necessary to engage with them when native title is invoked in dealing with the leasing.

Mr GIBSON: Can I pick up on that theme, Chris. I flagged it at the very beginning and then we have listened to the briefings as we have gone through. I have a concern. I understand and you have made it very clear what the community reference panel's role and job would be. I just fear that perhaps we have labelled it incorrectly, because I think the title 'community reference panel' is meaning something different. Certainly from the various submissions we have received and the presentations we have heard, I got the feeling that there is a different view out there as to what the community reference panel means and what the department sees the community reference panel doing. I put it to you: would the department consider renaming it because of that misinterpretation that there potentially could be, because I see an unintended consequence of this bill, should it pass and become an act, as one of the community being frustrated that the community reference panel is not a community reference panel in their view.

Mr COSTIGAN: Well said, member for Gympie.

Mr Robson: Yes, and I think that is a reasonable description from what we have heard both today and in submissions and even in some of the hearings on Thursday Island and in Cairns. I think the department would be quite interested in a name that the committee might want to contemplate. It might be more closely able to be described as something like a ministerial advisory group or something like that because ultimately they are decisions that the minister must make.

Mr GIBSON: Correct.

Mr Robson: They are advisory and they are specific to a particular lease interest. They are not specific to a whole-of-community issue.

Mr GIBSON: I think that is the problem. The community is looking at it as a whole-of-community issue, not that a particular lease is being discussed.

Mr COX: As Vince put it and what you are saying is that the stakeholders are the ones affected.

Mr Robson: The other word is 'stakeholders', because stakeholders can be those who are directly affected.

Mrs MADDERN: It seems to me that we are talking about a community reference panel in the singular. If it is structured in the way that you are thinking it will be structured, it should be about community reference panels in the plural because it would change as each individual stakeholder came on. No?

Mr Robson: It is termed that way because it is one per community.

Mrs MADDERN: Okay.

Mr Robson: We talk about it as if it is a panel for a community.

Mr Luttrell: We are anticipating for each trust area that there will be an individual community reference panel which would consist of the trustee, the relevant departmental officers and, as we said, those persons who need to be involved in identifying the practical obstacles for the lease entitlement notices that relate to that particular trust area.

Mrs MADDERN: So 'those persons' being individual potential leaseholders or leaseholders.

Mr Luttrell: Yes.

Mrs MADDERN: I was reading it that you were dealing with one person or one leaseholder at a time and that was why I was referring to reference panels in the plural.

Mr Luttrell: I do not think that would be the case because it may not be an efficient way of doing things. The concept there would be that what might work in one community may not actually work in another community. As we have identified, in some communities it may not be efficient to actually constitute the community reference panel if, when we look at the outstanding lease entitlement, there are

no practical obstacles to it being granted. So in those circumstances, other than simply advising the trustee that there are no practical obstacles and we intend to grant, it would be a case of advising the grantee that we are going to grant the lease. But equally we might have some communities where it is more complex and we might need to come back to that community until we resolve some issues and things like that. I suppose the bill is trying to give us the maximum flexibility.

But it is the view that there will be a lease entitlement notice for the individual lease entitlement. That then gets bundled up into the trust area notice. We will then form a community reference panel for that trust area. Then, with advice from the trustee, we will start to work through those lease entitlement notices to try to work out and identify the practical obstacles and ultimately, with everyone's agreement, the resolution of those.

Ms TRAD: Mr Luttrell, in relation to that, that does not address some of the concerns that Ms Fisher-Ware has raised about the provision of infrastructure across various areas.

CHAIR: I was going to ask if the department could look into the situation of Grace Fisher-Ware's sister, Isobel Stephens, to see whether there is some land title.

Ms TRAD: With all due respect, Chair, that was not the question I was asking. May I be permitted to finish my question and then you can actually have your go?

CHAIR: Certainly.

Ms TRAD: Thank you, Mr Chair. Mr Luttrell, to get back to my question: the issues about the provision of infrastructure across leases during this period are not addressed in the current bill; is that right? So the trustee at the end of the day will not have to consult. It is up to their own internal mechanisms in terms of the provision of infrastructure.

