

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

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

Dear Research Director

Please find attached a submission from Cape York Land Council regarding the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014*. This submission was developed on behalf of Cape York Regional Organisations (CYROs), namely Cape York Institute for Policy and Leadership, Balkanu Cape York Development Corporation, and Cape York Land Council Aboriginal Corporation.

This submission is brief and addresses general principles of the Bill. CYRO representatives will appear before the Committee at the public hearing in Cairns on 18 June to make a verbal submission and further explain our position and answer any questions.

If you wish to discuss any part of this submission please contact Shannon Burns, Policy Leader for Land Reform, Cape York Land Council at [sburns@cylc.org.au](mailto:sburns@cylc.org.au) or phone 4053 9222.

Yours sincerely



Peter Callaghan  
Chief Executive Officer

## Cape York Regional Organisations submission re Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014

1. **Primary comment** – Before any option for freehold is made available in Aboriginal towns two threshold issues must be addressed.

The first issue is the transfer of DOGIT and other transferrable land within townships to the tenure of Aboriginal freehold, and from the trusteeship of Council (or other trustees) to an Aboriginal corporation which includes land trustee within its functions.

The second issue is to address native title on a township wide basis through a township Indigenous Land Use Agreement (ILUA) so that a process for the surrender of native title and a formula for compensation is agreed.

2. **Only Aboriginal freehold should be convertible to freehold** – Aboriginal Shire Councils are temporary DOGIT trustees and as such are an inappropriate party to be making decisions about whether land tenure should be converted to freehold. In addition, the Bill provides that Councils can only respond to lot by lot applications for freehold, which will therefore result in a more complicated tenure mix where some land tenure is freehold, some is Aboriginal freehold, some DOGIT, some LHA, some leased, some owned, etc. The objective must be to simplify the tenure mix, and to allow Councils to concentrate on their core local government functions, disentangle the trustee and local government entities, and remove local government aspirations for monopoly land ownership.

To this end, the Bill should remove the option for DOGIT to be converted to freehold, and only Aboriginal freehold should be convertible. Therefore, the transfer of land from DOGIT tenure and Council trusteeship to Aboriginal freehold held by an Aboriginal land trust corporation must precede the option to convert tenure to freehold. The Bill provides that a Aboriginal corporation land trust may decide to convert the land it holds to freehold. This is supported since the land trust could decide to convert all or none of its land to freehold, and therefore simplify the tenure mix in Aboriginal towns.

CYROs consider that it is preferable that all township land tenure is converted to freehold to create one level playing field that is equivalent to the mainstream situation. However this requires that native title is comprehensively addressed.

3. **Native title and Compensation** - CYROs have previously expressed concern about the lack of agreed process and compensation to incentivise the surrender of native title to enable tenure conversion to freehold.

In his speech to Parliament the Minister states:

*Some may argue that because, under the proposed changes, the State will not contribute to the costs of surrendering native title and also because of the costs associated with native title compensation, that there is a risk the policy will not succeed. I disagree. If a community values native title over freehold title then that community*

*has made a value judgement, or perhaps more appropriately, a cultural judgement, which the Newman government and all Queenslanders should respect. That is their choice. Native title holders will decide whether or not to consent to the grant of freehold, knowing that the land will go to an Indigenous person. This should be a factor in their decision. Any reasonable costs can be recovered through the purchase price set by the trustee.*

However, this statement doesn't address the issue – the State has a responsibility to ensure that the freehold model proposed in its Bill is viable. The compensation formula must be incorporated into a township wide ILUA and the source of native title compensation identified.

The objective of land reform in Aboriginal towns should be to simplify the tenure mix and create a level playing field for development. It is therefore critical that a township wide native title solution is found. Otherwise the Bill will lead to a situation where land where native title continues to exist within towns will not be converted to freehold because the native title compensation issue will make its conversion unviable, but adjoining land where native title has been extinguished by a previous act will be converted to freehold. The tenure mix in communities will then consist of freehold blocks, and Aboriginal freehold or DOGIT blocks where native title continues to exist. This will create a very un-level playing field and undesirable situation where development will occur under two very different and unequal tenure scenarios.

