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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
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By email: SDIIC@parliament.qld.gov.au

RE: Land and Other Legislation Amendment Bill 2014

We refer to the letter from the Committee dated 26 March 2014, inviting submissions on the Bill by 4 April 2014.

Cape York Land Council Aboriginal Corporation, Balkanu Cape York Development Corporation and Cape York Institute (CYROs) jointly provide the following submissions:-

1. Inadequate consultation

This Bill was introduced into Parliament on 19 March 2014, we became aware of it on 21 March 2014, we received the letter from the Committee inviting submissions on 26 March and we are asked to provide submissions by 4 April 2014.

We submit that this is a grossly inadequate timeframe and does not allow for any proper consideration of the Bill and its implications for the Indigenous people of Cape York.

It continues the failure of the Queensland Government to adequately engage with and take into account the rights and interests of Queensland's Indigenous People as it pursues its legislative reform program. We have now made numerous submissions in relation to numerous Bills and discussion papers in relation to a wide variety of matters. While we have indicated that we generally support the various reform proposals to date, we have also emphasised the need for Indigenous people to be properly recognised and consulted with.

We again urge the Government to develop an appropriate model for planning and stakeholder engagement to ensure that Indigenous people are properly engaged and

represented, consulted with in a coordinated manner and have their interests and concerns appropriately considered and addressed. This will help to ensure that the reformed processes operate effectively and efficiently.

2. Previous submissions

CYROs provided detailed submissions to the SDIIC's 2013 *Inquiry into the Future and Continued Relevance of Government Land Tenure across Queensland*. We were disappointed that many of our concerns were not addressed in the Committee's 31 May 2013 Report. We are however even more disappointed that the few recommendations of the Committee which sought to provide some level of protection for native title and other Indigenous rights and interests have not been accepted by the Government.

The Committee made 44 recommendations, the bulk of which were accepted by Government. However, 9 recommendations (those containing recommendations about the ways in which native title might be addressed) were **not** accepted. The clear picture is that the Government is willing to undertake reform in the interests of rural leaseholders and others, but is not willing to provide any level of reasonable protection for the rights of Indigenous people.

The Government's response blandly stated that for those recommendations that were not accepted, it would work with "all interested parties" and "key stakeholders" on "an improved approach to native title negotiations, including examining incentives to enhance how consents are obtained" and "to develop template ILUAs". There has been no approach to Indigenous people about these issues.

We reiterate some of the key aspects of our previous submissions:-

- native title exists in much of the land in Cape York, including pastoral leases;
- broad acre tenure change is not supported, although upgrade of small areas of land to freehold may be appropriate in some circumstances;
- native title must be taken into account, ILUAs will likely be required and compensation must be provided;
- as well as the opportunities which are clearly being pursued through these processes for other Queenslanders, so too should opportunities be actively identified and offered to the Indigenous people of Queensland.

3. Reform process

The Government's response to the *Inquiry into the Future and Continued Relevance of Government Land Tenure across Queensland* dated 23 August 2013 (and to the SDIIC Report of 31 May 2013) stated that implementation would occur in two phases, with phase 1 focusing on red tape reduction in lease renewal processes and setting clear pathways to upgrade from leasehold to freehold; and phase 2 involving reform of the *Land Act 1994* and other land legislation to modernise the principles and purposes of land administration, management and disposal. Phase 2 was to occur in parallel with the development of a smoother approach to native title negotiation, and consideration of incentives for all parties to resolution.

Critically, the Government's response stated that "DNRM will work closely with local governments, business, Indigenous parties and the community to progress these reforms". We are not aware of any contact from DNRM since that time, and there certainly has not been any in relation to this Bill.

The Consultation provisions in the Explanatory Notes acknowledge that there has been no community or stakeholder consultation on the provisions of this Bill, but says that the provisions reflect stakeholder aspirations and the Queensland Government's response to the Parliamentary Inquiry. We submit that the provisions of the Bill may reflect the aspirations of *some* stakeholders, but clearly not all stakeholders. The Indigenous people of Queensland are clearly being treated through this process as "second class" stakeholders, and their rights and aspirations are being ignored by the Queensland Government. Whether or not there is an intention to undertake consultation with Indigenous people as part of a phase 2, the amendments currently proposed have the potential to significantly affect the rights and interests of Indigenous people in Cape York, and should not proceed unless and until native title issues have been clearly identified and addressed.

