STATE DEVELOPMENT, INFRASTRUCTURE AND INDUSTRY COMMITTEE

Members present:

Mr GE Malone (Chair)
Mr MJ Hart MP
Ms KN Millard MP
Mr CW Pitt MP
Mr BC Young MP

Staff present:

Dr K Munro (Research Director)

PUBLIC HEARING—INQUIRY INTO RELEVANCE OF GOVERNMENT LAND TENURE ACROSS QUEENSLAND

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 28 AUGUST 2012

Cairns

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Committee met at 9.05 am

CHAIR: Good morning, ladies and gentlemen. I declare open the public hearing for the committee's inquiry into the future and continued relevance of government land tenure across Queensland. I thank you for your interest and your attendance here today. I would like to introduce the members of the committee. My name is Ted Malone. I am the member for Mirani and chair of the committee. The other committee members attending today are Michael Hart. Michael, who is second from my extreme left, is the member for Burleigh. Kerry Millard is alongside me on my right-hand side. Kerry is the member for Sandgate. Bruce Young is on my extreme left. He is the member for Keppel. There is also Curtis Pitt, the member for Mulgrave, who is sitting in for the deputy chair, Tim Mulherin, the member for Mackay. I would like to acknowledge the traditional owners of the land on which we meet.

The State Development, Infrastructure and Industry Committee is a committee of the Queensland parliament and, as such, represents the parliament. It is an all-party committee which adopts a non-partisan approach to our proceedings. In relation to media coverage, the committee has resolved to allow television and photography during the hearing. The committee has also resolved that the members of the parliamentary Finance and Administration Committee be granted leave to participate in this public hearing and question the witnesses. At this stage I also would like to welcome one of the local federal members, David Kempton, to join us. I ask the members of the committee to recognise that David also may be able to ask questions of the witnesses.

The program today is as follows: from 9 o'clock—and we are running a little late and we will make allowances for that—to 9.30 we have the Cook Shire Council. We have Ms Penny Laws on behalf of the Etheridge Shire Council and Stephen Wilton. From 9.30 to 10 o'clock we will have the Association of Marine Park Tourism Operators, the Alliance for Sustainable Tourism and the Tablelands Forest Users Group. From 10 to 10.15 we will have morning tea. From 10.15 to 11.15 we will have the Queensland Traditional Owners Network, the Chuulangun Aboriginal Corporation and the Cape York Land Council Aboriginal Corporation. From 11.15 to 12 o'clock, we will have Cape York Sustainable Futures and the Australian Conservation Foundation. From 12 to 12.30 we will have leaseholders.

Although the committee is not swearing in witnesses, I remind all witnesses that this hearing is a formal process of the parliament. As such, any person intentionally misleading the committee is committing a serious offence. For the benefit of Hansard—and Hansard is recording here today—I ask witnesses to identify themselves when first they speak and to speak clearly into the microphone and at a reasonable pace. It is the committee's intention that the transcript of the hearings be published. Before we commence, may I ask that mobiles and pagers be switched off or put into silent mode. We are now in session 1, and I call the witnesses for local government. For the benefit of the Hansard record, would you both state your name and the capacity in which you appear before the committee?

WILTON, Mr Stephen, Chief Executive Officer, Cook Shire Council

LAWS, Ms Penny, Solicitor, Preston Law

Mr Wilton: Stephen Wilton, Chief Executive Officer with Cook Shire Council

Ms Laws: Penny Laws, solicitor for Preston Law appearing on behalf of Etheridge Shire Council.

CHAIR: Would you both like to make statements before the committee and move from there?

Mr Wilton: Cook Shire Council has made a submission to this committee, and I will refer to my notes as I am speaking. We made a number of points in our submission. The first one is regarding pastoral holdings on leasehold land. Remote pastoral leases are generally operated as a rate- and lease-paying enterprise. The businesses are often severely impacted by seasonal and market forces. The current leasehold tenure is very restrictive in terms of business diversification and opportunities for the leaseholders. It is very difficult for them to try to implement any type of business strategies that are normally available to businesses, including other primary industry entities. We would be looking for a simpler process to enable pastoral leaseholders some diversification of their business. At the moment, if it is a pastoral lease, all they are able to do is run a pastoral business. It is very difficult in these times to have a sustainable business in the pastoral industry. So we believe that they should have opportunities for cropping or orchards, low-impact tourism type activities, farm stays and that type of thing as well as low-impact eco, cultural and environmental tourism options including hunting.