Mr Luttrell: The provision of community infrastructure is not dealt with by the bill.

Ms TRAD: No. That is right. So some of the concerns raised by Ms Fisher-Ware around how infrastructure is provided across particular tenures is not covered off in this bill. It would have to be dealt with locally through, I assume, residents and the council.

Mr Luttrell: I think the issues that are being identified fall within the Local Government Act and how the Torres Strait Island Regional Council provides municipal services to that particular community. Under that piece of legislation there are some particular provisions that relate to, I think, community panels or land panels and how interests are created by the trustee in those communities. Responsibility for that legislation falls within another department. So I probably cannot comment much more than that.

Ms TRAD: Sure. It might be beneficial that there is a parallel information session or the provision of information for community members, because it does seem to be an issue that is being raised, to advise them that this does not actually cover off on that infrastructure provision.

Mr Luttrell: Yes.

CHAIR: Just on the issue of Grace Fisher-Ware and Isobel Stephens' land: could I ask the department to have a look at whether there is any lease land in their name—whether Grace's family does have a DOGIT claim—simply for the fact that there seems to be some uncertainty there? Under the Local Government Act, they have a right to acquisition of land for water easements or whatever. Does that act apply if there are DOGIT leases in place or not?

Mr Luttrell: Again, it probably falls within the Local Government Act, which we would not profess to be experts on. So we would probably not be assisting the committee accurately in providing a response.

Mr Robson: In terms of your first question, we can have a look at what we know as granted leases and we can have a look at what we know as lease entitlements as per the lists in the Moa St Pauls area and see whether there is such a reference. There may not be simply by name. That does not mean that it does not exist. It might mean the name identification is not what is known. The other way is—and this applies to anyone who has an interest—to ask, 'Do I have an entitlement or don't I have one?' You sent the letter out to all the registered voters in the Torres Strait. There was an address and a phone number for people to ring and get that sort of information directly which is held and managed by our colleagues in DATSIMA. That is the other option. We will have a look, but I cannot be sure that straightaway there will be a proper identification because the names might not be the names that people have.

CHAIR: Could I ask Ken or one of the other officers to talk to—

Mr Robson: We will have a talk out of session.

CHAIR: Yes, and get some proper addresses re correspondence so that they can respond.

Mr Robson: For general information, in our response which we gave to the committee yesterday we did highlight that email address if people want to find out that information individually as well. It is available to anyone.

Mr COX: Chris, for practical reasons, when this bill passes, do you see a need—and I could be thinking too far ahead—for infrastructure projects that are still happening in these communities to stop? I do not mean a grace period, but where changes are happening—such as infrastructure or roadworks or sewerage or something like that, say, in Vincent's community—will that need to stop while you are in the middle of trying to sort this out? Does that make sense? I cannot think of a particular issue. Do you envisage something like that?

Mr Luttrell: I think it is probably the opposite. Those things will not be able to be done because of the issue that we are still trying to resolve.

Mr COX: So it could aid in trying to sort it out.

Mr Luttrell: Yes. I think it is the opposite. We would be trying to dedicate roads in these communities but because of encumbrance on the lease entitlement we cannot actually open the road. So there will be pressure, in order to open the road, to try to resolve the lease entitlement issues.

Mr COX: I am not saying someone would do this but, if someone is trying to rush something through and put a road somewhere beforehand, is there going to be a period where things need to stop?

Mr Robson: No.

Mr COX: It won't because this would help it.

CHAIR: Thank you very much. I thank everyone for assisting us today. Please join us in thanking the departmental officers from the Department of Natural Resources and Mines. On behalf of the committee, I thank everyone else who assisted us today. Some of you have travelled quite a distance. The draft transcript of today's meeting will be available on our website as soon as completed. I imagine that will be some time early next week. If anyone has any further comments they would like to share about the bill that may assist us, I encourage you to contact our staff on 1800504022 or send your comments by fax or email. Our email address is arec@parliament.qld.gov.au and the fax number is 34067070. The committee will meet over the next few days to finalise our views on the bill and consider our recommendations to parliament. I declare this public meeting closed.

Committee adjourned at 2.29 pm