



CAPE YORK LAND COUNCIL  
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9 July 2014

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

Dear Research Director,

On behalf of the Cape York Land Council please find attached a submission regarding the *Mineral and Energy Resources (Common Provisions) Bill 2014* (Qld).

If you have any questions or wish to discuss any part of this submission please do not hesitate to contact Shannon Burns, Cape York Land Council, on 4053 9222.

Regards

A handwritten signature in black ink, appearing to be 'P. Callaghan', written in a cursive style.

Peter Callaghan  
CEO  
Cape York Land Council

**Submission from Cape York Land Council (CYLC) regarding the  
*Mineral and Energy Resources (Common Provisions) Bill 2014***

CYLC has made numerous submissions over the last 12 months, in response to the various papers released for comment as part of the process of consultation leading to the Mineral and Energy Resources (Common Provisions) Bill 2014 ("the Bill").

We have repeatedly explained the key role that Cape York Indigenous people should be afforded for any activity occurring in Cape York. They are the original landowners, make up over 50% of the population of the region, hold large areas of land under statutory title, are native title holders and have deeply significant cultural values across the Cape York region. Land use associated with mineral and extractive resources should not occur without the support of Aboriginal parties who hold interests in land throughout Cape York.

Our submissions have consistently indicated that while we support the desire to streamline and simplify legislation and associated processes, we remain concerned that insufficient regard has been given to the potential effect of existing and proposed legislative provisions and processes on the Indigenous people of Cape York.

We have made specific suggestions in each of our submissions for how improvements can be achieved, and we are disappointed that those suggestions have not been adopted.

We reiterate that there must be greater engagement with Indigenous groups and their representative organisations in any proposals for legislative or policy change. We again urge the State Government to develop a model for planning and stakeholder engagement for Cape York which ensures that Indigenous landholders and native title holders are properly engaged and represented.

**The Bill**

We do not have adequate resources to undertake a detailed examination of the Bill.

However, we submit that our concerns about the failure of the proposed provisions to adequately accommodate the existence of native title rights and interests could be largely addressed if the Bill was amended to include native title holders as owners or occupiers or parties who may be affected by proposed activities on land. This would ensure that notification and objection provisions would be extended to those Indigenous people who assert the existence of native title rights and interests in relation to land.

It is increasingly the case that Cape York Traditional Owners hold some form of tenure over their land, which means that they will fall within the various definitions of "owner" of land or similar. However, there remain a number of Cape York groups who assert the existence of native title rights

and interests but who do not yet hold tenure over their land. These people are at risk of having their rights and interests affected in circumstances where they have limited or no procedural rights under the *Native Title Act 1993* (Cth) (NTA) (for example, because they do not yet have a registered claim under the NTA).

Native title groups should be included in the processes for access to public land, which is now to include reserve land. Native title rights and interests are likely to exist on reserve land in Cape York.

We also make the following specific submissions:-

- In relation to restricted land, we oppose the proposal to grant tenure over the entire area including the restricted land. We are concerned that the requirement for written consent to enter the restricted land to carry out authorised activities before the tenure holder can conduct activities on that land will not be sufficient to protect the interests of Indigenous people with native title rights and interests in the land. Similarly, there is no protection for groups with native title rights and interests in neighbouring areas which may be affected by a resource activity;
- The “eligible claimant” provisions in s.80 should include native title holders to ensure that where public or private land is being used for access to a resource activity, they are also able to seek compensation for any effect on their rights and interests;
- The proposed removal of the requirement for physical pegging of boundaries is not supported, as it has the potential to make it difficult for Indigenous parties potentially affected by an application to identify relevant areas. There are likely to be practical ramifications for land in the vicinity, as well as the actual land on which activity is to occur, such as damage to land caused by access. Cultural heritage rights may be affected;
- Changes to requirements for notification of mining lease applications (by limiting notification of mining lease applications to “directly impacted landholders, occupiers, infrastructure providers and local governments”) may result in Indigenous people with native title or other interests in the affected land not being aware of the application (particularly where native title has not yet been determined and land tenure has not yet been obtained). CYLC submits that public notification of all ML applications should be maintained or that Indigenous people with interests in an area should be included in the process as “directly affected landowners”;
- Similarly, we submit that public notification of standard applications and variation applications for an environmental authority for a mining activity under the *Environmental Protection Act 1994* should be maintained.