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

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

Dear Sir

Submissions have been invited in respect of the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014* ("the Bill") which has been introduced into Parliament.

The Bill's objectives are noted in the Explanatory Notes to be as follows:

(a) The Introduction of the option for ordinary freehold into Aboriginal and Torres Strait Islander land;
(b) The simplification of the leasing framework that applies to lessees of Indigenous land;
(c) Amendment of the *Land Valuation Act 2010* to provide that Indigenous local government areas can be subject to statutory valuations;
(d) Repeal of the *Aurukun and Mornington Shire Leases Act 1978* upon transfer of the remaining shire lease land under the *Aboriginal Land Act 1991*;
(e) Amendment of the *Land Act 1994* to provide the Minister the power to declare on a case by case basis in certain circumstances a conditional right of public access over private land.

The Bill will apply to 34 Aboriginal and Torres Strait Islander communities and as Yarrabah and Palm Island fall within the representative body area of the North Queensland Land Council ("NQLC") and are noted to be included communities, the opportunity to make this submission to the Parliamentary Committee on the areas of concern in the Bill is considered important and the NQLC thanks you for that opportunity.

Freehold option

The sentiment behind the Bill is acknowledged by the NQLC to be positive in as much as the Bill's objectives demonstrate a commitment by the Queensland government to recognise international standards to protect the rights of all citizens by the provision of the same land ownership entitlements and opportunities for Aboriginal communities as are available throughout Queensland. Aboriginal people who are able to take up the freehold option should have greater opportunities to secure their own home, raise mortgages, grant interests in land such as leases, licences and easements and participate in land transactions which will provide some Aboriginal people the opportunity to generate financial advantages.

It is noted that current lease holders will be offered the freehold option and if the land contains a social housing dwelling the offer may be approved by the housing chief executive to include that the dwelling may be purchased at the value decided by the trustee.

In spite of the positive sentiments behind the Bill, the reality is that many Aboriginal people living on Yarrabah and Palm Island are economically disadvantaged and will not have the means to purchase the social housing dwelling or to raise the money for that purpose through a mortgage or personal loan. Accordingly, the Bill, if it becomes law, has the potential to create a divide in Aboriginal communities which currently doesn't exist. This is not a realistic option because the creation of a two strata society of "haves" and "have nots" isn't advancing Aboriginal well being or harmonious living conditions in Aboriginal communities.

The freehold option in the Bill will be limited to townships which are defined as being land identified in the relevant local planning schemes as "urban" or "future urban use". NQLC supports this approach because it will avoid the potential for large tracts of land being permanently alienated from Aboriginal community ownership. This is important, given that land once converted to freehold, can be on sold to non Aboriginal people, which in itself has the potential to significantly reduce the amount of land held in Aboriginal ownership at Yarrabah and on Palm Island, and which, over time, could effectively fracture the Aboriginal communities residing there.

The Explanatory Notes are silent on how it is proposed to deal with native title where it may still exist in the land to be converted to freehold. This may mean that it has been determined already by the government that native title has been extinguished, given the freehold option is being confined to townships where there would be substantial infrastructure in place. However, if native title has not been extinguished the conversion to freehold will be a future act which attracts compensation pursuant to the *Native Title Act 1993 (Cth)* ("NTA"). Native title will need to be addressed in the relevant way provided by the NTA, which is likely to be by Indigenous Land Use Agreement ("ILUA"), noting that consent to the future act will need to be obtained as well as a voluntary surrender of native title to the State by the native title holders for a private purpose rather than a community purpose. It must be kept in mind that it has taken

approximately 20 years to achieve recognition of native title in Yarrabah and asking native title holders to voluntarily surrender their native title when attaining it has been a very hard won battle is both unrealistic and unfair.

As native title is communal, rather than individual, it will be the native title holders as a group who would be required to consent to the future act and agree to surrender their native title and provide instructions to the trustee or their agent, as applicable, depending on how the native title is held. Although s28I(3) of the Bill provides for consultation with native title holders and for their views to be expressed, it is difficult to see what incentives are being provided to gain the consent of the native title holders to the future act and to the surrender of native title as there is no mention of the payment of compensation in the Explanatory Notes or in the Bill.

If compensation is not to be paid by the State, which is likely as it is noted that there is a funding pool of $75,000 only provided for consultation, and instead it is proposed that compensation for extinguishment of native title will be paid by the recipient of the freehold, this would be imposing an additional burden on persons who are already economically disadvantaged. It is envisaged that the compensation issues would need to be addressed in the ILUA and there would not be support for lodging a compensation claim under the NTA as this is a costly and time consuming process.

Leasing simplification

NQLC supports the provisions in the Bill for lease simplification, longer lease terms and sub-leasing and that Ministerial approval will no longer be required for lease grants with the exception of townsite leases. This should provide for flexibility and for greater pursuit of social and economic development for Aboriginal persons.

Land Valuation

It is said in the Explanatory Notes that a number of Indigenous Local governments have been requesting the change to provide for statutory valuations but no consultation has been conducted. The NQLC is of the view that there should have been consultations to ascertain if all Indigenous local governments support this approach and it is considered that there is still time to conduct these consultations.

Repeal of *Aurukun and Mornington Shire Leases Act 1978*

The repeal will not occur until all land is transferred under the *Aboriginal Land Act 1991* and the land will be held subject to native title. NQLC does not have any concerns in relation to this proposal.

Right of Public Access

In regard to the proposal in the Bill to provide a right of public access through freehold properties to the beach, NQLC is of the view that this should be done by the creation of a formal easement for public access and compensation should be paid to the freehold owner as it no doubt would be if, for example, a right of public access was being

granted to the intertidal zone ("ITZ") over prime freehold beach-front land on the gold coast or some other up market area.

The Explanatory Notes expressly mention that among the reasons that no compensation will be paid is that the value of the rights being affected is highly questionable because the land, being sandy, does not permit cultivation or construction and because it has been government policy to reserve the land between the sea and the land (the ITZ) for public access. In this case, the particular land wasn't reserved for public access and the freehold owner should not be penalised for the State's failure to take this action in the past. In addition, it is strongly disputed that significant rights will not be lost to the freehold owner, including the highest right of all, which is the right to exclude all others. Rights such as use for sport, recreation, boatshed, jetty construction and construction of boat launching tracks over the area will also be lost to the freehold owner.

This move is not in keeping with international standards on human rights and the Bill should be amended to provide for compensation to the freehold owner when a right of public access to the beach is declared over the freehold property.

As it is probable that the right of public access will not be declared until the land is converted to freehold or alternatively it will be created at the same time, this will mean that the native title (if any) should have already been addressed in the freehold conversion process.

It is considered that occupier and public liability over the public access area is an issue. It is not clear in the Explanatory Notes or the Bill how this will be handled and NQLCs view is that there would need to be full indemnification provided by the State to the freehold owner pursuant to an agreement as the ownership of the land will remain in the freehold owner. Accordingly, in the case of personal injury and other court actions brought by a member of the public, the freehold owner may be joined. As relevant, NQLC's clients would be advised to pursue the approach of obtaining full indemnification through an agreement with the State.

If there are any issues arising from this correspondence please contact my staff member Ms Jennifer Jude, Senior Legal Officer, on Ph 07 40427023.

Yours faithfully

Ian Kuch
Chief Executive Officer
North Queensland Land Council Native Title Representative Body Aboriginal Corporation