We take issue with the statement that "media coverage of the government's reform agenda indicated support for the land tenure reforms". Which media coverage, whose support and exactly what land reforms (noting that no detail had been released)?

We submit that further consideration of this Bill should be deferred until DRNM has taken steps to engage with Indigenous people.

4. The Bill

We note at the outset that we have not had sufficient time to fully consider the detail of the proposed amendments.

We have prepared these submissions to meet the deadline of 4 April 2014, but ask that the Committee consider further submissions that we propose to provide within the next week.

We do not believe that the Bill complies with the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992* (Qld). As set out below, we submit that the Bill adversely affects rights held by the Indigenous people of Cape York. The Government has acknowledged that there has been no community or stakeholder consultation on specific provisions of the Bill. We reject the assertion that it reflects stakeholder aspirations.

We submit that the provisions of the Bill, particularly those relating to term leases for agriculture, grazing and pastoral purposes and declared offshore tourism leases issued under the *Land Act 1994* (Qld), are an attempt to further extinguish native title rights and interests, in circumstances where there is no adequate provision for compensation to the native title holders.

The Bill contains provisions to:-

a. **"improve tenure security for term leases used for agriculture, grazing and pastoral purposes and declared offshore island tourism leases issued under the Land Act 1994"**

   - **Rolling lease term extensions for term leases issued for agricultural, grazing and pastoral purposes (of 100 hectares or more, or where Minister declares them to be rolling leases), and for all term leases issued for tourism purposes on declared offshore islands**

     A new subdivision is proposed to provide for the extension of term leases used for agriculture, grazing or pastoral purposes, and term leases for tourism purposes on declared offshore islands – to be called "**rolling term leases**".

Native title is likely to exist for many of these areas in Cape York, and the amendments are opposed.

The extensions are effectively mandatory, and may therefore affect the rights and interests held by native title groups. We submit that the provisions effectively seek to make the leases in question perpetual (or at least longer than the original term) as covered by *Native Title Act 1993* (Cth) s.24IC(4)(b) or (c), so as to trigger the procedural rights under s.24ID(4) (effectively the same right to object as under s.24MD(6B)).

The Bill, and the process to date, fails to address or even to consider the effect of the amendments on Indigenous people's rights and the amendments should be deferred until there has been consultation with the Indigenous people of Queensland.

- **No land management agreement will be required at the time of rollover (State Rural Leasehold Land Strategy leases will become rolling term leases) and no consideration of the most appropriate use and tenure for the land (to reduce assessment time from years to weeks)**

  A land management agreement will now only be required more as a tool for compliance. For example, if the Minister is satisfied that an area suffers from or is at risk of land degradation, the Minister may require that the proposed lessee enters into a land management agreement. Existing land management agreements may be cancelled, with the lessee's agreement, if the Minister is satisfied that the agreement is no longer required.

  CYROs oppose these amendments. It may be that the purpose of an original term lease is no longer appropriate, or that the land is not being managed in accordance with its conditions. The amendments will remove any obligation or ability to consider those issues.

- **Pastoral purpose leases no longer need to convert to perpetual tenure before being able to convert to freehold title**

  Section 166 currently provides that a lessee may apply to convert a perpetual lease to freehold land, or a term lease to a perpetual lease or to freehold land, but that the lessee of a term lease for pastoral purposes can only convert the lease to a perpetual lease, and only after 80% of the existing term has expired. The amendments propose to remove the restriction on the ability of a lessee of a pastoral lease to convert the lease directly to freehold.

  The need to address native title issues is not just a question of overriding Commonwealth law but is also a requirement of the Land Act (see s.28(4)(h)).

  CYROs oppose the proposed amendments unless and until provision is made for the effect of the proposed conversion on native title rights and interests, including consultation with Indigenous stakeholders in relation to compensation.