Leaseholders should have the ability to graze a range of stock on agricultural leases. They should have opportunities for value adding to their industry. If they can get a small processing plant or something to make the business more sustainable, they should have that opportunity. There should be an opportunity for low-impact aquaculture based on the native endemic species and horticulture based on agreed parcels of land and assessed under the normal environmental impact regime. The enabling of a diversification

permit system would allow leaseholders to better manage their businesses and have a positive economic flow-on for the whole region. Diversification and job opportunities complement a whole suite of tourism options that people are looking to conduct in Cape York. Apparently Western Australia developed such a process back in 2000 and it is working pretty well. We would be looking for a simpler process to enable pastoral leaseholds to be converted to improved tenure, whether that be freehold or grazing homestead perpetual leases. We are also very supportive of freeholding and improving the lease tenures generally for pastoralists and all leaseholders.

The next issue is around townships and town reserves. We believe that the processes for the use of town reserves should be streamlined. At the moment if you want to do anything on a town reserve, it is near impossible. I believe red tape has been touted a fair bit recently. There is plenty of red tape around town reserves in terms of being able to do anything. Town reserves should be available for any purpose normally associated with the town and the development of that town, and that includes things like residential expansion, recreational uses, community, commercial, industrial, roads, water infrastructure, waste disposal infrastructure, telecommunications and education. Town reserves should be able to be used for these activities. You should be able to, as a right, put uses associated with towns on town reserves. We would be looking for no town reserves being removed from any future use.

That leads on to the next item, which is the community purpose reserves. In 1994 the Land Act was amended and the definition of 'community purposes for reserves' was changed. The current definition results in local governments being required to purchase in fee simple land on which operational works are to be conducted. That includes schools, fire brigades, ambulance stations, works depots, landfill sites, water supply, sewerage and telecommunication infrastructure. We would be wanting an amendment back to the 1991 act definition of operational uses so that local authorities are able to conduct operational activities on community purpose reserves. At the end of the day, local authorities generally want to develop their communities. If the land available to do it is a community purpose reserve, at the moment it is very difficult to do it.

An example that we have currently is a community purpose reserve adjacent to our landfill site. Our landfill site is now full and we need to develop a waste transfer station. The community purpose reserve, I think, has the purpose of gravel associated with it. It is just a bare block of ground. It is in an industrial area. But for us to build a waste transfer station on it, we would need to acquire that from the state in fee simple, deal with native title and all those issues. We believe that a community purpose reserve should be available for local authorities to actually do things for their community.

With trustee leases associated with community purpose reserves where the council is the trustee, we should be able to grant a trustee lease over a piece of reserve land because we believe that the local government authority actually knows what the community requires and needs in its development. At the moment, you have to go through the process of developing land management plans, they have to be ticked off by the department, they then have to have ministerial approval. Usually, it appears to be for no real benefit. The purpose of the lease is usually something that the community requires, whether it is some form of infrastructure or a business opportunity for somebody. It is about community development. If you cannot use community purpose reserves for community development, there is something wrong with the system.

The next issue we covered in our submission was the tenure conversion process in Cape York. At the moment, the state, through Natural Resources and Mines, has a policy to divest itself of all the land on Cape York. This has been dealt with through the tenure conversion process. It involves the creation of Aboriginal freehold land, national parks, Cape York Peninsular Aboriginal land under the Cape York Peninsular Heritage Act and a small number of community purpose reserves that are neither Aboriginal nor local government trustee. We believe that this denies legal access for the travelling public to all but the national parks. There are quite a number of people, particularly the grey nomads, who pack up their motor home, caravan or whatever and travel with their pets. The pets are part of their family. They are denied access to national parks. What we would be looking for is that community purpose reserves be created through the tenure conversion process, which would allow people to have access to our lovely part of the world with their pets. This should include reserves on the coastline so that there is access to the beautiful beaches in our part of the world. That would provide an alternative to the national park experience for the travelling public. We believe beach access is an imperative for the long-term community of all residents. They are increasingly being restricted through the process that is in place at the moment, where they are not opening up esplanades, they are not opening up reserves along the beaches. We believe every Queenslander and every Australian should have access to Queensland beaches.

We also touched on roads in our submission. We manage a vast network of gravel roads. To maintain gravel roads, you need access to gravel and you need access to water. As a consequence of the tenure conversion process, it makes life very difficult when those resources are tied up. We believe that a simple solution is if road reserves created through this process or existing roads be given a wider reserve, so that we have access within the road reserve to the necessary resources to maintain them safely. I think that just about covers most of the stuff in my submission. Thank you, Mr Chairman.

CHAIR: That is excellent, Stephen. I compliment you and your council on the submission you gave to the committee. You have covered a lot of areas there. There probably are some areas that cross over with the Newman government's plan to hand more control back to councils, in terms of running your area or looking after your area. I am particularly interested in the reserves of road material on gravel roads,

et cetera, and the cost of haulage. From my perspective, access to those valuable quantities of gravel and road building material is very important. Certainly that would be one consideration that the committee will be looking at in terms of the land tenure. Some of the issues you raise can be satisfied, I guess, by the council actually having more control over the way in which they run council. Penny, would you like to contribute?

