AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

Members present:

Mr IP Rickuss (Chair)
Mr DF Gibson MP
Ms J Trad MP

Staff present:

Mr M Gorringe (Principal Research Officer)
Mr B Nutley (Indigenous Liaison Officer)

DEPARTMENTAL BRIEFING AND DISCUSSION WITH STAKEHOLDERS—INQUIRY INTO ATSI LAND HOLDING BILL

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 19 SEPTEMBER 2012

Thursday Island

WEDNESDAY, 19 SEPTEMBER 2012

Committee met at 10.40 am

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

HAMILTON, Ms Susan, Private capacity

HARRY, Ms Abigail, Elder

KANAI, Ms Garagu, Chair, Kaurareg Native Title Aboriginal Corporation

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

SAILOR, Mr Dan, Private capacity

WASAGA, Mr Elizah, Member, Kaurareg Native Title Aboriginal Corporation

WIGNESS, Mr Pearson, Elder

CHAIR: I will ask Abigail to say a prayer for us.

A prayer was *then said.*

CHAIR: Maiem to everybody. May I call on Pearson Wigness to do a welcome to country, please.

A welcome to country was then given.

CHAIR: Welcome, ladies and gentlemen. Thank you for turning up. I declare this meeting of the Agriculture, Resources and Environment Committee open. I would like to acknowledge the traditional custodians of the land on which we are meeting today and the clans and the surrounding areas as well. I thank you for the prayers and for the welcome. I acknowledge elders past and present. I am Ian Rickuss, member for Lockyer and chair of the committee. I introduce the deputy chair, the member for South Brisbane, Jackie Trad, and the member for Gympie, David Gibson. The rest of the committee send their good wishes for this meeting.

The purpose of this meeting is to hear about this important bill, the Aboriginal and Torres Strait Islander Land Holding Bill, that the government has introduced to parliament. We have been asked by the parliament to examine the bill and report back with recommendations by 29 October. The parliament will then consider our report and decide whether the bill should be passed as it is written, amended and then passed or not passed at all.

There are four key aims of the bill: to resolve longstanding uncertainty involving leases on deed of grant in trust, DOGIT, land; to provide local government with continued access to the use of their facilities and land that is transferred under the Aboriginal Land Act 1991 and the Torres Strait Islander Land Act 1991; to allow subdivision of deed of grant in trust land; and to define the requirements for Indigenous access and use agreements under the Land Act. The changes that are proposed in this bill will not become law in Queensland unless the parliament first passes the bill.

To help us here today we have Chris Robson and Mr Ken Carse from the Department of Natural Resources and Mines who will begin by explaining the four key aims of the bill. We have asked them in particular to explain very clearly what these changes will mean to the Aboriginal and Torres Strait Islanders who are affected. These officers are here to give facts about the bill. Questions about the policies that are behind the bill should be put to the minister, Andrew Cripps. Everyone please note that the briefing and meeting today will be recorded and transcribed. It will be put up on a parliamentary website and if anyone wants copies please contact us and we will provide you with copies. Welcome, Ken and Chris. Could you please start.

Mr Robson: Good morning committee chair, members and members of the public. My name is Chris Robson. I am an assistant director-general in the Department of Natural Resources and Mines. With me is Mr Ken Carse, who is a principal policy officer in the Department of Natural Resources and Mines. Firstly I would like to acknowledge the traditional owners of the land on which we meet today and those of you who are traditional owners of other land.

I would like to give an overview of the bill that the committee is now looking at to give you a brief summary of that bill. In doing that I would like to table four documents with the committee. They are an overview of the bill, which I will refer to later; a summary of what is called the granted leases, the entitlements and the invalid applications; frequently asked questions; and an introductory document which gives a very simple summary of particularly the provisions of this bill that relate to the land holding act 1985. I would also like to table a number of maps which I will quantify later. We can hand out some maps as we go to help you see what we are talking about.

I would like to give a brief introduction to remind us of all the legislation that deals with land tenure in Indigenous communities in Queensland, just to reflect on the fact that the bill we have today refers to only part of that legislation and to put that in context. Queensland's remote and regional Indigenous communities, both Aboriginal and Torres Strait Islander, are generally located on land tenures which are called deed of grant in trust, DOGIT, land. There are some specific exceptions to this such as 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 located wholly on Aboriginal freehold; and Hope Vale, which has partially DOGIT and partially Aboriginal freehold.

The trusteeship of the community lands, particularly under DOGITs, is held by the Indigenous local government or councils. In the case of the Torres Strait Island areas there are two councils who essentially are the trustees: the Torres Shire Council—there is some transferred land which is the Kaurareg land particularly around Horn Island and some areas around here—and also the Torres Strait Island Regional Council, which has many of the islands outlying. They are the trustees of these lands, the DOGITs, in terms of land administration and issuing things like leases and the like which we will talk about.

It is worth reflecting on the number of pieces of legislation that affect the administration of land in the Indigenous communities. I will just quickly refer to them: the Land Act 1994, which established the deed of grant in trust areas and their trustees and did that largely in the 1980s under the previous Land Act but that carried through into the current Land Act; 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 freehold land and for the leasing of that land in those DOGITs and reserves. In this department we have been talking in some communities about transferring some of those lands to Indigenous freehold, but we have not yet in the Torres Strait. Apart from the Horn Island Kaurareg areas, that has not happened.

The Aborigines and Torres Strait Islanders (Land Holding) Act 1985 is the third piece of legislation, and it is the one which is the main focus today. It provides for perpetual leases for homeownership and special leases for commercial purposes to be granted in Indigenous communities. This act is proposed to be repealed by the bill the committee is considering at the moment: the Aboriginal and Torres Strait Islander Land Holding Bill 2012. We will obviously talk a lot more about that. There is another act called the Aurukun and Mornington Shire Leases Act, but I will not talk about that because it is not relevant to the people here today. We also importantly have the Native Title Act, which is Commonwealth legislation which ensures the rights of native title parties to the land are protected in any future acts in terms of changing land tenure.

The bill the committee is looking at today, the bill which is called the Aboriginal and Torres Strait Islander Land Holding Bill 2012, has four main parts. If you quickly look at the overview document you will see the four main parts described there. The first part, and the one I expect of main interest today, are amendments to repeal and replace the Aborigines and Torres Strait Islanders (Land Holding) Act 1985. The second part talks about amendments to the Aboriginal Land Act 1991 and the Torres Strait Islander Land Act 1991 to provide local government with continued access to and use of their municipal facilities once land is transferred to be Indigenous freehold land under those acts. The third part is amendments to the Land Act 1994 to allow the subdivision of deed of grant in trust lands. We will talk more about that. The fourth one is amendments to the Land Act to define requirements for Indigenous access and use agreements, particularly under pastoral leasehold land. Unless individual people here wish us to talk about that today, I do not think that actually has any significance to the people in the communities in the Torres Strait. So unless you have particular questions I think we would be best served by focusing on the first three parts of this bill.

Mr Sailor: Mate, you added a piece in at No. 2 there, transferred to freehold land under either of these acts.

Mr Robson: Yes. It is transferred, and it is transferred as Indigenous freehold under the Aboriginal Land Act or the Torres Strait Islander Land Act. It is communal freehold—it is not ordinary freehold—but that is the transfer. That is what results under a transfer.

Mr Carse: Horn Island was transferred as Aboriginal freehold.

Mr Robson: With the Kaurareg Land Trust as it is now, that is holding that land in Indigenous freehold in communal ownership. Is that clear?

Ms Hamilton: That is clear. The reason that question is raised is that in the Torres Strait we do not actually have very many areas of communal freehold. Most of our land is individually owned.

Mr Robson: Under the current DOGIT arrangements—deed of grant in trust arrangements—the land is held as a deed of grant in trust in those cases by the Torres Strait Island Regional Council, or Kaurareg where it is not DOGIT. I think there may be some parts where it is DOGIT; I am not sure about that one. But there are also—and I think you might be referring to this—obviously native title determinations over all the Torres Strait as well.

Ms Hamilton: I am aware that there are two forms of title. In the Torres Strait there are two forms of title. The majority of the islands have already received their native title determinations.

Mr Robson: That is right.

Ms Hamilton: So you have the legislated DOGIT, deed of grant in trust, land that is held by the regional council. They were originally held by individual councils on each of the islands. When they were amalgamated, it went to the supercouncil, which only has one representative from each island sitting on it. That is the legislative trusteeship. You also have the native title determinations that were done through common law and they also have prescribed bodies corporate that hold that common law determination in trust for the traditional owners. So you also have a trusteeship for common law holders. So you have a dual holding of title on each of those islands and reserves.

Mr Robson: That is exactly right.

