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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
Corner George and Alice Streets
BRISBANE QLD 4000

**Re: Parliamentary Inquiry into the Future and Continued Relevance of
Government Land Tenure Arrangements in Queensland**

Dear Research Director

Please find attached a submission from Cape York Land Council, developed on behalf of Cape York Regional Organisations (CYRO), namely Cape York Institute for Policy and Leadership, Cape York Partnerships, Balkanu Cape York Development Corporation, and Cape York Land Council Aboriginal Corporation, outlining issues of interest to the Aboriginal peoples of Cape York associated with the Parliamentary Inquiry into the Future and Continued Relevance of Government Land Tenure Arrangements in Queensland.

We note that the Terms of Reference for the Inquiry include consideration of the needs and aspirations of Traditional Owners. CYRO see potential opportunities and threats to Aboriginal Traditional Owner interests as possible outcomes of the Inquiry. CYRO maintain that the interests of Aboriginal people, particularly Traditional Owners, must not be diminished for the benefit of other parties without benefits also flowing to Aboriginal people.

CYRO strongly support and advocate the ongoing economic and social development of Cape York, provided Aboriginal people are involved in development activities and impacts to Aboriginal interests do not outweigh the benefits. With positive intent and

innovation, the reform of land tenure arrangements could provide significant benefits to Aboriginal, non-Aboriginal and government interests. CYRO is willing and able to assist Inquiry processes to achieve this outcome.

CYRO submits that in addition to future land tenure arrangements the Inquiry should also consider improvement of land administration on Cape York. Improvement of land administration is necessary to more easily create interests in land, achieve better utilisation of land, and enable full benefit from land tenure reforms.

This submission is brief and covers only general principles given the broad terms of reference for the Inquiry. Further submission could be made by CYRO once the specifics of possible reforms begin to emerge or are under consideration. CYRO representatives are also available, and request an opportunity, to appear before the Committee at a public hearing to make a verbal submission to 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 Institute at [REDACTED] or phone [REDACTED].

Yours sincerely

A handwritten signature in dark ink, appearing to be 'Richie Ah Mat', with a stylized, flowing script.

Richie Ah Mat
Chairman
Cape York Land Council Aboriginal Corporation



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**Cape York Regional Organisations submission
to the Parliamentary Inquiry into the Future and Continued Relevance
of Government Land Tenure Arrangements in Queensland**

Introduction

Cape York Regional Organisations (CYRO) are aware that the Parliamentary Inquiry is considering the possible upgrade of Government land tenures in Queensland, including interests held under pastoral leases, mining leases, tourism leases and other such tenures, to a perpetual lease or freehold interest in land. CYRO also understands that part of the motive to upgrade land tenures is to encourage and enable the intensification and diversification of land use so that agricultural food production increases, economic investment and activity increases, and greater returns can be gained from the land.

CYRO strongly support increased sustainable economic activity on Cape York that enables participation and benefits for Aboriginal people through job creation, infrastructure improvements and opportunities for private enterprise. CYRO is prepared to consider and propose new and innovative approaches to reforming land tenure arrangements so that economic and social development is enabled for Aboriginal people and wider Australian society. Aboriginal people want to be actively involved in growing the economic cake on Cape York, not just receiving crumbs from the table in the form of welfare handouts. There are many ways that land business could be done differently to create benefits for all interested parties.

CYRO are also determined to enable home ownership and economic development on Aboriginal land tenures, particularly within the village centres of Aboriginal Local Government Areas, but also on Aboriginal land outside of the villages and outside of

Aboriginal Local Government Areas. Reform is necessary to enable home ownership and economic development on Aboriginal land since it is clear that the existing tenures and the legislative regime that provide for these tenures have clearly not been successful in delivering desirable outcomes. CYRO have thoroughly considered the issues associated with these tenures and have developed sophisticated solutions to address the issues. CYRO would like the Inquiry to consider the solutions identified by CYRO in more detail during its deliberations.

Reform of Aboriginal land tenures to facilitate home ownership and economic development

There are significant areas of land on Cape York, mainly within Aboriginal Local Government Areas, that could be considered to be land under government land tenure. This includes Deed of Grant in Trust (DOGIT), Aboriginal Reserve and Departmental and Other Reserve land (D&O Reserve) granted under the *Land Act 1994* (Qld), Shire lease land granted under the *Local Government (Aboriginal Land) Act 1978* (Qld), land leased under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (Qld) (Land Holding Act lease), and Unallocated State Land (USL).