Ms Laws: The Etheridge Shire council, specifically in relation to leasehold tenure and grazing leases, wanted us to research and look into the impediment of separating leasehold properties where titles are tied together. They are known as additional area leases. In instances where you have two grazing properties, there are some circumstances where the titles of the properties are tied together by lease condition, covenant or by implication of the Land Act. Those sections of the Land Act are detailed in our submission with a brief summary of the applications of those conditions. Under those conditions, it means that leaseholders can be totally separate but the properties are tied together with other leaseholders. It means they cannot sell, transfer or dispose of those properties unless they have the agreement of the other side or by making an application to the Department of Natural Resources and Mines to have the lease condition or lease covenant amended.

I will do a quick run through of the actual provisions of the act that apply to these tie-in conditions. Leaseholders' properties may be tied together three ways under the Land Act: pursuant to section 205 of the act, which provides that a lease condition may be imposed to restrict the independent disposal of properties; section 373A of the Land Act, which provides that the state may register a covenant against the title of the property and that covenant can restrict the independent disposal; or where leases were granted under the Land Act 1962, pursuant to section 512 of the current Land Act it is implied that a lease condition is imposed that these properties cannot be separately disposed of. The Land Act does not prohibit the removal of these covenants or conditions so there is room for these things to be done. However, the DNRM policy entitled 'Additional area covenants and conditions' states that applications to subdivide or to split tied-together leasehold properties should generally be refused.

Tieing these properties together creates a number of issues for leaseholders. They include financial issues, estate planning issues and business development issues. The financial issues are in respect that it restricts the leaseholders' ability to seek funding for further development of their properties. Specifically, leaseholders find it difficult to obtain finance from financial institutions as the leaseholder and the additional leaseholder both need to be mortgagees to the mortgage and the mortgage needs to be registered over both properties in order to protect the financial institution's interests.

Business development: although leaseholders of additional area leases have successfully operated properties separately for decades, leaseholders are unable to sell, transfer or dispose of their interest in their properties independently and this affects property values and business development. A working example that is appropriate in the Etheridge Shire council local government area at the moment is Whitewater Station and Allandale Station. Whitewater Station acquired Allandale Station by ballot in 1977. It was acquired as an additional area lease because, with previous land practice management and farming processes, they needed a larger space in order to have a successful grazing business. In 1989, processes had developed and farming structures had improved such that the two separate stations were able to operate as successful grazing businesses themselves. But due to section 205, which imposes the lease condition that those properties as additional area leases cannot be separated, they are now tied together. Although they operate as two separate businesses, they have one title for the properties. Obviously that has caused the hardship that I have talked about, with the finances. They are unable to obtain finance to further develop the property unless they have the agreement of the other leaseholders. I think, basically, that gives you a good idea of what the current situation is.

The action that the Etheridge Shire council was hoping that the committee could take back to parliament to see amendment to the Land Act is that the departmental policy be amended to reflect current grazing standards, in that additional area leases are more often than not run as separate businesses and enterprises and their tieing together is based on irrelevant and outdated policy; that departmental policy restricting the separation of additional area leases be repealed; the amount of red tape in assessing applications to amend lease conditions or removal of covenants for additional area leases be cleared; that the process of making applications to the state is streamlined, more cost effective and time efficient; that DNRM, when assessing applications to amend lease conditions and the removal of covenants for additional area leases, should revert to local governments, whose knowledge of leasehold properties should be seen as a governing criteria when assessing such applications.

We understand that DNRM does assess applications for the removal of lease conditions and covenants in respect of these tied-together conditions, but we are aware of one working operation that has actually occurred in the Carpentaria Shire Council local government area. From the date of submitting the application to the actual removal of the lease condition, it was over two years. The process of doing that is not cost effective or time efficient and leaseholders are getting stuck by that point. If they can show that they can successfully run the two separate tenure properties as grazing properties and there is no reliance on the adjoining property, they should be able to split them in a simple enough process.

CHAIR: Thank you very much, Penny. That was wonderful. Your submission actually touches on some very complex issues in terms of land tenure. The committee's role here today is to listen to the witnesses, but there may be a couple of questions that our committee want to ask you. Both of you have made excellent submissions to the committee, which we will certainly be looking at in depth.

Mr HART: Penny, you mentioned that in order to split the leases one party might have to get the permission of the other lessee. Can you give me some examples of that? Were you talking about one party having two separate properties's leases tied together?