Ms TRAD: So that is on each of the islands?

Ms Hamilton: On all of the islands that have their native title determinations; hence the concern in our community, with the effect of these leases and the effect of this act, is that the Katter leases effectively extinguish native title. The concern we have in our communities is that if those Katter leases that were currently on hold, that had not been granted, are now granted you are effectively extinguishing native title. The other concern is if you state that the equitable interest in land was created at the time of application, which was in the eighties, which was pre native title determination, what you are doing is effectively saying that the equitable interest was created there. We are deciding here and now to effect it. The wording in your discussion paper is quite conflicting because it says the minister will process the application to issue the deed. However, on application and approval by the council you are saying that the interest was effected then. You do have the right, though, to say afterwards that it was an invalid application and you do have a right to reject it. However, all of those that are currently sitting and not dealt with, if they are dealt with now, and you say the interest was created in the 1980s or early 1990 when they were actually applied for, you are effectively extinguishing native title now and not allowing any of the native title holders to apply for compensation. That is the practical effect.

Whilst you can say that legally the equitable interest was created at the time of the application, by processing those applications now you are going to disadvantage the people who made the applications because, through no fault of theirs, it was not processed until now. However, to process them now, when the native title determinations have been done, traditional owners are now going to be disadvantaged by saying, 'It has been extinguished on your land,' and you are not prepared to have any compensation dealt with because the interest was created pre determination. So that is a consideration that really does need to be looked at in this bill. You have to consider the practical effects on the ground on our land because it is only our areas that are affected.

CHAIR: Chris, could you respond to that? It is a quite an interesting point that has been raised.

Mr Robson: I will refer to this sheet here because I think it goes to the very heart of what you are talking about. I have to say that this is based on information that we have been able to get from council records and our own discussions to try to find out what were at that time between 1985 and 1991 applications made and subsequently applications actually granted. So, in relation to the granted leases received for the Torres Strait Island Regional Council, there is list per community of those perpetual leases that have already in our records been granted—60 all up. The numbers for the NPA are listed below as well. So they exist, as you rightly describe, as perpetual leases that have fallen out of the DOGIT and native title does not apply.

The next column is the entitlements that from our records and information were approved properly by the relevant council at that time but not granted for various reasons by the state. So you are correct in saying then that those entitlement leases—165 in total—on my interpretation of the land holding act 1985 are right, because as soon as they were granted by the council they fell out of the DOGIT. That was the law. That is the way it described it. So the reason they were not granted and became part of the column of 60 could be any reason from simply that the processes within government did not get dealt with, as best we can find them. You are correct therefore in saying that we are, in this bill, of the view that they are a legal entitlement.

There is some need, particularly given their age, to go through and establish whether the applicant in fact still exists or whether potentially there are deceased estate issues to work through. There might be some boundary issues in terms of the fact that, from when they were first applied for, the property descriptions or the areas of interest may have changed. There might be other areas or parts of areas that are identified in each application that might have a road on it or might have another house on it. We have to sort through those. But the fundamental advice we have is that they are a legal entitlement as provided for under that act. So, as you rightly say, if we were to say they do not exist then they are retrospectively taking away a right that was granted under the existing act, not fully granted but on the pathway to being granted.

The third column are those applications that, from our records, were granted by the council but in fact there was some part of the process in their approval that was wrong. They may not have notified properly. There was a requirement to notify for 28 days. It may have been that the descriptions of the land given are insufficient to actually be able to locate them. There are a number of factors. In our view they are not capable of being entitlements to be granted. Your description is reasonable in terms of practical effect.

CHAIR: The question then really is: are native title rights extinguished on those 131?

Mr Robson: No. They are extinguished on 165.

CHAIR: But not the 131, is that right?

Ms Hamilton: On the 131 invalid applications native title definitely cannot be extinguished. My question then becomes this: you are saying that on approval by the council an equitable interest was created. Once the council approved it, those lands then reverted to state unallocated land. Now, those 131 are sitting there as state unallocated land—I will just address the 131—and have not been returned to a DOGIT. Because they are sitting there as state unallocated land, are they still excluded from the native title determination or are they taken into account?

Mr Robson: The intent would be in what we are saying that, because they were invalidly dealt with by the council, they will return to a DOGIT.

Mr Carse: Currently they would be unallocated state land upon approval. Part of the bill is about filling in all those holes. So they will become part of the DOGIT. We are not intending to grant those. They are invalid. We cannot grant them. So they will return to the DOGIT. If they weren't claimed under the native title process, obviously they are still not claimed but native title will exist over those blocks and they could be included in a new claim. So we are not going to grant them. They will be included in the DOGIT.

Ms Harry: Who's 'we'?

Mr Carse: The government. If there is a transfer of the land to Aboriginal or Torres Strait Islander freehold, they will get transferred. Further, earlier you picked up that the minister may 'reject'. There is no basis for the minister to reject. The minister cannot say no. If it is a validly approved application, the minister just grants it. There is no basis to refuse or reject it. However, for the invalid ones, they are not validly approved. We are incapable of granting them. We cannot grant them even if we want to and we are not proposing to grant them.

Ms Harry: Why not? So who determines that at the end of the day?

Mr Carse: That they are valid? We have gone through the applications and whether they have met the processes in the act.

Ms Harry: You keep saying 'we'.

Mr Carse: The state government.

Ms Harry: Then say 'the state government'.

Mr Carse: The state government, the department, has looked at them. The applications come from the trustees, the council, to the state government to grant, and we have looked at those. Now that we have all the ones that were not granted—we got the information from the council and we have looked at whether we can grant them and for a number of them we have identified that the processes were not followed, so we cannot grant them. Those people will have to apply for leases under the Aboriginal Land Act or the Torres Strait Islander Land Act if they want a lease.

Ms Hamilton: My point is now this: you have just stated you grant—you grant the leases.

Mr Carse: Yes.

Ms Hamilton: In relation to the approved list you have given my council, the lease is not granted. It is not approved until you say it is. Now, at that point the equitable interest is created. It is not created on application because the application can be deemed to be invalid.

Mr Carse: It is created upon approval by the trustee. There is an entitlement at that point.

Ms Hamilton: Exactly, but there is the play on words in the new bill. You are stating that the equitable interest was created in 1985 or whenever the application was made. If it is now approved by your department on the changing of the act, you are saying that entitlement pre-existed on the application and it is not subject to veto or granting. In your discussion paper you state that the minister will initiate the process—not grant, initiate the process—to have the lease registered now. If he does that now and you are going to approve the granting of the lease, then effectively what you are doing is saying, 'Here and now I extinguish your native title by the granting of this Katter lease.' Therefore you create the ability, because at the moment under the Native Title Act you are not entitled to extinguish native title or a native title determination unless you are prepared to compensate and it must be clearly stated that your intention is to extinguish native title.

Mr Carse: That is for future acts, not future acts—the minister does not approve them; the minister has to grant them. There is no ability for the minister to do otherwise for a valid application.

CHAIR: Could I just interrupt there? Sue, I think what the department, the government, is saying is that the perpetual lease is granted and, because the entitlement leases—the 165 entitlement leases—were valid, that is the difference. They picked up the Katter lease stuff from then because it was a valid application. That is where the native title has been extinguished because they were valid. Would I be correct in saying what I am saying there? Because the other ones are invalid, they have not picked up the native title.

Ms Hamilton: There is no registered equitable interest on that land. Until the lease is actually granted, there is no equitable interest registered on that land in any land titles office. Therefore, when the application is made for native title determination, those applications and leases that were not granted are not included. The native title determination therefore covers all of the island. If those are now granted, are they going to now be said to be excluded when the determination has already been made and they were not registered and therefore the court could not take them into account at the time the native title determination was made?

Mr Carse: Did they claim the USL, the determinations? I cannot recall. I think most of the claims up here were over the DOGITs which would have excluded these areas. What we are saying is that there is a legal entitlement created when the application was approved. There is a legal entitlement and that gets converted into the lease. So we are acting on a legal entitlement. The lease is granted. That does extinguish native title. You have to go back and look at the wording of each native title determination to see whether it did include these blocks there. Often they exclude those PEPAs and other things without actually defining them on the determinations. These have come up since. Maybe those areas were included but, as you said, the effect will be to extinguish native title but because of the legal entitlement that was made when the trustee approved them back in the eighties before the Native Title Act.

CHAIR: Abigail?

Ms Harry: Thank you and good morning. God bless you. I did not read the overview and I am just quickly going through it and I see there are amendments to replace the 1985 legislation, amendments to the 1991 legislation and now we are talking about 2012. All of this came after 2 June 1992—we are talking about Mabo and the High Court decision.

