

10 July 2014

The Research Director
Agriculture, Resources and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000
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Your ref Aboriginal and Torres Strait Islander Land (Providing Freehold)
and Other Legislation Amendment Bill 2014

Our ref: Property and Development Law Committee

Dear Research Director

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

Thank you for providing the opportunity for the Queensland Law Society to provide comments on the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Bill 2014* (the Bill).

The Bill has been considered by the Society's Property and Development Law Committee (the Committee).

Given the time available to the Society and its committee members, this submission does not represent an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not commented upon. Omission of comment on any particular matter should not be interpreted as endorsement of that aspect of the Bill.

The Society wishes to restrict its comments to one aspect of the Bill, being Chapter 3 dealing with amendments to the *Land Act 1994*.

Chapter 3 *Land Act 1994* amendments

The Committee notes that the purpose of these amendments are to make certain private land available for public use as beach. It is understood that the amendments are deemed necessary as erosion and other natural factors have changed the location of the foreshore in some places, causing the beach area now to be within existing private lots.

The amendments propose for a part of a lot to be declared as a declared beach area, which leads to a number of consequences:

- Ownership of the declared beach area does not leave the lot owner

- The owner of the declared beach area loses their rights to exclusive use and quiet enjoyment of that part of the lot
- No compensation is payable to the owner of the declared beach area for the change of use or loss of rights with respect to that part of the lot
- Subject to any conditions imposed by a beach manager (either local government or the State) for the declared beach area, the beach area is open to public use
- The beach manager has control of the declared beach area and is responsible for maintaining the area in a safe condition
- The owner of the declared beach area can not be civilly liable for an act done, or omission made, honestly and without negligence in relation to the declared beach area.

It is proposed to be an offence to obstruct the public right of use of a declared beach area.

Fair compensation

The Committee notes that it is a fundamental legislative principle that proposed new laws have sufficient regard to rights and liberties of individuals by providing for the compulsory acquisition of property only with fair compensation.

In the proposed amendments s431S denies an owner of a declared beach area any kind of "relief or compensation" for "deprivation of an interest of any type in land, or for loss or damage of any kind, arising out of a part of a lot becoming a declared beach area". The rights to exclusive use and quiet enjoyment of the parts of the lot which will form a declared beach area are valuable personal property and accordingly deserve fair compensation. As the use of the land in a declared beach area is effectively acquired by the State in the proposed provisions, the partial abolition of civil liability in proposed s431W(4)(b) cannot be said to be a fair exchange.

Partial civil liability immunity

The partial civil liability immunity proposed in s431W(4)(b) appears less effective than is warranted given the loss of the owner's control of the declared beach area. The proposed provision states:

(4) The owner of a lot of which a declared beach area forms a part, and any other person having an interest in the lot—

...

(b) is not, and can not be made, civilly liable for an act done, or omission made, honestly and without negligence in relation to the declared beach area.

(5) If subsection (4)(b) prevents civil liability attaching to a person, the liability attaches instead to the State.

The retention of civil liability for any negligent acts by an owner of the declared beach area continues to potentially expose the owner to a level of risk with respect to the part of the lot over which they no longer have control.

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In the scenario where the lot owner:

- observes a group of people and a bonfire on the declared beach area at night
- takes no steps to make the area safe following the gathering
- knows that the beach is frequented by families and young children during the day,

the lot owner may still be subject to claims where a young child sustains burns in the hot ashes of the fire of the night before. In this case:

- the lot owner's insurer may seek to avoid coverage as the injury occurred on a part of the lot where the owner no longer has control,
- the injured person may still seek compensation on the basis of ownership of the lot and the reasonably foreseeable risk that an injury would occur.

In light of this scenario, we suggest that proposed s431W(4)(b) is reworded to only retain civil liability for the lot owner for wilful or intentional acts which cause injury or loss.

Such a change will ensure that, appropriately, the State is not liable for intentional or wilful acts of the lot owner with respect to the declared beach area.

Thank you again for the opportunity to provide these comments. If you wish to discuss any aspect of this submission, please contact our Principal Policy Solicitor, Mr Matt Dunn, on 3842 5889 or via email on m.dunn@qls.com.au.

Yours faithfully

Ian Brown
President