Ms Laws: That is the case with Whitewater and Allandale stations. They acquired additional area and tied it together with their parents, so we call it the parent lease and the additional area lease. That was acquired in 1977. As it has gone down, with family planning and everything like that, the property has been distributed to family members or on sold. With other leaseholder properties in the area you can actually have two entirely separate families. In order to obtain the property or the grazing lease, they have had to become a party to an additional area lease with another family or someone they do not even know, in order to get that space. I understand that it was implemented in the first instance because they did not believe that either the additional area or the parent lease were sufficient enough to run a successful grazing property. They had to give them more property to build the business up. Now with farming developments and grazing developments, those two properties can actually be run successfully separately. Leaseholders want to be able to separate those titles and deal with those properties in their own free will.

Mr HART: Can you give us an idea of how many of the properties might be in your local area?

Ms Laws: With Etheridge Shire council, they held a community consultation and quite a few people attended. We have received written submissions from 13 people who are interested in working with Preston Law to get these titles separated. I know that there are more, but my understanding is that 13 made written submissions.

CHAIR: David Kempton, the member for Cook, would like to ask a question.

Mr KEMPTON: That policy was originally to prevent small holdings being taken up and failing. So were aggregating them, I guess, in some sense. They used to have a minimum living area standard, which was a formula of how many beasts per hectare you could run. There was a certain requirement to make money. If the act was just changed, how do you prevent then those non-viable properties from being separated out and just recreating the problems that were there in the first place?

Ms Laws: We definitely think it should still be by way of application—that leaseholders would need to submit or provide a plan to show that their areas are running successfully. That is obviously something that would need to be considered maybe by an DNRM application that considers local government with making that approval or not, as they have that knowledge in that area.

Mr KEMPTON: So if you can make that application now under the act, it is really more a shift in policy rather than a shift in legislation.

Ms Laws: What was that, sorry?

Mr KEMPTON: If you can make an application now to separate, it is a question of addressing the policy more than the legislation. It is the policy around the minimum standard that they need to look at.

Ms Laws: That is correct, because the legislation does not prevent it. It actually says that those things can be done. It is the policy that expressly prevents it.

CHAIR: Thank you very much.

Mr YOUNG: I was just going to say—and this is only a statement—it reinforces the policy of obtaining access to gravel. I think that is a good move. You drive across a lot of good gravel to get to a quarry pit.

CHAIR: I think we have covered pretty much everything. I thank you both for your valuable contribution to the committee's hearing. I declare this section of the hearing closed and I will now call for the those in the second session—the 9.30 to 10 o'clock session—to come forward, please.

McKENZIE, Mr Colin, Executive Director, Association of Marine Park Tourism Operators and on behalf of Alliance for Sustainable Tourism

ENGLISH, Ms Anne, Spokesperson, Tablelands Forest Users Group

CHAIR: This is the Association of Marine Park Tourism Operators, the Alliance for Sustainable Tourism and the Tablelands Forest Users Group.

Mr McKenzie: I am doing the alliance as well.

CHAIR: Thank you very much for coming along today. As I said, and you have probably heard, the committee is here to look at land tenure and the ability for the Queensland government to look at alternative ways of creating or using land tenure. Could I ask the witnesses to state their name and then both of you can then make a statement so that we can move forward from there.

Mr McKenzie: Thank you, Mr Chairman. I will do both at the same time—for the Alliance for Sustainable Tourism and for the Association of Marine Park Tourism Operators. Essentially, it is the same issue. The alliance is looking at more terrestrial, obviously, and the marine park tourism operators are looking at the island tenure, but the issues are very much the same—affecting tourism.

Tourism itself is a very low profit business. Tourism Queensland before the global financial crisis indicated that financial returns on investment were less than five per cent. When you look at that, it is cheaper to leave your money in the bank than it is to invest in tourism in regional Australia, in particular, when you start dealing with things and trying to invest in tourism activities in remote locations, such as islands or on Cape York. So we have a situation where we are very much similar to the pastoral industry. Our returns are low; our risks are high. However, the grazing and pastoral industry get a two per cent lease fee on their land simply because they are a high-risk business with low returns. I would suggest that tourism is in exactly that same situation, with the other exception being that we are a high-employment industry. We provide enormous employment opportunities but, again, at high risk and low yield. The real key to what we are asking for is that we are looking for the same consideration that pastoralists already have. We would like to see land tenure for tourism islands and tourism activities in remote locations be treated as a separate category within the Land Act similar to pastoral leases. We are looking, obviously, for a lower return. Currently, we pay six per cent on the value of the lease for the land. The pastoral industry pays two per cent. We have to do enormous capital costs to make it viable. When you start looking at those capital costs and returns on investments, you realise that it just does not stack up. Let me give you the case of Hamilton Island. Hamilton Island has had over $2 billion spent on it in infrastructure. It sold—changed hands—for $200 million and yet, at $200 million, they are still getting less than a five per cent return on investment. In fact, without their one-off land sales, their profit and loss at Hamilton Island would be negative. It is only the one-off land sales where they are selling land on some spectacular locations on those islands that prop them up. How do you justify the employment of a couple of thousand of people when you are getting a return of one or two per cent on your investment? Fitzroy Island, right in our backyard here, has had $68 million spent on it and the island sold for $8 million. Typically, in our industry we find that it is the second to third owner who finally gets it at a reasonable price and starts to be able to make a return on investment. It takes a long time to develop that market. You can look at the parallels between what we do and what pastoralists and the agricultural industry do. I find it very difficult to stand up and tell the members of the alliance or the members of AMPTO, 'Sorry guys, the government does not recognise you as a public good industry in these areas and you are going to be taxed at the rate of six per cent whereas a farmer would be taxed at the rate of two per cent.'