What I wanted to say to you here this morning, as government and as parliamentarians—and this is an issue that I always raise and it has been of concern to me for many years working with Aboriginal people down south and coming back home—we are looking at the act of man, not act of God or act of the apostle but act of man, men making decisions. When you look back at history since colonisation and you look at the act for Aboriginal and Torres Strait Islander people, Torres Strait Islander people are using and granting the same act as Aboriginal people. So when you talk about amendments being made to the Aboriginal Land Act 1991 and the Torres Strait Islander Land Act 1991, are they the same act or are they two separate acts?

Mr Carse: The Aboriginal Land Act and the Torres Strait Islander Land Act; is that your question?

CHAIR: Yes, there were two acts in 1991.

Mr Carse: They are separate acts but they are very, very similar. So one applies to Aboriginal land and Aboriginal people and the other one applies to Torres Strait Islander land and Torres Strait Islander people. There are a couple of spots in the middle where it gets confusing. I was up here a couple of years ago—

Ms Harry: I would still like to see that. Another point that I wanted to raise is about the stakeholders. You are talking about the local government. My brother sits across the road. I do not agree with him. He is the mayor for TSI since the amalgamation. We are community grassroots people—leaders in our own right. But what I wanted to say here is that the people who regulate the act and the policy are doing for all of government. They are not doing for the grassroots people. This needs to be minuted and noted to the minister. Everything on this island is about all of government and it is not of the people. You are writing something, and I am not going to be disrespectful because you are non-Indigenous people. I do not know whether you are mindful or not mindful. We as a people, community grassroots people, we are still struggling.

Whether you are talking about land, whether you are talking about the sea, whether you are talking about housing, whether you are talking about education, whether you are talking about employment: disadvantage is not the word. Our people, Aboriginal and Torres Strait Islander people, are still suppressed and oppressed. What we are talking about today—we are still suppressed and oppressed because of decisions, because of government writing bills, because of government making amendments, because government execute it, and we are still struggling. Praise God, I should have been at the cultural festival, because I am one of the people that go and sit. And when I am not happy with that I just pray for my people.

Look at this group of people here. When it comes to culture, do you think people are going to come and sit with the government here to talk about what is important to them because it is about their land, because it is about their generational inheritance, because it from children to children? They are going to go to culture because that is what they hold on to. Government that come into the country to do business must be mindful of what is happening within the community, whether it is sorry business or whether it is something like this. This consultation here—what kind of consultation is this? It this the whole of the

community? Is this a consensus? I am going to raise this so that next time you come you are prepared so that when the government says to you, 'You have to go and do this,' you have to be mindful of the people. You think there are no people here. It is because culture is the identity of the people. That is why there are no people here today. But thank goodness there are a few of us here to speak on behalf of the people—the children, the future generation. Praise God, I just wanted to raise this.

CHAIR: Thank you for that, Abigail.

Mr GIBSON: Chris and Ken, If I can just ask you a question about what Susan was talking about with regard to native title and the invalid applications. Within the bill there is a provision for a hardship certificate. Just so I am clear, with the 131 invalid applications that we have for the Torres Strait Islands area, could the hardship certificate apply to any of those invalid applications and, if a hardship certificate were to be granted, then we would have the issue with regard to native title that would need to be addressed prior to it progressing. Is that correct?

Mr Robson: That is correct. In the case of the 131 in the Torres Strait—and we have one invalid application at Bamaga as well—and all the others on Aboriginal communities elsewhere, if a person comes forward and identifies that in their view they believed they always had an approved entitlement and they acted as if they had an approved entitlement, they have to demonstrate a case to the minister in the context of administering the new act, if it comes into being, that is accepted in order to receive what we call a hardship certificate. It simply means that the benefit that is given to that person is that they could then apply to the trustee of the DOGIT to say, 'On the basis of this certificate, I would like to get a 99-year homeownership lease.' That would still be subject to a native title assessment and agreement so it is subject to native title. It has not fallen out of the DOGIT. It is not a perpetual lease. It is subject to those laws.

Mr GIBSON: Chris, just looking at the numbers in some of these communities, there are more invalid applications than there are entitlements or where perpetual leases could be granted.

Mr Robson: Yes.

Mr GIBSON: In one case, all of the applications have been deemed to be invalid applications. You would assume in that case there would perhaps be some ground for hardship certificates.

Mr Robson: There may be. We do not know individual cases. The bill provides a process for people to come forward. I would add that the numbers you see here, as I said earlier, are based on the best information we are able to get from the people like the councils and the government agencies' own records. The bill provides a process for people to identify whether in fact they have information or records to say (a) they do have an entitlement and they can provide records and (b) they had an invalid application and it is not registered by us. We are talking about an 18-month process in that alone for people to come forward to identify.

Mr GIBSON: How will people be aware of that? As you have said, this is a situation based on the best information you have available from council or the department, but there may be people in the community who believe they have a lease or believe they have an approved entitlement. How are you going to communicate that? As we have heard today, there is a challenge in getting information out to the broader community.

Mr Robson: Absolutely.

CHAIR: As a supplementary to that, with regard to those 296—the 165 and the 131—have you contacted them or tried to contact them? If they have put in invalid applications, you must have some details of who they are.

Mr Robson: We have details by name, by individual, by their description, by their location based on information we hold in government or information we were able to get by the councils. Part of the process that the bill is proposing is to notify in each community—so on each of these island communities—by name the people we believe hold an invalid application and entitlement.

Mr Carse: If I could clarify a bit further, we did consider that but there are a number of privacy issues with that. People may be deceased or may have moved location, and we would be sending out details about applications to an address and not knowing who is receiving it. So we have not gone through that process. What we are dealing with is the trustees and then a public notification process through lease entitlements and then the trust area notice which will be publicly advertised and dealing with the trustees to promote it. So that will be up on meeting boards, and through the implementation process that we will be doing once the act is passed we will be promoting that to say, 'Here is all the knowledge we have. Here is all the information.' We will also be writing to the trustees to clarify this again because there have been new local government elections, and some of the mayors have said to us they are not quite sure where this detail is so we will be getting them to go back to the communities again.

On the invalid ones, even if a lease is granted native title would not be extinguished. If a lease is granted—and it will be by the trustee, not by the state in those cases because it will go back to DOGIT—that would be a future act and they will have to deal with native title. The non-extinguishment principle would apply so they will need to get the trustee's approval and they will need to have an ILUA to get a lease for those invalid ones, so they may not get a lease depending on what the trustee and the native title holders say. Even if one was agreed, the non-extinguishment principle would apply. For the invalid ones, native title would not be extinguished.

Mr Robson: If I could come back to your original question, David, just to highlight, we have not written to every individual person. We have worked through the trustees and the councils to get the information. As Ken says, with some of the addresses and names in terms of identity we could never be sure they had the correct postal addresses for us to write to them. Equally, there are numbers of people who are probably deceased. We are talking about applications that are up to 25 and 30 years old here.

Mr GIBSON: I appreciate the privacy concerns but the numbers are not huge. A letter without too much detail so that you do not—

Mr Robson: We did look at that seriously. We know that probably up to 50 per cent of the applicants may well have deceased. We do not know that for sure but they are just our assumptions. Therefore, we were concerned about causing upset and concern in the community about writing to people who are no longer living.

Mr Carse: If we do write—and that is built into the statutory process—and there is no response because the person has moved and never received a letter and they come back later and say, 'I didn't get the letter,' we are opening up areas for appeal. What we have found is where it is difficult to locate the people it is better to get into the community and work with the trustees trying to identify the people that way. We do have sections within the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs which look at cultural history and cultural records, and we work with them to identify the people. We are going personally through these meetings rather than through the correspondence.

Ms TRAD: I have two questions. The first one is to you, Ken. In relation to the invalid applications, will the applications themselves still stand or they will have to reapply?

Mr Carse: They are nothing because they are invalid. They have to apply to the director-general to say, 'We believed we had one. Here is the evidence we have that made us believe we had one and what we did.'

Ms TRAD: So they would have to reactivate the application?

Mr Carse: Well, no, you cannot reactivate the land-holding application. What they are trying to get is a hardship certificate in that case. They actually have nothing in legal terms. They made an application. You can no longer make applications. Their application is invalid. There is nothing there. But if they have acted on it they are going to say, 'There is a hardship case here. We thought we did.' But in other cases people may not have acted on it and so there is nothing. There has been no change to the land.

Mr Robson: So what they get out of that simply is recognition for them to apply to the trustee of the DOGIT to say, 'In our circumstance it has been recognised by the director-general of the department administering the act that we have a hardship.' But it is nothing more.