- **Provision for consolidation of multiple adjoining leases (term and perpetual), where same lessee, issued for same purpose and native title has been addressed**

Section 176K will allow adjoining leases issued for the same purpose to be amalgamated, and where a term and perpetual lease are amalgamated, the amalgamated lease will be a perpetual lease.

The amalgamation of term and perpetual pastoral leases is another example of an effective extension of an interest that is limited in time to one that is perpetual. As noted above, *Native Title Act 1993* (Cth) s.24IC(4)(b) or (c) would apply, so as to trigger procedural rights under s.24ID(4) (effectively the same right to object as under s.24MD(6B)).

Again, CYROs oppose these amendments and seeks engagement with Indigenous stakeholders in relation to the effect on their rights and interests, and proposed compensation.

- **Protection of state forest products interests on land being freeholded (to allow State to retain ownership of forest products)**

The amendments propose that a lessee of a lease that is to be converted to a freeholding lease or deed of grant may enter into an agreement with the State that identifies an area as a forest consent area. The agreement may provide for rights and obligations of any kind in relation to the use and management of, including access to, forest products on the forest consent area. The Explanatory Notes state that this provision will enable the lessee under the Land Act to purchase land containing forest products and for the State to retain its ownership of the forest products and to safeguard its right to deal with them. The amendments create offence provisions for interference with forest products on a forest consent area.

CYROs oppose these amendments. Where native title rights and interests exist on term leases, those rights may well extend to a right to access and use forest products. The amendments make no provision for the possible effect on native title, or compensation.

- **Other minor & technical amendments**

The proposed amendments to s.122(3) will facilitate the conversion of unallocated state land to freehold, with the Minister decision on the purchase price for such land to be made in the way prescribed by regulation.

It is submitted that native title of an exclusive nature may well exist on unallocated state land in Cape York. Conversion to freehold will extinguish such rights. Again the amendments are opposed and should be deferred until there is appropriate engagement with Indigenous stakeholders.

b. reduce red tape and fix minor drafting errors relating to taking of water and water licencing and confirm validity of particular water licensing decisions

The amendments propose to validate water licence decisions, despite potential invalidity because the department failed to take into account mandatory decision making criteria.

CYROs oppose this amendment on the basis that if the decisions were made invalidly, then any native title rights and interests will remain, and any attempt to validate now must be done by way of a process that addresses native title.

c. **clarify the public and environmental purposes for which land may be acquired under the *Acquisition of Land Act 1967***

Amendment are proposed to clarify the environmental purposes for which the State or another constructing authority (such as local government) can acquire land – for example, management and protection of the seashore and land adjoining the seashore.

Native title rights and interests exist and are likely to be recognised in most of the land that is likely to be used for environmental purposes in Cape York. There are already considerable powers available to government, including local government, in relation to the management, protection or control of environmental values of land in Cape York, including in relation to seashore, estuaries and land adjoining those areas.

Recently Cook Shire Council has proposed assuming control of foreshore areas along the east coast of Cape York, and has also proposed the creation of esplanades for various native title claim areas. These proposals have been strongly opposed by Cape York native title groups.

The Cook Shire Council proposals, and the amendments contained in this Bill, have the potential to severely impact existing native title rights and interests, when there is no need to do so. Any consent determination of native title will preserve rights of public access. Native title groups are already in many areas working with government agencies to manage and protect coastal land. There are existing regulatory regimes for those areas which ensure protection of the seashore and river banks.

CYROs oppose these amendments, which appear to be directed at the future vesting of areas of prime waterfront real estate in local government authorities, which has the potential to significantly impact existing native title rights and interests.

We anticipate that compensation for compulsory acquisition in these circumstances would be significant.

d. **validate decisions made regarding later work programs and later development plans under the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* and decisions made regarding later development plans under the *Mineral Resources Act 1989***

The amendments propose the validation of "later" work programs and development plans.

CYROs oppose this amendment on the basis that there has been no assessment of the way in which this might affect native title rights and interests. The amendments should be deferred until consultation with Indigenous stakeholders has occurred.

We would be happy to provide further detail in relation to these matters. Please do not hesitate to contact us.

Yours sincerely
CAPE YORK LAND COUNCIL

Peter Callaghan
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