With regard specifically to tenure, we are looking for long term, in particular on the islands. A lot of the islands started off on 99-year leases. They are now getting down into the 20- and 30-year leases. This makes it incredibly difficult for you to go to a bank and say, 'We want to put another $20 million or $30 million into infrastructure investment.' You just do not have the tenure to get a return, particularly given the fact that those returns are so low. We also see opportunities being lost because of lack of certainty. I think any change to the legislation that gave a very certain future for us would make an incredible difference. When we start talking about lack of certainty—the revaluations—one of the unintended consequences of the revaluations that was done by the previous government and, sure, they were looking at trying to pick it up with the shopping centres, they did not look at what the net effect would be on tourism islands. You could have somebody putting in multimillion dollar facilities—doing wharves and, in one case on Hamilton Island, airstrips and everything else—but they then get taxed on the value of the infrastructure under the current system. So the previous government put a 10 per cent cap in place and said to the operators, 'Your fees will only go up 10 per cent based on land tenure each year'—for the last year and then again this financial year. What scares the hell out of my industry is what is going to happen next year? Will this current government continue the capping of 10 per cent? But the capping is not the answer when we are having 300 and 400 per cent rises in the valuations of the island, because they are taxing us on the infrastructure that we built.

So we really need to get a grip across this. What would the Whitsundays be without tourism? Take the Greenland and Fitzroy islands out of the Cairns economy and you create a massive big hole as well. But it is not even what do you to the existing industry; it is what happens with land tenure? What is going to

happen in the future? How do we develop areas like the Cook shire? How are we going to get in there and give the operators, the people who want to put the money on the table, the opportunity to do so with a degree of certainty?

Certainly, we need to look at how applications to develop tourism destinations are put together. There may be, for example, a leasehold and you need to say, 'We want multiple use.' The Cook shire just said a few minutes ago about needing to be able to do low-impact tourism activities on some of these pastoral and grazing leases. Certainly, we want to do those kind of activities, but it has to be at an affordable price. Once you start trying to go in and doing three- and four-star accommodation and in some cases five-star accommodations in remote locations, there is an enormous investment. Not only is it building it; it is then getting the investment of a couple of years of operation before you start to hit your straps and make some kind of return on investment. It would be nearly as heartbreaking, I think, as trying to grow mango trees.

I guess the guts of the alliance's and AMPTO's submission is that we need a separate category that clearly recognises tourism as also having public good and public benefit to the regions. I am sure the regions themselves understand just how much it affects us, but unless we get the same kind of breaks we are an industry that is in trouble. We were in trouble for investment returns before the global financial crisis let alone where we are right at now. I realise that the valuations are not part of what you are talking about here, but it certainly links so close to tenure that it is not funny. The current valuations, where you are seeing 300 and 400 per cent rises on average on tourism islands, are just simply not affordable. You take the 10 per cent cap off and we will see more islands close. There have already been five islands, to my knowledge, that have closed down as tourism destinations. How many more do we need to have close down before we seriously impact some of the regional economies?

CHAIR: Thank you very much, Col. From your perspective—and not necessarily just the islands but tourism in general and I understand the issue of tenure and the fact that you need long-term secure tenure—have you thought about what would be the best tenure for tourism to enable the operators to move forward and get security for the bank et cetera to underpin it?

Mr McKenzie: No, I literally have not gone down that path and we are not even sure that we will get some kind of recognition as tourism. Ninety-nine-year leases are fine. Fifty-year leases are fine. Nobody is going to finance you out over that 50 years but, typically, if you go to the bank for multimillion dollar applications you looking at 15, 25 years and they want security over what you have got and the current system really does not allow for that.

CHAIR: Perhaps I could be a bit provocative—and I am talking about both land and island tourism. Say you have an operator who has a lease over part of an island and the ability to either sublet that or subdivide that so that they may be able to split the capital requirements to operate that business. Would that be something that the tourism operators would be looking for—to share some of the facilities, or whatever?