Mr Carse: The result of that is that for a homeownership lease many of you will know there is a fee to purchase it. What the hardship certificate does is set that fee at zero. So if someone thought they had a lease and built a house on it and then they get told, 'No, you never had a lease, it was invalid,' we cannot grant a lease. What we have done is said, 'You can apply to the trustee for a homeownership lease.' If the trustee and the traditional owners agree, the price will be set at zero in recognising the hardship case. But it is up to the trustee and the traditional owners to agree to that lease. That is all the hardship certificate does. As I said, if that lease is granted it will not extinguish native title.

Ms Kanai: I am a Kaurareg traditional landowner. I also have ties to the Kubin community on Moa Island. I am an Italgal traditional landowner there. My question is: you have places like, for example, Hammond Island, which is Kaurareg country, and the deed of grant is obviously held by TSIRC granting a lease. The people who are actually residing there are not Kaurareg traditional landowners. What happens in that case? Because of the leases on Hammond and St Paul's community that have not been granted, do we as traditional landowners have a say on who is able to get a lease?

Mr Robson: I will answer it first and Ken can add to it. In the case of entitlement ones, because, as was rightly described earlier, the view is that they have been effectively given a legal entitlement then the minister has no discretion to refuse them except in cases where there might be some need to clarify boundary issues and the like, but there is a legal entitlement to grant them. So to answer your question, no, there is none.

Ms Kanai: The applications were approved before native title. Now that we have native title on that land, can we as traditional landowners contest that?

Mr Robson: No.

CHAIR: What about the invalids?

Mr Robson: The invalids are a separate story, yes.

Mr Carse: We are not intending to grant them.

Ms Harry: I feel like crying. I want to pick up my bag and go. We are talking about an act that has been imposed on our people since colonisation and we are still struggling. There are some people still alive from Kaurareg, from the Torres Strait, who are still trying to understand, because when they say from this coconut to that rock to this oleander tree to that toorak tree (inaudible). Today we are sitting here and it

is all of government. The government makes the decisions. The government executes amendments, bills, leases, landholders, caretakers, custodians and overcustodians. How is it that this can happen? When you come and sit down here like my friend, my brother there, the integrity comes from the heart. You must speak from the heart.

We pray this morning for justice and righteousness, because today the people still do not own anything. They say the land is theirs; everything is theirs. Government must come back to the table. It must come back to renegotiate with the people of the land—the traditional people, the true custodians of this land. Everybody in this place are doing all of government. The local government is doing all of government. The amalgamation is all of government. There is nothing for the people. What are we going to do?

Praise God, I do not want to say this word in this meeting here today, but this thing must be prosperous. You must benefit as government representatives and we must benefit, too, as the people of the land. It is a two-way thing. It is not about government exercising authority and power over the people, because I think people hate it when they read this stuff, because from what you have said here, you have answered my question. Talking about closing the gap, talking about me sitting here, today I sit and I look at you with my own two eyes. My co-fathers could not sit here at the table set up like this and talk to government, but today we have the opportunity to sit down and to talk to government.

We raised a lot of things yesterday apart from this. This place is all of government. When you look at people coming into this place here buying homes, there are 40 homes in this place ready to be sold. It is the second wave of colonisation. People do not see it, because if people are thinking with an ability from God and the wisdom of God they can see it. This is the second wave. It is going to lose people, it is going to lose jobs, it is going to lose houses, it is going to lose everything if we do not come to some form of agreement at this table that we have to work with government. We have to work with you and work with the committee, and this is the only way that we are going to see success.

I really pray that out of here we are all going to leave with a good heart, because I can see this is all of government. When I was born—and today is my birthday—I was born before the 1967 referendum, before our parents became citizens of this country. Think about them. We do not even come together—me and my brother. We can talk only now and then because I am busy in the family and live over on Horn and come over here. I want us all to sit down and start talking of a way forward so that we can talk the way forward outside of leadership, because government listens to leaders who have been elected by the people up here.

We have to stand up as a community, and we are going to stand up and try to come back and talk to the committee because you are part of government. I am raising this because I have been a spokesperson and ambassador for over 40 years and I still see the same thing. Nothing changes, nothing new, because it is all of government. Government exercises authority over us. Common people. Natives. Struggling people. Not 'struggle'—I do not want to use that word. Oppressed and suppressed. Let us use the word from past injustices. I think those are the right words to use. I am not going to leave it like that, Mr Chair, because there is something else that will come of it.

CHAIR: Can I just ask a question then from the committee's perspective so that we get a better understanding. Do people in the room agree that these leases and entitlements need to be tidied up? That is the problem we have had. They have not been officially recognised and that sort of thing. Does that need to happen?

Ms Kanai: They have not been officially recognised. Hammond Island is Kaurareg country. You have got people living there who are not traditional landowners. They do not have a right to those lands. That land belongs to Kaurareg. It is being held in trust by TSIRC. It is Kaurareg country. We should have a say and we should contest it.

CHAIR: When did the people move into Hammond Island? How long ago was that started? How long ago was the transmigration?

Ms Kanai: The people moved there in the 1920s. The Kaurareg traditional landowners were forcibly removed from Kaurareg country to Moa Island in 1922.

CHAIR: What about you, Sue? Do you feel that these have got to be tidied up?

Ms Hamilton: My concern is this. We have historical people living on those islands. You have traditional owners who own the land. Traditional owners have always allowed historical people to live on their land and that is why you have historical people residing there. Regardless of European Anglo-Saxon, you go out to the islands and very few islands have more than four or five non-Indigenous people, Anglo-Saxons, living on them—I am sorry, I will clarify that because they have people from Papua New Guinea as well—other than teachers who have full-time jobs there, store keepers or owners who work for IBIS or any other private store.

Traditional owners have always allowed historical people to stay on their land for whatever reason. They will say, 'You don't have a house. Here's my land. Come put your house on it. You can reside there.' They never granted the land to them; that is the difference. You are coming in here now and saying, 'With our law, we're granting you that person's land'—regardless of your law saying, 'You didn't have native title determination.' Everybody knows on that land, since time immemorial, who actually owns it—not you, we who live there. We know that is grandfather's land, that is grandmother's land, that is auntie's land. Your Anglo-Saxon ownership sits here and it only matters when the government needs to come in and do something.

For all practical purposes, it is not owned by you. Our families do not understand that we do not own the land. Our families do not understand that native title is just this tokenistic little trusteeship thing with the DOGIT trusteeship sitting over the top. We know about DOGIT. We live with it every day. We know that law inside out and backwards.

You are going to disadvantage the historical owners who apply for that land, whether you give them that lease or not, because the traditional owner is going to have a major conflict. There is going to be a major conflict on every single island. Katter leases are not public knowledge for the owners on any of those islands. I go out to the island and I am going to be in it explaining Katter leases to Indigenous people: 'Sorry, you're an historical owner. You do own that.' I have to apologise to the traditional owner to say, 'This person actually owns your land,' when there is world war 3. I have already been advised by traditional owners there will be bloodshed. This is not just a piece of paper, flick and tick. This is something that affects our values at a most basic level.

CHAIR: Susan, just to add to that then, we have got 60 leases already granted, 25 on Poruma. Has that made any difference to that community over there?

Ms Hamilton: It is only now becoming common knowledge that people hold Katter leases. The council was very careful not to have that information put out to people. In fact, most of the people who had applications have not made that common knowledge. They did not know, and this is a quote. I went out to Boigu, when the new councillor came in. He approached the PBC. When you get a native title determination, the court orders that are prescribed by the court are set up to hold the native title determination in trust for the traditional owners. The newly elected councillor had never heard of Katter leases. He looked at the information provided by the department in a little bit of shock, chucked it at the PBC chairperson and said, 'Oh my God, there's Katter leases on our island. I don't know what the hell this is. You call out the native title office to deal with it.' They called me to come and try to explain it. The chairperson got up and said, 'My sister apparently applied and she was approved and she doesn't actually know what it is. Can you explain to us what it is?' This is the sort of thing that happens in our communities. Here you have the Kaurareg who own the five internal islands. You have 14 external islands. Native title determinations are all granted. We are in a postdetermination era.

I will just raise this point. When you are doing this consultation—if Brett had not been the person coming on the boat discussing it, nobody here would know about it. I happened to overhear Brett discussing it with someone, this gentleman here, my brother from Erub. If he was non-Indigenous, I would never have approached. So I asked, 'Excuse me. You're having a meeting about a bill or something?' He then said, 'Yes, this is what I'm having.' I said, 'Can I see you?' He turned up. We had a discussion. I sent the email out. This is on the day that Brett arrived. Nobody was aware you were coming. Nobody has had any discussion on this. We have not read through the land holding bill. We have not read through any of the legislation. For people on those 14 outer islands, I sent an email to the PBC chairs to say that this is happening.