These land tenures restrict the development aspirations of Aboriginal people. Within defined Aboriginal village areas the tenures should be reformed to facilitate viable and sustainable home ownership and economic development outcomes. The key tenure reform should be that land within village areas should be converted to the tenure of fee simple freehold. Land outside of defined village areas should be transferred to Aboriginal freehold, as provided for under the *Aboriginal Land Act 1991* (Qld).

The reform of land tenure within Aboriginal Local Government Areas must also be accompanied by improvements to land administration since inadequate land administration is also severely restricting land development. Some improvement to land administration is currently being undertaken by the Remote Indigenous Land and Infrastructure Program Office within the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs.

However, although welcome and significant, the current land administration improvement does not reach the critical threshold required to enable development to take-off in Aboriginal villages. The critical threshold that must be reached is a permanently registered lot for each parcel of land used for a discrete purpose, and where native title has been addressed, for the entire village area and for all land use purposes. This threshold could be achieved with minimal additional effort and expense and would create the conditions on Aboriginal land that enable development in other parts of Queensland on non-Indigenous land.

Land administration improvements are also required on some Aboriginal land outside of Aboriginal Local Government Areas including some Aboriginal freehold land, and some fee simple freehold land of interest to Aboriginal people, such as around Coen.

CYRO submit that, broadly speaking, the following land reforms should be made within defined village areas. The specifics of the definition of the village area, the

current land tenure and land use profile, the parties who would be eligible to be granted an interest in land, etc will vary and will require negotiation between relevant parties. However the generic elements of the model should be implemented for all Aboriginal Local/Regional Government Areas across Cape York, namely the WujalWujal, Hope Vale, Lockhart River, Northern Peninsula Area, Mapoon, Napranum, Aurukun, Pormpuraaw and Kowanyama jurisdictions.

The Inquiry should note that the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* is proposed for amendment because of the numerous issues with leases issued under that Act, known as “Land Holding Act” or “Katter” leases. CYRO submit that amendment of this Act should be considered within the wider context of this Inquiry, and not before or separate to it. Amendment of the Land Holding Act should not be proposed until this Inquiry is completed and proposals for the wider reform of Aboriginal land have been developed. CYRO have written to Minister for Natural Resources and Mines requesting that this approach be taken.

Similarly, amendment should be made to the *Aboriginal Land Act 1991*, and other relevant Acts, based on proposals for reform of Aboriginal land developed by this Inquiry through wide consideration of current issues and with the objective to enable viable and sustainable home ownership and economic development on Aboriginal land.

Land tenure:

- Land which is currently under the tenure of Aboriginal or Torres Strait Islander DOGIT, Aboriginal Reserve, D&O Reserve, Shire lease, Land Holding Act lease or USL should be converted to the tenure of fee simple freehold.
- Land under the tenure of road reserve should remain unchanged, except to resolve anomalies where roads have been constructed off alignment of the road reserve.

Land administration – cadastral improvements:

- Create a permanently registered lot for each parcel of land used for a discrete purpose. This includes a separate lot for each house, commercial premises, municipal or government service delivery building, infrastructure, land used for a discrete purpose such as a park, cemetery, showgrounds, etc. Every non-Indigenous town in Queensland provides a model for how this should be done.
- Create covenants and easements where necessary.

Native title

- The conversion of land within village areas to the tenure of fee simple freehold will require the surrender of native title where it continues to exist. The surrender of native title must be by agreement with Traditional Owners through an Indigenous Land Use Agreement (ILUA), as provided for by the provisions of the *Native Title Act 1993*.

Primary land transfer

- Freehold land lots (after the completion of land administration actions to create appropriate lots) should be transferred to appropriate parties. This will include:
 - the transfer of land used for municipal service delivery (Council buildings, workshops, storage areas, sewerage treatment plants, water supply dams and infrastructure, etc) and public purposes (parks, sports fields, cemeteries, showgrounds, community halls, public toilets, etc) to the relevant Local Government Authority,
 - the transfer of land used for housing, commercial, government service delivery and other purposes to a Traditional Owner corporation.
- Road reserve land, and land where a road has been constructed but is not on a road reserve, would also be transferred to the relevant Local Government Authority (and road reserves created where necessary).