Mr McKenzie: Absolutely. A good example would be Fitzroy Island, where they are trying to strata title what they are doing. If you can go into a tourism location and you can do a mix between strata title and hotel management—essentially pulling both lots together—you can reduce the capital cost of doing those investments significantly. That would be certainly one aspect that we are really keen to explore. I know, for example, Keppel islands, the work that they have done there. It does not stack up unless you do a mix of tourism, residential and strata title. You have to have the capacity on any of these tourism leases to do multiple activities. You cannot just limit it in one area. But that is true for the pastoralists too. You want to make the pastoralists effective. You have to give them the ability to do multiple things with their land.

CHAIR: That is well recognised. As I said to the last witnesses, the committee is here to canvass all of the issues and, hopefully, at the end of the day, the recommendation that will go forward to the government will have the ability to enhance both the tourism and pastoral industries across Queensland but, more importantly, in North Queensland. I think there are huge opportunities in freeing up tenure to the extent that you have certainty and have the ability to provide to the banks certainty so that they can lend and that money can be made available. Does anybody else have questions of Col, or do we need to move forward?

Mr HART: Col, have you given any thought as to whether there is a better system for lease payments to be linked in some other fashion rather than unimproved capital value and percentages, so profit or turnover or anything else?

Mr McKenzie: I would love to link it to profit. I think that would be fantastic. We would not have to pay anything. Look, it is an excellent question. What we had in the past—and it is only as a result of the last legislative amendments that it has changed—was collective bargaining. In the past the Association of Marine Park Tourism Operators has collectively bargained with the valuation department across all the tourism islands. We had it linked to occupancy. If our occupancy went up, we would pay more. If our occupancy fell, we would pay less. So we struck a bargain and said, 'These are the levels on 60 per cent occupancy, but if it goes to 65 per cent we will pay extra for the use of that land. If it drops off, it drops off.' I am doing this from memory, but I think in about 2000 we might have been up here and then as the tourism industry fell off the rates went down but then they started to come back up just before the global

financial crisis so we saw this slight fluctuation. But the better the tourism islands were doing, the better the government would do. Unfortunately, part of the unintended consequence of the change to the legislation was it took away the ability to do collective bargaining.

Mr KEMPTON: I would like to make a quick observation. It applies equally to the previous speaker. Where you are making alterations to tenure or use over leasehold, there are implications under the Native Title Act where the state government is constrained. If native title is not extinguished—and the process of getting that consent is very cumbersome and very costly. So, whilst we would like to create the best possible tenure and the best possible mix of uses, that is not always easy to do. It is either prevented by the native title process or it is very costly and very cumbersome. That is an issue we need to address to try to streamline that process.

Mr McKenzie: I do acknowledge the degree of difficulty that that will create. Fortunately, that is your difficulty.

Mr PITT: It is probably more of a comment, Col. It relates to the fact that as an alliance you are looking for certainty of land tenure as it relates to financing. This is not to say that there is not an improvement needed; I think based on your testimony there is. At the moment I would probably say that there is an incentive based approach in terms of Indigenous tourism given any length of tenure when something becomes Aboriginal national park and that sort of thing. Are there moves within the tourism sector to take advantage of what is already there? To me that is almost a gift horse given the ability for finance to be able to go straight in over those very long tenure—

Mr McKenzie: Curtis, in fairness, I have been involved in the tourism industry now for 30 years and we often talk about these opportunities. I think the Ma:Mu canopy walkway was an excellent example where the government got in and built the infrastructure but then looked for expressions of interest to see who could commercially run it. When the commercial operators looked at it they could not come up with a return. I think that is what is happening with a lot of the stuff that is on the table at the moment. How do you do it and make a commercial return? All the local commercial operators that had the expertise to make Ma:Mu work all said they could not. I see that as being the hard part. There is a lot of talk where people say Indigenous tourism in particular is going to be the new wave. Well, I have been watching that for 30 years and it still has not happened. I would love to see it. There are permits sitting there begging to be used out of Cape Tribulation specifically for Indigenous tourism, and it is a fantastic place to do it, but no-one picks them up because we cannot see how to make a commercial return.

Mr PITT: It is interesting that where you have the length of tenure it does not correlate in terms of financing opportunities.

Mr McKenzie: But again, Curtis, part of the problem is that when you go to the bank and you are trying to work on the Indigenous side of tourism and you say, 'How are we going to stack it up?' the people who are typically asking for the money and trying to put that business proposal together do not get tenure; the Indigenous component get tenure so you cannot use that to go to the bank. It really becomes a catch 22.

CHAIR: Thanks very much, Col. We really appreciate your involvement here today. That was very helpful for the committee to move forward with. We will now move on to the Tablelands Forest Users Group. Would you like to introduce yourself and make an opening statement?