I will just give you some of the logistics. We have a cultural festival happening here. We have planes that carry a maximum of eight people per island to come in. Those are fully booked and chartered. You have the normal daily flights that are fully booked and chartered. They cannot get in. On that sort of short notice, they cannot get in. You also have to be aware that the PBC are volunteers. They are not paid to do their business in relation to land, they are not paid to do their business in relation to housing and they do not get grants to do it. So, firstly, they have got to find the financial resources and that is okay. If you give us sufficient notice, we will try to find it. Secondly, they have got to have transport to get in here from those 14 islands. There is no way anybody could get a seat on any plane coming in with the amount of notice that we had. There is no accommodation available here. That is why you are on Wongai. There is just no accommodation either. If they came in, they would be sleeping in tents or bunked in with people.

So there are issues. One, there is no transportation. There is no public transportation; there are no private charters available. There is nothing available to bring anybody here for you. Two, there is a lack of knowledge. Nobody knows about it so nobody can come. Three, as for the timing, we have a cultural festival, so nobody will come. Four, English is not our first or second language. It is our third, fourth or fifth language.

I appreciate that when you send this bill out for discussion it is a legal document. I appreciate that, yes, there will be some difficulties with people on the mainland having access to someone who will interpret this form. However, given it is our fourth, fifth and sixth language, some consideration needs to be given as to breaking down this legislation, putting it in a form that we can understand in simple English. With all due respect to the department, the department has drafted it and the department's explanatory notes are going to be supporting the passing of the damn thing. We would like to know the positives and negatives and how they affect us on the ground. What are the practical effects? Are they aware of the practical effects on native title of saying, 'Yes, we're going to give all these leases because they're entitled'? Are they aware of the effects on the ground for those people who are going to say, 'Fine, we didn't even know we had a lease'?

While it is interesting to hear about postal addresses and notifying people on the islands, Horn Island is across there; it is one of the inner islands. This is Thursday Island. You do not have a postal service that delivers door to door. You either own a post-office box number or you get it care of somebody. This is at the hub of government. If you go across to Horn Island, you get it either care of the shop or you do not get it. On the outer islands, you get it care of the council or you do not get it.

As for people who are deceased, your laws of succession do not apply to us. They apply to us legally in your western system. When you are talking about a lease being handed down from father to son or to the person who is the next of kin, you have to be aware that when we hand down landownership, we do not hand it down to the next person in line. The grandmother can bypass all her children and say, 'That granddaughter there.' The grandfather can say, 'Only that grandson and that grandson to hold it.' He will not give it to the eldest two because they drink or he does not like what they do. He will give it to the youngest son because he is the churchgoer and he is the one the grandfather thinks is responsible.

So our land is handed down at the decision of the traditional owner. Nobody has the right to tell the traditional owner, 'You can't give it to him. It has to go to your oldest son.' Nobody. The traditional owner has first, last and final say in our hereditary succession of land. So your bill here is saying that, for the people who have applied for Katter leases, the normal succession laws will apply. That is not our traditional law. Fine, that is your law, but those people have died and did not know they had Katter leases. Your issue is privacy; our issue is on that island nobody knows.

Mr GIBSON: Can I pick up on that. There are two elements in what you said. I acknowledge your comments with regard to time frames. If you take out the cultural festival this week, in a normal situation, how long would it take to communicate out to all the islands and then for those people to be able to organise the logistics to come in? What sort of time frame should be provided to enable an effective consultation or public hearing?

Ms Hamilton: We need three weeks notice just to fly in. I will be happy to return with my own question. My question is: who is going to go out to these communities and explain what the legislation is? Because you have to go to every single island and explain it.

CHAIR: Can I just ask the department then. You have been working on this bill for a number of years, haven't you? Have you had consultation with the councils and that sort of thing up here? What has gone on with that?

Mr Robson: Just to reflect on that, this has not just popped up; we have been working on this for a number of years. I will quickly outline that briefly. I guess it might also reflect, then, on how even this information has been communicated within the island communities. It is clearly an issue. Back in December 2010, we prepared what we called a discussion paper on just how we may proceed to deal with these Katter leases, because we knew that there are, as per this information, significant numbers that still had some status or were invalid but we needed to resolve what to do with them. We could not let them continue to sit unattended. So we put out a public discussion paper in 2010 and we asked for comments by the end of February 2011 and took on later comments. We sent that out to basically all the councils, as in the trustees. We sent it out to all the representative bodies, so that would have included TSRA. We sent that to a number of other groups who were involved, government agencies, and Commonwealth and state members of parliament. We also put it on websites and the like. I appreciate that websites in Torres Strait communities might not be so accessible, but it was put there.

CHAIR: Did you get many responses?

Mr Robson: We did, but it was more through a couple of rep bodies and through the councils. We got one or two individuals—not many. Because this issue is very specific to individual people and communities, it was feedback we picked up but then we also kept going. That was not the end of it. We had quite a lot of meetings. This is all over Queensland in Indigenous communities, not just Torres Strait but also Aboriginal, as you appreciate. But in the Torres Strait we had meetings with the Torres Strait Islands Regional Council in March 2011. We had a presentation to all the mayors of both Aboriginal and Torres Strait Islander councils in, again, March in Cairns. We did send a survey to all councils in April seeking their input, advice and information on who held or did not hold such leases or had applications that they had not dealt with. We also gave a further presentation to all council representatives—Aboriginal and Torres Strait Islander councils—in September 2011. There has been a number of times. We have talked more to the trustees, to the councils, because ultimately they are the ones, in their previous forms, that granted and dealt with the applications. We certainly were aware—

Ms Kanai: You keep mentioning you have given the information to the councils. We have native title determination on our islands. We all have PBCs, prescribed bodies corporate, which represent the people because of the Native Title Act. The councils do not provide this information to the PBCs.

Mr Robson: I would say that we did send it to the rep bodies as well.

Ms Kanai: I am actually the current chair of Kaurareg native title. I saw this yesterday.

Mr Robson: Okay. I accept that.

Mr Carse: Not the PBC; the TSRA or Cape York land councils—those ones. We sent it to them.

Ms Kanai: Who normally would send any information they receive out to the PBCs. As we have heard Susan mention, you sent out emails yesterday to the PBCs about this meeting. I saw this yesterday.

Mr Robson: I am just saying to you what we did. We did send it, and I can show you the records where we have sent it. I am not wanting to go there particularly, but I say that we did. As you rightly say, we normally expect that to then transmit to the PBCs within that rep body area.

Ms Harry: Can I just raise something here. You were talking about TSRA. We have TSRA elections on Saturday, but the TSRA was established on 1 July 1994. In 1996 Lou Lieberman of the House of Representatives standing committee did consultation with communities—Torres Strait Islander community, mainland Torres Strait Islander community, Kaurareg community. What they talked about was the Torres Strait Regional Authority was a transition Commonwealth statutory body—I feel like I am going to cry—to represent the interests of the Torres Strait Islander people, to talk about the value of the objective of understanding Indigenous people—the values, the tradition, the custom, everything it says in that report about Torres Strait Regional Authority. After four years it went back into whole of government—started running government programs. So today we do not know what TSRA is running—a Commonwealth statutory body. We do not know why they are existing. We do not know about programs. We do not know about existing programs of the TSRA.

Today, that should have been the hub of the nations to represent the people. That is why when you come and you go to people like them, as a head, that information is not disseminated into the community because the community does not get that information and the community does not know what is going on. It comes back to the language barrier. It is some people's second or third. It is that contemporary pidgin English—Creole language. It is very important.

If the Torres Strait Regional Authority was doing what it was supposed to be doing to empower, we would not be sitting here. Every meeting with those people where they are now, if they were here they would talk to you about sovereignty. Who owns the sovereignty of this Commonwealth? It is government, not the people. But when we talk about sovereignty of our people as a nation, who is going to empower us? We want to make decisions because the leaders are not making decisions properly.

When you look at the history of our forefathers, they were never paid an extra amount of money to sit as a chair or a deputy chair or to come in this place here for a meeting. They came with nothing. That is why they were able to go back and tell their people in the community or through the radio. They did not have fax or phone or any of the resources. Today it is (inaudible) for community people. We do not have an internet cafe across the road where people can go sit down and pay less money. You go to the TS local government here where my brother is the mayor, you cannot access anything because there are people.

