



CAPE YORK LAND COUNCIL
ABORIGINAL CORPORATION

ICN 1163
ABN 22 965 382 705

32 Florence Street
PO Box 2496
CAIRNS QLD 4870
Phone (07) 4053 9269
Fax (07) 4051 0097

Contact: Peter Callaghan
Email: pcallaghan@cylc.org.au

5 April 2013

Agriculture, Resources and Environment Committee

By Email: arec@parliament.qld.gov.au

Dear Sir/Madam

**Re: Cape York Land Council Submissions
in relation to the *Land, Water & Other Legislation Amendment Bill 2013***

Please find enclosed the submissions of Cape York Land Council Aboriginal Corporation (CYLC) in relation to the *Land, Water & Other Legislation Amendment Bill 2013*.

CYLC is the Native Title Representative Body for Cape York pursuant to the *Native Title Act 1993* (Cth) and has a proud history of representing Traditional Owners and native title holders in the region since 1990.

We appreciate the opportunity to make submissions on the proposed amendments and their anticipated effect on the native title rights and interests of the people of Cape York.

Please let us know if you require any further information.

Yours Sincerely
CAPE YORK LAND COUNCIL

**PETER CALLAGHAN
CHIEF EXECUTIVE OFFICER**

Cape York Land Council Aboriginal Corporation submissions – Land, Water and Other Legislation Amendment Bill 2013

Cape York Land Council (CYLC) provides the following submissions in relation to the proposed amendments contained in the Bill.

Cape York Peninsula Heritage Act 2007

CYLC supports the proposed amendment to Section 7, which will effectively include the Eastern Kuku Yalanji national parks in the Cape York Peninsula region.

The amendments should eventually allow the current longstanding Aboriginal Land Act claim over Cedar Bay National Park to be withdrawn, rather than requiring a costly and time consuming claim process.

CYLC also supports the proposal to allow for the map that defines the region to be revised from time to time by regulation, which would make it easier to adjust the boundaries of the region if that is required in the future.

Aboriginal Land Act 1991 ("ALA")

CYLC supports the proposed amendments to:-

- simplify dealings with reserves and roads on Aboriginal freehold land ("ALA land"), by removing the requirement for the intermediate step of creating transferable land;
- put it beyond doubt that a sublease entered into under the *Aurukun and Mornington Shire Leases Act 1978* continues in force upon the transfer of the Shire lease land under the ALA. (CYLC has previously made submissions to government concerning appropriate tenure for land within Cape York township areas and notes that land used for residential or commercial purposes should ultimately become freehold land, including any pre-existing sublease);
- to make Starcke National Park transferable land, instead of claimable land (so that it is consistent with all other parks in the Cape York region); and
- give land trusts the power to appoint, remove or suspend members of the land trust.

However, CYLC has concerns about the proposed amendment to allow the Minister, if the Minister forms a view that the actions of a member of the land trust is hindering the proper operation of the land trust and the Minister is satisfied that grounds exist for removing or suspending the member, to remove a member. The amendments to give the land trust the power to take action in appropriate circumstances should be adequate for appropriate action to be taken, without the need for ministerial intervention into the operation of a land trust.

CYLC recommends the establishment of a regional support body for land trusts and other Aboriginal land-holding organisations which would have a wide range of support, advice and executive roles, including to assist with and provide advice about corporate governance and similar issues. Such a regional body could also hold a "power of attorney" to make decisions on behalf of local organisations in the case of local dysfunction which would provide an alternative to the proposed Ministerial power.

Acquisition of Land Act 1967

CYLC notes that the proposed amendments to shorten acquisition processes in cases where the parties do not object, do not apply to the taking of land if that land includes "Aboriginal or Torres

Strait interests". "Aboriginal or Torres Strait Islander interests" exist if native title rights and interests exist for the land, or the land is Aboriginal land or transferable land under the ALA.

CYLC assumes that the reference to the existence of native title rights and interests would include land where native title rights and interests are asserted but not yet recognised.

Land Act 1994

CYLC is concerned about potential impacts on environmental and cultural heritage values, and associated lost opportunities for engagement in land management and conservation services. We therefore **do not** support the proposed amendments to:-

- Repeal the "future conservation area" provisions, and provide for the Qld Government to stand in the market place independent of the lease renewal process to negotiate purchase of part or all of the lease, if a leasehold property is identified as a priority for adding to the conservation estate. It is likely that less traditional land in Cape York will become conservation estate, potentially resulting in degradation of land and loss of cultural heritage and traditional use opportunities ;
- increase the land area threshold for land management agreements under the State Rural Leasehold Land Strategy from 100 hectares to 1000 hectares (notwithstanding the provision for the Minister to require a land management agreement for rural leasehold land where the land is vulnerable to land degradation or there are demonstrated land degradation issues requiring remediation). The proposed amendments are likely to result in poor land management and degradation of country, by moving from proactive to reactive management. The amendments also potentially decrease economic opportunities for Traditional Owners to provide land management services.

Land Title Act 1994

CYLC supports the proposal to provide for an alternative process which will allow an indefeasible title to be created where a deed of grant is delivered to a grantee under the ALA (currently deeds of grant are delivered to grantee and cannot be lodged in land registry).

Petroleum Act 1923, Petroleum and Gas (Production and Safety) Act 2004 and Water Act 2000

CYLC notes the proposed amendments to streamline the process for conversion of petroleum wells to water bores, and to allow additional low risk activities without a water entitlement, including the taking of or interference with water by Aboriginal parties for traditional activities or cultural purposes.

CYLC notes its concerns that increased access to water will potentially increase use and therefore impacts on environmental, cultural heritage and native title values in the country around the watering points.

Whilst a water entitlement may not be required in circumstances where Aboriginal parties have native title rights and interests to use water, the proposed amendments to the *Water Act 2000* may assist in circumstances where native title rights and interests do not exist.

However:-

- CYLC has concerns about the limitations imposed by linking the definitions of operative terms to the *Aboriginal Cultural Heritage Act 2003* (ACHA):-

- The term ***Aboriginal party*** refers to s.35 of the ACHA. CYLC has previously raised concerns about the link between cultural heritage and a “native title party” who was a registered native title claimant. It may be in particular circumstances where a native title claim has been withdrawn that it is not appropriate for the previously registered native title claimant to continue to assert rights;
- The term ***cultural purpose*** is defined to include an activity, other than a commercial activity, that supports the maintenance or protection of Aboriginal cultural heritage within the meaning of s.8 of the ACHA. CYLC has previously raised concerns about the narrowness of the section 8 definition of Aboriginal cultural heritage, and its failure to recognise aspects of Aboriginal culture that extend beyond significant areas or objects;
- The term **traditional activities** for an Aboriginal party refers to any of the following activities the party carries out in accordance with Aboriginal tradition or Island custom-
 - (a) hunting, fishing, gathering or camping;
 - (b) performing rites or other ceremonies
 - (c) visiting sites of significance.

CYLC is concerned that this list may not adequately cover the range of activities for which Traditional Owners might wish to use water, such as for personal use during a meeting on traditional country.

- CYLC submits that Traditional Owners should also have rights to use water for compatible land use activities, which may extend beyond traditional or cultural purposes, to economic uses.