Ms English: Good morning, members of the committee. I come from a background of passion with horse riding. I am a horse breeder. I breed quarter horses. I also do a lot of trail riding and have done ever since I was in my early 20s, which is a long time ago. I have a further document to hand up to the committee which expands on the submission already provided.

CHAIR: Does the committee agree that the document be tabled? So agreed.

Ms English: Essentially the submission is directed to the two terms of reference relating to ensuring tourism industries are viable in the future and ensuring balanced protection of Queensland's ecological values. The forest users group is essentially a very loose coalition of national park and forest-using groups, recreational groups as diverse as horse riders, four-wheel drivers, motorbike riders, beekeepers, mountain bike riders, walkers and dog walkers. There is a whole range of recreational users of national parks and forests on the Tablelands, in particular. We came together in response to the forest transfer process that was initiated by the previous government a couple of years ago in about 2010.

What was happening was the government was automatically transferring all of the state forests into national park status. As a matter of principle we did not agree with the automatic transfer. We felt that was not evidence based and there were certainly large areas of state forest which had cultural and social values which were not being appreciated in that process. Nevertheless, because the government decided it was going to proceed with this process the group worked with QPWS to develop what was called a multi-user trail network—a map and a plan for a multi-user trail network which provided for some conservation areas to be set aside for horse riding, economic activities related to horse riding and also for the mountain bike industry.

We reluctantly embarked on that process because we did not see that there was an alternative. The main thrust of that, and also of our submission today, is that there should be no net loss of current existing access to the protected area estate. There is a real opportunity now with this review to look at how to enhance not only the conservation value but also the economic value of our protected area estate by

utilising the community. Interested groups such as the forest users group are committed to a consultative process and are also in agreement with the principle that it is necessary to protect nature and wildlife and biodiversity through government managed and owned lands.

What we are looking for is whole-of-government solutions for a recreation combined tourism approach. We developed some theories in that regard, which are contained in the submission today, when we responded to the draft management plan process of last year or earlier this year for the Tablelands national parks. There are 13 national parks on the Tablelands and there was a draft management plan in process that was advertised. Tablelands Forest Users Group put in a fairly detailed submission. As a result of that, we realised there was a multitude of national parks on the Tablelands but in responding we were trying to pick out what the commonalities of groups of national parks were. One of the principles endorsed in our submission is that the committee might consider a recommendation where we have a much larger bioregional management planning process for national parks or protected area estate which maybe has sections within it that deals with site specific issues.

An example is the current Cape York bioregional management plan. I had the opportunity of attending AgForce conference at Coen recently which provided an overview of the Cape York bioregional management plan process. We are suggesting that that might be extended beyond Cape York. It has a much greater ability to incorporate a wider cross-section of the community user groups and those interested in national parks. What we suggested in that submission was community based management advisory committees that would liaise with QPWS which would have wide-ranging representation. It would perhaps not be a huge committee because we know we cannot get very much done with large committees—this one excepted—but individuals who might have multiple interests such as conservation interests and scientific interests could come to the table to represent local socioeconomic interests in a particular protected area estate and be able to bring some local knowledge and cooperation.

For instance, one of our groups are the quad bikers. They have already put together a plan to QPWS for emergency response after cyclones. They can get into the forest on their bikes. They can clear tracks. They can attend to rectification work. All those sorts of initiatives at a community level are able to be advanced in that management advisory committee process. I think that is probably all that I really wanted to emphasise. In the submission I have given to you this morning there are some core principles that the group started off with a couple of years ago. There is also is copy of the LNP MOU with the horse riders in New South Wales, which is a really good example of a cooperative approach to permitting horse riding to continue in protected area estate which is endorsed by our group.

There are a couple of letters from individuals in our group outlining issues relating to the protected area estate and a copy of our submission in relation to the draft management planning process for the 13 national parks on the Tablelands. Even though we are a loose coalition, we come together as the need arose. In one case last year we were able to draw over 20 different recreational interests to a consultative meeting in relation to the transfer process. I am open for questions.

CHAIR: Thank you very much, Anne. That was a very valuable contribution. I certainly like the view that there should be more local input into what national parks and, more particularly, forest areas can be used for. I do not think the committee wants to open national parks up to larger impacts, but certainly there are opportunities with the forestry areas to look at all of the things that you talk about. The committee would be interested in exploring the ways in which those protected areas can be utilised by local communities and hopefully, as Col mentioned, opened up for lower impact tourism and ecotourism in a way that makes money and also protects the areas so there is local ownership and it is not driven by George Street. We really appreciate your submission. I congratulate you both for coming this morning. As I said, we value your contribution. I think you both gave the committee something to think about. Thank you very much for coming in and talking about your individual issues.