We must look at some form of how community can make decisions, too, because it is our government; the people have been elected for the people by the people. The people sit and they regulate the policies from the government. If you go to Housing, they will tell you, 'It is an act.' If you go to Child Safety and say, 'Give me the act. Show me what the act is,' they say they do not know. They regulate it, but they do not know. So this is a very serious thing, my brother. You need to take it back and you must come and have a proper consultation in the community. I talk about the islands around the Torres Strait. Go to Horn Island and come back here again, because this is not a consultation. How can we make decisions for the people—

Mr GIBSON: Can I pick up on something, because you are making some very good points there, and it connects, I guess, to what you said as well, Susan. You talked about people in the community not knowing about the Katter leases. You gave us an example of a councillor. Katter leases are not new. We understand that. How widespread is that lack of knowledge throughout the islands? Is it unique to a particular area or is it consistent across the whole Torres Strait?

Ms Hamilton: It is consistent across the whole islands. I will just address the issue you raised about consultation in December of 2010. In September and October of 2010 there was talk of the introduction of section 24JAA into the Native Title Act. That was enacted on 12 December 2010. Unfortunately for that consultation with the bill, this was a major issue for the Torres Strait. We then began having meetings on every island in relation to that section. At that time, the land holding bill was never raised. I went to each of the islands in late 2011 and I did consultation on 10 islands in relation to section 24JAA. At no time was I advised that the land holding bill was an issue that needed to be discussed. You have to be aware that each time anything happens that affects the Torres Strait, every single piece of legislation or bill that affects us has to be explained.

If we talk in terms of capacity and lack of understanding, the persons who enacted the Katter leases that were councillors at the time in the eighties and nineties, they were individual councillors who sat on individual islands. There were only three councillors on some of the islands. Some of them are no longer alive; some of them are. Those people who submitted those leases—that is not commonly discussed. It is not general knowledge in any of our communities, particularly given that in the early 2000s we started to make application for native title determinations. As soon as the native title determinations were put on the move, there is no way politically or even sensibly a councillor would say, 'We have Katter leases here.' They would receive so much flak from the community that that is just not something they would do.

Mr GIBSON: Even though that councillor today would have had nothing to do with the Katter leases at the time they were granted, they still would not be prepared to identify that?

Ms Hamilton: Absolutely. I have just told you the effect of one councillor being elected who was told about the Katter lease and has just (inaudible). Everybody is aware that this is the first time he has ever been a councillor.

CHAIR: As the native title process has gone through, though, Susan, hasn't that Katter lease issue come up? They are going to be exempt from native title, aren't they?

Ms Hamilton: They have got exclusions: 'Under this lot mark this number.' It does not identify it as a Katter lease. It is only in the schedules attached to the application. So when you make application for native title you define the area and you agree to the exclusions. And if you do not, you will not get a consent determination. So all of those were identified, and they were identified amongst the lawyers. The lawyers would explain, 'These areas are excluded,' for whatever reason. It does not mean that we have the capacity to say to you, 'Okay. You have explained that to me. If I do not agree with that, there is no consent determination.'

CHAIR: So the cadastral surveyors map has not really become relevant back on the island where they have said, 'This block here is out. That is brother Joe's block over there and it's out because he already had a Katter lease'? That has not come into the island speak at all?

Ms Hamilton: No. The issue is arising now because we have a social housing program that is also being rolled out. The social housing program is identifying lots on the island. Because of the native title determination they have advised that greenfield lots are lots that have no development currently on them. Brownfield lots have development currently on them. The greenfield lots are getting native title traditional owners' consent before they can build on them. Council has shown us how this is affecting our social housing program. That is the terms and how it has arisen. It has not arisen in relation to this consultation process. What are Katter leases and where are they?

With the privacy issue, I had to ask them how they want to address the privacy issue. Because of the people who have passed away, people who have inherited or supposed to inherit do not know that some of their parents had Katter leases. So our difficulty on the island is that the council has the information. I asked DERM if I could have that same information on the Katter leases and I was told, 'No, sorry. We can't.' When we sit down at a community meeting, the Katter lease needs to come out and be overlaid on the map with the social housing program and the native title determination to see if those Katter leases were actually excluded and who owns them, and the people who own them need to be told their rights.

My concern is this: I am going to be representing the PBCs. However, you cannot bully someone into relinquishing or surrendering a Katter lease or ask for the application to be removed or withdrawn. So you have a serious concern here that once the Katter leases become public knowledge—and everybody wants to know; 'I think my mami put one; I don't know. Can you find out?' So whose privacy am I breaching? Yet the community needs to know, 'Sorry, you're the TO but that section there you no longer own because that has a Katter lease on it.' So when you are speaking in terms of privacy, you have to realise that there is a conflict in a lot of areas.

CHAIR: Could I just add to that. There is very little privacy about landownership in South-East Queensland or Queensland generally.

Ms Hamilton: Exactly.

CHAIR: Pearson, would you like to add something?

Mr Wigness: I was just going to talk about communication. When the (inaudible), they do not have a first or second degree at university. Legal jargon needs to be in native language. They go to a forum and listen to conversation like this and then go back to their communities. The community asks what happened. They say, 'It was just government talk.' Do you understand what I am saying? No-one understands what is going on with the Katter leases. What Susan is trying to say is that, when you come up here to get us to acknowledge this, you need to break it down. There is legal jargon, doctor jargon, medical jargon—all kinds of jargon. We have one talk—pidgin. That is the only talk that our people will understand.

I will give you a small scenario. I was playing football in Darwin—rugby union. We were playing against New Guinea. They had doctors and dentists—they were introducing the guys running into the stadium. So I asked one of the doctors, 'How come you became a doctor? Torres Strait doesn't have many doctors and lawyers and such.' He said, 'We speak one language—one talk, pidgin. That is how we communicate.' When any government comes to the Far North and tries to interpret anything from down south, you have to use our terms—our jargon—which is pidgin. You have to break this down so that we can understand it. That is all I wanted to say.

CHAIR: That is a good point. Thank you very much.

Mr Carse: If I may make a couple of comments. Without commenting on the general knowledge now, I would remind everyone that there was a notification process before approval. The councils had to publicly notify the application for 28 days in that community. So the intent was that the public would know who had applied and where.

CHAIR: For Katter leases?

Mr Carse: Yes. So there was a 28-day notification process. If they had not complied with that process, they fall into the invalid ones. So all the valid applications have gone through—and I acknowledge that this was way back then; I am not commenting on what the knowledge is now. But that is how the act worked in that the application was publicly notified.

I am not certain, but you made a comment about privacy issues and I think Mr Gibson made a comment about information being publicly available. Those leases granted can be searched through our system. I did have that request through TSRA. That was about the entitlements which we said the trustees

have and they could hand it on. The information about the granted leases I think we probably could provide. It should be publicly available through our systems. It may even be recorded on the DOGITs themselves. But, as there are holes in the DOGIT, I am not quite certain on that. Where a lease is granted on a DOGIT, that is actually recorded against that title so you can clearly see what interests relate to the DOGIT.

But part of the problem with this is that, because there are holes, they may not show up there. I think—and we would have to go back and check on this—those leases are recorded in our systems and can be searched and they can be identified. But it was about the entitlements that we are not allowed, through the Privacy Act, to provide that information to third parties. But, in the detail of the bill, we are doing that through the lease entitlement notices to get that out there and through the trust area notice which says, 'These are all the lease entitlements for that area.' So that would make that publicly available at that time.

Mr GIBSON: Ken, from what you were saying earlier—and Chris mentioned this—looking at the leases granted, the entitlements and the invalid applications, I do not come away with a great sense of certainty that these numbers are all there are. You flag that it is the best information that you have available. You are indicating to us now that the leases at least are registered, but there are holes in the system. If someone wanted to find out today, whatever information they could glean from the department may not necessarily be 100 per cent accurate. Is that fair?

Mr Carse: On anything other than the leases, we could not be certain that we have all the information. The trustee should have all the applications. So they could go to the trustee, but that has not been certain. And some people have records which they say the trustee does not have. So we cannot be certain. If someone came to us and said, 'Is there an application?,' their first problem may be that they may be a descendant and trying to match the names up is difficult. But that is the process that we want to go through of that lease entitlement and trust area notice to say, 'Here is all we have. If anybody else has any further information, now is the time to come forward.' So there could be more out there, but we are unaware of them and the trustees are unaware of them.

Mr Robson: Just to follow up, the ones that have been granted certainly are, as Ken has said, public knowledge or can be provided publicly. It is the ones that because they are registered they are final; they exist. Whether they are actually being used as a granted lease is another matter. I cannot comment about that.

Ms Hamilton: You did make the point that if they are granted now they do not extinguish native title.

Mr Carse: No, the land holding act ones do. The invalid ones would not get a land holding act lease; they would get a lease under the Aboriginal Land Act or a lease under the Torres Strait Islander Land Act and that would not extinguish native title.

Ms Hamilton: So it is not in perpetuity, because all of the other ones that were previously granted are in perpetuity.