Secondary land transfer

- The Traditional Owner corporation would then sell or lease land to appropriate parties. For example:
 - land used for housing would be sold for private residential purposes or leased to the State for social housing purposes;
 - government service delivery land would be sold or leased to government agencies for the delivery of health, education, police and other services;
 - land used for commercial purposes would be sold or leased to commercial operators;
 - land used for religious purposes would be sold or leased to church organisations;
 - remaining land would be sold or leased to other parties for other purposes as appropriate.

Native title issues on non-Aboriginal land tenures

Unless native title has been extinguished on a particular lease area, including for example pastoral leases and mining leases, then any change to the tenure of leases would impact on native title rights and interests. The *Native Title Act 1993* (Cth) sets out requirements for future acts that affect native title. The Preamble to the Act states that:-

“It is particularly important to ensure that native title holders are now able to enjoy fully their rights and interests... In future, acts that affect native title should only be able to be validly done if, typically, they can also be done to freehold land and if, whenever appropriate, every reasonable effort has been made to secure the agreement of the native title holders through a special right to negotiate. It is also important that the broader Australian community be provided with certainty that such acts may be validly done.”

CYRO submit that:-

- The upgrading of existing leasehold interests to tenures in the nature of freehold or perpetual lease could only occur with the consent of the relevant

- native title holders to surrender their native title rights and interests via an Indigenous Land Use Agreement (ILUA).
- Many pastoral and other leases cover very significant land areas. The surrender of native title could prevent current and future generations of native title holders from
 - accessing the land in order to exercise their rights - such as hunting, fishing, camping, burial, ceremonial activities, and use of natural resources; and
 - negotiation and participation with mining companies and other land developers, which could result in considerable loss of employment and economic development opportunities;
 - Any agreement to surrender native title rights and interests would require significant negotiation with native title parties to identify the conditions under which they would agree to surrender their native title rights. Given that significant benefit will accrue to the holder of an upgraded land tenure, such as a perpetual lease or freehold title, significant benefit must also accrue to native title parties who surrender their native title rights and interests to enable the upgraded land tenure.
 - CYRO would like to discuss with the Inquiry Committee innovative ways of addressing native title that enables benefit for tenure holders and native title parties.

Traditional Owner interests in land where native title no longer exists

Government land tenures exist over some land where native title has been extinguished. CYRO submit that the upgrade of government land tenures in these areas will present an opportunity to address previous injustice and provide benefit to the Traditional Owners of these lands. This benefit should be provided in a way that supports their engagement in the economy rather than in a form of welfare.

Given that significant benefit will accrue to the holder of an upgraded land tenure, benefit should also accrue to the Traditional Owners of that land. Traditional Owners were dispossessed of this land without agreement or recompense in historical times, and they have not been able to enjoy native title rights in more recent times. None the less, they are still the Traditional Owners of the land. The Queensland Government should take the opportunity provided by this Inquiry to identify that Traditional Owners, as well as land tenure holders, could be provided with benefit to improve their social and economic circumstances as a result of land tenure upgrades. CYRO would like to discuss this concept with the Inquiry Committee in more detail with the intent to identify innovative ways to provide multiple benefits as a result of tenure upgrades.

Cultural heritage issues

Intensification and diversification of land use could have serious negative impacts on Aboriginal cultural heritage in Cape York. Most current land uses on government land tenure, such as pastoralism, tend to have lower impacts on cultural heritage since they do not involve significant alteration of the landscape and ground disturbance. If land uses were intensified or diversified into activities that required land clearing, cultivation, access into areas that are not currently accessed, higher

population densities, etc then there could be significant impacts to Aboriginal cultural heritage.

CYRO submit that:

- Comprehensive planning should be undertaken to identify areas of high cultural heritage significance and these areas should not be considered for land use intensification. Previous cultural heritage studies, such as under the Cape York Peninsula Land Use Strategy (CYPLUS), could be used to partly inform planning processes.
- Despite planning to identify areas of high cultural significance, cultural heritage may still exist in areas identified for land use intensification regardless of land tenure. All practical and reasonable actions must be taken to protect cultural heritage, consistent with the duty of care obligations of the *Aboriginal Cultural Heritage Act 2003* (Qld).
- Traditional Owners must be involved and resourced to participate in the preparation and implementation of cultural heritage management plans.