4. **Town ILUAs** – The State must continue with the resourcing of township ILUAs to enable the grant of leases for a range of purposes, and to enable the surrender of native title as part of the freehold process.
5. **Restriction of freehold option to town areas only** – Restricting the freehold option to town areas only is supported. The leasing regime to apply to out of town areas must be strengthened to ensure home ownership and economic development may occur in these areas as well, and be supported by the Services Hub proposal and simple trust accounts.
6. **Consultation** – It is claimed that “extensive” consultation was undertaken by the State to inform the drafting of the Bill. However, as indicated in the Explanatory Notes, there has not been any direct consultation with native title holders or individual Traditional Owners.

The Premier wrote to the Mayors of Aboriginal and Torres Strait Islander communities on 16 November 2012 advising of the government's decision to provide the freehold title option. A discussion paper was enclosed with the letter from the Premier, and was also released for public comment. However, whilst there may be “in principle” support for freehold title that does not mean that community members, native title holders and Traditional Owners are aware of or fully understand the detail or implications of the freehold model proposed in the Bill. Far more extensive consultation must be taken with the people affected by

the Bill. Aboriginal community, native title and Traditional Owner stakeholders for this matter are far more extensive and relevant than Aboriginal Shire Councils.

7. **Pilot communities** - The proposal to call for expressions of interest from communities to “road test” the freehold model, where DATSIMA and DNRM will work closely with councils, trustees and communities to implement the freehold model, is supported. However, only \$75,000 is available in the “funding pool” for DATSIMA and DNRM to “assist trustees of pilot communities to undertake community consultation on the freehold model”. Further assistance must be provided for all communities to address the full range of pre-conditions necessary for home ownership and economic development to be enabled. CYROs have previously made detailed submissions about the land, finance and human capacity pre-conditions that are necessary to enable development to occur.
8. **Freehold consultation processes** – The Bill does not require communal land owners and native title parties to support tenure conversion to freehold. The Bill must be amended to provide a much more prescribed process for community consultation when deciding whether to freehold land. This issue would be resolved by transferring all transferrable land prior to the freehold option being applied.
9. **Land transferability** - Where land tenure is not converted to freehold, leasing options for home ownership and economic development under the ALA will remain available. However Aboriginal land ceases to be transferable land when the subject of an allocation offer to an interest holder or an allocation notice where no interest holder. The Bill must be amended or clarified to provide that the land becomes transferrable again if the allocation offer or notice is not taken up. This issue would be resolved by transferring all transferrable land prior to the freehold option being applied.
10. **Townsite leases** – The proposal for a townsite lease is irrational and not supported. Instead, the capacity of the trustees of Aboriginal freehold to administer their land must be better supported, through for example, the proposal to establish a Services Hub, and build the capability of land trustees in this way.
11. **ALA leasing provisions** – The proposals in the Bill to strengthen the leasing provisions for all lease types except home ownership by removing time limits and the need for Ministerial consent are supported. However, these amendments should also be extended to home ownership leasing provisions, particularly to remove the criteria that only an Aboriginal person is eligible for a home ownership lease. The Bill should provide that the trustee may grant a home ownership lease to any person but the trustee may set local eligibility criteria according to community desires.

It is important that a viable leasing regime exists for home ownership and economic development since freehold is only an option in town areas, but may not be viable in many instances because of compensation or community aspiration being prohibitive. So although the CYRO preference is for the freehold

option to be applied across all town land the Bill must ensure that the ALA leasing provisions will also be a viable pathway to home ownership and economic development for land inside and outside of town areas.

**12. Simple trust account** – Regardless of the tenure, whether it is DOGIT, Aboriginal freehold or freehold, simple trust accounts must be established to support home ownership and economic development projects. The trust accounts will provide confidence to development proponents and will attract mainstream finance into Aboriginal towns.

**13. House sale price valuations** – House sale prices must be fair and reasonable and reflect market reality, including secondary market risk, and designed for a normalised economy where IBA subsidies do not exist. The draft house valuations proposed by the State for negotiation with Councils are too high, and Councils, as temporary DOGIT trustees, are an inappropriate party to be making these decisions. Once again, land transfers to an Aboriginal land trust corporation must precede the setting of house sale prices.