Mr Carse: Yes. It is the same on Horn Island. There are no land holding act leases on Horn, but the Kaurareg Aboriginal Land Trust can grant leases including 99-year homeownership leases. We do have a statutory renewal clause in there so that, as long as it is used for homeownership purposes, in effect it is perpetual. It is not perpetual by nature but it is up to the trustee to decide to grant it. So they are the leases that we are talking about. The invalid ones can apply for a lease—that is all there is. They can apply for that. It is up to the trustee to grant it and the traditional owners, through an ILUA, would need to approve that lease.

Ms Hamilton: Is there any guarantee that no houses have been built on the granted Katter leases?

Mr Carse: There would be many houses built on them.

Mr Robson: There would be houses built on them.

Ms Hamilton: My reading of the bill—and I apologise that I have not read the bill in its entirety; as I said, I only received it a couple of days ago—is that, if you have a lease granted and a house is on your lease, you need to pay the owner for that house either rent or the cost of the house—

Mr Carse: This is all different for the land holding act, I am afraid.

Mr Robson: The land holding act is unique. So, if a land holding act lease has been granted—and there are 60 of those in the Torres Strait Island communities—the granting of a land holding act lease does not give that grantee, the person who has the lease, any rights to the house or improvements that might sit already on that land.

Ms Hamilton: That is my point. The person who has the lease granted has no ownership of the house—no rights. In this instance, a fixture on that land does not go with the land. It goes with the housing department who put the house on there. What you are doing with this bill is creating an obligation on the lessee to pay for the house or rent the house that is on their land, whether or not they are financially able to, whether or not they knew that the granting of that lease would create that financial obligation. You also state that you require them to keep that property in a good tenantable condition, a good habitable condition. I will give you an example.

I come from Boigu—six kilometres off the coast of Papua New Guinea. Maybe the reason some of your records are not there is that we have king tides and we go underwater by about four foot—everything gone. So all our houses are built upstairs. We have a high-set home. If you go into the bathroom, after 20 years that bathroom is going to be quite rotten and it is going to fall through. Now, those houses were built a while ago.

What happens if there is a Katter lease there and the bathroom falls through next week? We know that the department has put it there at a cost. It is very nice to say that I would like to invite the committee to go out to Boigu—in fact to any of the outer islands—and have a look at the condition of the house and ask anybody out there if they can give you a quote on the cost of replacing a bathroom. First, you have to fly a qualified plumber from somewhere into that island to give you a quote and fly them back. Then you have to purchase all of the equipment and have it shipped out there. And then you have to fly the plumber back out there to do the job with a builder. So a bathroom can cost you well over $50,000, and don't forget the air fares and the accommodation for the plumber while he is out there and everything else.

On the communities teachers have the same income as everywhere else in Australia. Registered nurses have the same income as everywhere else in Australia. People who work for the IBIS stores do not have the same income as everywhere else. Council workers do not have the same income as everywhere else. We are newly converted from the CBUP to CEA. Nobody on that island other than those people mentioned, except maybe AQIS and Customs, have full-time positions with full-time wages. You are creating a financial obligation on the people who are living on CDEP money to pay to fix up a bathroom and transport the supplies out there, plus pay for the insurance on that home.

Mr Carse: That is only if they choose to purchase the house. It can remain social housing. We have built in there that there can be a sublease. So for most of those houses where the person with the land holding act lease does not own the house the house is social housing, which is maintained either through the council or through the state. What we are trying to do and put in place is the same as with the 40-year social housing leases where the department does the maintenance. In this case here, if the person does not want to surrender the lease but does not want to purchase the house, they can sublease to the department and the department will maintain that as social housing. That person will need to pay rent for it—the same as any other social housing in the state—but the state does the maintenance.

If they choose to take on homeownership, they choose to take on the costs of maintenance and repair, but that is something that those people need to carefully go into and consider, because I agree with you that homeownership in some remote communities is far more expensive than living in Cairns next to the hardware store. We are not forcing them into homeownership through this. We are trying to rectify those leases and provide that opportunity that they can still have social housing. So they can go into a sublease. There is rent paid for that. It is the same as with the 40-year social housing: the tenant pays the rent; the state does the maintenance.

Ms Hamilton: So my point is this: I can have a lease. You can put a house on it and I do not have jack right to do anything other than sublease it to the department so I can rent it back or start to pay off a house. I am sorry, but nowhere else in the whole of Australia do you have the right to go on to anybody's property when they hold the lease and say 'Wow, I'm putting a house here and I have created a financial obligation from you to me.' You cannot do that anywhere else in Australia.

Mr Carse: We have not done that here either. The house was generally first and then the leases come. So somebody has taken a land holding act lease over social housing and the act provided for that. I think the intent was, and it has happened in a number of places, that these people would end up owning the house. So through the rent they were paying they were paying that house off. We believe there are a number of cases where people actually own these houses and are not aware of it. But we are not forcing them to keep that either. They can still go into the social housing process. If they do not want to own it because of all the costs that you identify, on the salaries they cannot afford to maintain it, they can have that as social housing.

Ideally the best thing would be to surrender the lease and go straight into social housing, but we are not forcing people to do that either. We are putting in these options that if a person is in that situation where social housing was on the land, they have gotten a lease over the housing, we are not putting houses on leases now and saying we are forcing that there, we would only do that through a sublease which that person would agree to. That is an opportunity that could be there, but generally we are going into the vacant blocks with 40-year leases. So we are not building on a block.

Ms Hamilton: That is the housing program now. That is why I specifically asked.

Mr GIBSON: Susan, I just need to pick up on something you said. There could be situations where people own the house but they do not know it?

Mr Carse: Yes.

CHAIR: Through the rent they have paid for it.

Mr GIBSON: Has the department identified how many that would be, particularly here in the Torres Strait?

Mr Carse: That is another department, the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs. I think they are going through that, but it is the same sort of record process to find out who is the applicant et cetera. They have to look for records and I think there even has to be a Governor in

Council decision. There is not a lot, but they have to find the financial records and try to match it up. They are doing that process now. I do not think it will be a high number, but there are records in various places that we are going back over 30 years to see whether they have made payments, whether that was recorded and whether they made an application to own the house. During that time, even if they did own it theoretically, the state has been maintaining it for them since then.

Ms Kanai: Through the chair I just wanted to ask a question in relation to the TRAWQ communities—Tamway, Waiben, Quarantine, Rose Hill and Aplin. Social housing have got houses there, but we do not have a formal ILUA with social housing. What happens in cases like that?

Mr Carse: There are no leases or applications on Thursday Island or Horn Island. This bill we are talking about does not apply on Thursday Island or Horn Island. When you are looking over there, those are just reserves for social housing. They may be transferable under the Aboriginal Land Act, and I think they are, but they are a totally different thing to this bill. There are no land holding act applications, entitlements et cetera on Thursday Island.

Ms Kanai: So who owns the fixtures that are built on Kaurareg traditional land?

Mr Carse: It would be the trustee of those reserves, I expect, or there may be leases there to housing co-ops or to the state through the department of housing.

Ms Kanai: So, the owners of the fixtures that are on the land that is reserve land, that belongs to Kaurareg?

Mr Carse: No, I said the trustee of that reserve or, if there are leases there, the lessee, I would expect.

Mr Wasaga: Through the chair, I am a trustee of the Kaurareg Aboriginal Land Trust. We own 75 per cent of Horn Island. There is a lot of information. I think we really need to do consultation thoroughly. This means something to me and I think it is important that our people get to understand the gut of it. I think there needs to be consultation. You parliamentarians, this is what the minister requested of you guys, and there are only a few of us here. I think it is very important that we look at a proper, thorough consultation.

Like Susan was saying, there are 14 islands. You have also got Bamaga and Seisa in there which are probably under the Aboriginal Land Act. It is important that we go into the community and listen to the people and really explain to the people what this whole thing is about. We are still getting over the hangover of CDEP reform, we are getting over the hangover of the amalgamation of local government and the dust doesn't settle.

I work for CEA. We go out into the community and we try to deliver a reform program on Torres Strait Islands and we are training them. Those people are your rocket scientists. We are just training them to be informed in the government program—a good program. And it is sad because they can't do anything with the land. They want to sell the land, they want to own their land but they can't because they cannot have equity. They are on welfare. That is the reality of it. Their aspirations are here, but they just cannot achieve it because they are stuck between policies, policies, acts, acts. I think in the best interests of you and your minister, you need to really get out there and put this on the agenda and really discuss it. It is just sad. Like your words and other images, that is not language for us. It is very difficult to interpret.

CHAIR: Thank you for those comments. They are very reasonable comments simply for the fact that I must admit I did not realise that a lot of this information has not been disseminated down through the councils. That was a surprise to me. I assumed that the councils would have disseminated some of this information through to the rest of the community. I am quite surprised that that has not happened.

Ms Kanai: In all fairness to the councils, the councils normally have community meetings and disseminate information. The reason I raised the input on section 24JAA is that that created a lot of dissent because the councils were the representatives on the ground of government and the effect of that was the same. Previously under native title law the traditional owners had the right to negotiate and say yes or no. With the introduction of section 24JAA it gave government the right to come in without your consent and bulldoze and put the houses where they wanted them for the social housing program infrastructure and if you wanted compensation you could take them to court. That was the effect of that section of the legislation. That created a lot of flak and dissent within the community and it also created a lot of antagonism between the council and the PBCs who represented traditional owners. In all fairness to the council, at that particular time there was a lot of antagonism. I am not making excuses for them; I am simply stating that that was the actual time period in which this bill would have been given to them and put out for discussion.

CHAIR: What was the changeover at the last council elections that happened this year? Were there many new councillors elected?

Ms Kanai: There were a lot.

CHAIR: A lot of new ones?

Ms Kanai: Yes. The other thing is that this is also the first time that they have had separate elections for councillors and for the Torres Strait Regional Authority board. Prior to that, if you were elected to council you were automatically on the board as well.

CHAIR: Are some of the councillors on the board as well?

Ms Kanai: The ones that were unopposed. It did not matter if you were a councillor or not, if you had put in to be on the board and you were unopposed you automatically got on. They have not finished counting yet.

Mr GIBSON: I wanted to pick up on something that Susan referred to and just get some clarification. If I go to the explanatory notes where we talk about identifying beneficiaries—and I note we talked about it a bit earlier and you pointed out for me reference to the schedule and an interested person—I just wanted to pick up what Susan had shared with the committee with regard to the law of succession. Looking at that definition that is provided within the bill where it indicates in the estate of the deceased person, the identified person means a person who has an interest in the estate or in the administration of the estate of the identified person who is one or more of the following—and we see (a), (b), (c)—but it goes on to read 'having regard to the law of succession'. Susan identified for us that obviously the way in which the traditional owners can allocate land is very different to the way in which our laws of succession occur. And they would have primacy if there was a conflict between what the laws of succession state and what a traditional owner had identified under the way in which this bill is written.

Mr Robson: It is probably worth reflecting who (a), (b) and (c) are. Just to read it out—

... in the administration of the estate, of the identified person, and who is 1 or more of the following, having regard to the laws of succession—

(a) a beneficiary of the identified person;

(b) a personal representative of the identified person or of any other person who is deceased, as provided for in a will or in a grant of probate or letters of administration;

(c) a person identified in a Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 section 60 certificate.

So, yes, it is written around, if you like, English law more than it is written around the thing we heard from Susan, but a beneficiary of an identified person could be identified through, I believe, the mechanism that Susan identified.

Mr GIBSON: From what Susan identified to us, where a traditional owner can identify a person—and the example given was a great one of saying, 'Look, I will skip the children and I will go straight to the grandchildren and of the grandchildren I will identify one particular one,' which is clearly outside of what would be the normal succession law that we have with regard to property—that respect of the traditional owner's decision in determining that grandchild would be respected under this bill when it becomes the act?

Mr Robson: I am not going to say I am an expert on this particular provision here. I would want to take advice and inform you properly on that rather than say it now.

Mr GIBSON: I am happy for you to come back.

Ms TRAD: That is only if those entitlements are for traditional owners and not for historical tenants.

Mr GIBSON: Correct, yes. The example that was given to us was with regard to traditional owners.

Ms TRAD: But that is in terms of their succession plan.

Ms Kanai: It is actually with regard to the historical owners as well. We have cases like Karen and Sam Halls, who are historical. If the person who has applied for the entitlements is not a traditional landowner, it goes against our tradition, our culture, because that is my land and they have put a lease on my land. Now if you are going by your law, that is saying his or her successor and it is different.

CHAIR: Just as an aside, there was a surrogacy bill that went through the last parliament and it did have some special recognition of adoption in the Torres Strait.

Ms Hamilton: I think also a lot of our historical people are people from other islands that have married into our family but they do not own that land. They might also have a similar succession law that we have in that they would skip generations. That is up to them. That is not something that we can personally speak of. That is why I said the act is really dependent on who owns the land and what they decide because that is up to them.

CHAIR: Chris and Ken, is there anything you want to summarise?

Mr Robson: I acknowledge the comments that have been made today and I thank you for that. We had consultation a couple of years ago on the Aboriginal Land Act and the Torres Strait Islander Land Act as it would apply in terms of particular issues relating to Hammond Island and Kaurareg country where the issues related to historical and traditional people on those islands when it came to land transfer proposals. So we were conscious that this bill may be an issue for those particular communities. However, in framing the bill, we were also in our approach conscious that the land holding act 1985 did give certain legal entitlements—we can say rightly or wrongly, but they did. We had to, in our view, accept that either they were as granted or they were legal entitlements. Fundamentally approaching it that way meant that we would have certain outcomes, as we have discussed here today, in certain communities.

To do otherwise would mean that those people who do have legal entitlements—I think as you have already mentioned, Susan—would actually have some rights for redress or compensation or equivalent. The bill as proposed takes the view that these people have a legal entitlement. There are those who are

granted and those who have, in that column, entitlements. Certainly those that are invalid have no legal entitlements as per the land holding act 1985 nor in this new bill, except to the extent that they can get a hardship certificate, which simply gives them slightly better consideration in making an application to the trustee for a 99-year lease or equivalent if that is what they are seeking.

In going forward, if this bill were to be passed, there are considerable steps that the bill provides for in terms of notification—public notification, submissions, validation assessment in terms of who are entitlement holders. It is designed that way because we are not 100 per cent sure we know who they are. We have made our best effort to try to find them, but we cannot say who they are for sure. And we would not want to exclude people who may have a right, and equally it might be contested that some people should not have a right but, frankly, where we have evidence to say that the council did make the right decision at the time—and this is pre-1991—they have a valid right. That is the law as it was and we cannot change that, acknowledging that native title came afterwards and it is now the law in all other circumstances.

In the context of this bill, it is a very specific bill about a very specific issue but it does have broader impacts in certain communities. We have to acknowledge that. To do nothing, as realistically has been the case for some years, in itself is only delaying what must be done some time. It cannot in our view be let to sit there. I guess that is partly the issue. That is why the bill is as it is at the moment. I cannot add much more than that at this stage.

Mr Carse: Again, I thank everyone for coming. I know it can be a bit difficult to get to these meetings during work time, so I do appreciate it. A couple of things came up today like sovereignty and homeownership. This bill is unlike probably others in new policy areas and moving the agenda forward. This is really about resolving technical issues or matters there. It is really focused on that. So people may be disappointed that it does not move things forward. That was not intended. It was just to rectify those outstanding leases and where there are problems with existing leases. So I just say that it was not intended to go any further than that. It was really more technical and specifically about those 1985 act leases and applications. Again, thank you for coming.

CHAIR: Are there any final comments you would like to make, Sue?

Ms Hamilton: I just want to restate that we have not had this bill explained to us in detail. We have not had explained to us the legal effect of this bill on our communities. While it is stating that you are going to redress the 474 applications that remain unresolved, it is going to have repercussions for every single Indigenous community in the Torres Strait and we would like to know exactly what those repercussions are—not maybe, not if, not but, not a case of 'we were not aware that it could impact on us'. We would like it absolutely clarified. If you are going to draft the bill and it is going to affect any other act, tell us how it is going to affect us and what effect it has in our daily lives. If it affects our landownership, we would like that stated, not tied up in legal jargon where we cannot understand it.

CHAIR: So you virtually want a list of all the benefits and all the negatives of it. Is that what you are saying?

Ms Hamilton: Yes, because we cannot actually say to you that we object to this or, yes, we are happy with it, because we do not actually know what we are agreeing to. We do not know what we would object to because we have not had the time to go through it. We have not had it explained to us. In this consultation process, whose job is it to explain it to us? This bill is about us, for us. Whose job is it to explain it to us? Getting the clarification that we need means that we would make a fully informed decision, and that is what we want. We want to be able to make a free, fully informed decision and move forward from there.

CHAIR: Admittedly, those are the sorts of questions that we have asked the department in earlier briefings. That is important. As a committee, that is what we also want to find out. Pearson, do you have any final comment? You would like to have a bit more clarification on the whole process?

Mr Wigness: Yes.

CHAIR: Thank you very much, everyone, for turning up today. It has been great to have your input and to give us more understanding. Elizah, will you close the meeting for us?

A prayer was then said.

CHAIR: With that, I would like to thank everyone for being here. Please join us for lunch.

Committee adjourned at 12.40 pm