Proceedings suspended from 10 am to 10.40 am

BURNS, Mr Shannon, Cape York Regional Organisations, Cape York Institute

SCHUELE, Mr Mick, Regional Manager, Cape York Institute

HARWOOD, Dr Sharon, Lecturer, James Cook University

CLAUDIE, Mr David, Traditional Owner, Chairman of the Chuulangun Aboriginal Corporation

CHAIR: Sharon, would you like to introduce yourself first, followed by others at the table, and if you would like to make a short statement we will come back to you.

Dr Harwood: My name is Sharon Hardwood. I am from James Cook University. I teach in the area of regional and environmental planning and I have specialisation in community based tourism in remote areas.

Mr Schuele: My name is Mick Schuele. I am from the Cape York Institute for Policy and Leadership. I have been involved with the welfare reform project for about three years and in particular the land use and engagement with the real economy that we have been advocating for.

Mr Burns: I am also appearing on behalf of the Cape York Regional Organisations which is the umbrella group for the Cape York Institute and Cape York Partnerships under Noel Pearson, also the Balkanu Cape York Development Corporation under Gerhardt Pearson and the Cape York Land Council under Richie Ahmat.

CHAIR: Going back to Sharon, would you like to make a summation of what you need to talk to us about?

Dr Harwood: I am just going to read it out if that is okay with you. I have two minutes. I will get it over and done with.

CHAIR: That is fine.

Dr Harwood: My issues are associated with land tenure and tourism development. The major ones that I have identified currently are that the size of the blocks that are in the transfer process are too large and typically contain environmental attributes that trigger a range of other referrals such as vegetation and wetlands irrespective of their proximity to a proposed development and the impacts on these attributes. This creates very costly reports associated with the development and typically the people who are required to do these reports are the least resourced to be able to finance these. They are required to do these reports even though the development may not actually have an impact upon these attributes.

While the government does not support homeland movement, this is what is being sought by some Aboriginal people and the size of the lots do not permit family groups and individuals to have their own secured lot to their name or to their family. Typically the transfer process is associated with the conversion of part of the land to an IPA—an Indigenous protected area—which in turn has ramifications for development such as not being able to undertake cultural activities such as collecting or what other pieces of legislation would class as interfering with vegetation or conserving artefacts such as rock paintings and this impairs the development of a cultural economy.

The most critical issue to address is land tenure and ownership because this determines who can control, own and plan development. In most cities land is described as alienable freehold held by an individual and that planning in the western economic system has evolved to suit this ownership and tenure structure. In western economies we can borrow against the implicit capital value of the land and buildings through a mortgage. The mortgage is tied to a property which is in turn tied to a person. This allows for the accumulation of assets and this accumulation then becomes active capital that puts additional production in motion that is fundamental to the development of the economy. Property rights associated with tenure do not allow Aboriginal people to monetise their assets. In the mainstream economy you have rights to alienate or sell your property. That allows you to use your property assets to raise capital. The ability to raise capital is the essence of capitalism and in a western economy anyone can do it. The fundamental difference between the two types of freehold is related to Aboriginal freehold being community based and the other is based on individual rights.

The issue then becomes if you cannot raise capital on your land assets then you cannot fund production, if you cannot fund production you cannot create jobs. If you cannot create jobs then where does the money come from to buy the food, access medical treatment and pay the mortgage? Aboriginal people cannot control their future if they are bound by tenure and use rights to keep them in the past.

Finally, the most significant and enduring effect of the restrictions on tenure is that whichever way the Aboriginal people turn they will continue to be dependant on external capital transfers from the city. Whilstever the city based institutions control the use and ownership of land in remote places, then Indigenous people will continue to be dependant, poor and marginalised.

CHAIR: Mr Schuele, would you like to enlarge on your submission?

Mr Schuele: I will just get Shannon to make the initial statement and I will follow up with a couple of points to support that.

Mr Burns: Thank you for the opportunity to present to the parliamentary committee today. I would like to acknowledge the Yidindji people on whose land we meet today. Cape York Regional Organisations are particularly concerned with promoting the interests of the Aboriginal people of Cape York, particularly through breaking the cycle of welfare dependence and enabling Aboriginal people to engage in the real economy. This is particularly through homeownership, employment and private enterprise. Reform of government land tenure is essential to achieve those outcomes. We will make four points about government land tenure. Our first point is about the tenures of Aboriginal DOGIT, shire lease and Aboriginal reserve. The Cape York Aboriginal local government areas of Wujal Wujal, Hope Vale, Lockhart River, northern peninsula area, Mapoon, Napranum, Aurukun, Pormpuraaw and Kowanyama are composed mainly of these government land tenures, along with the small areas of road reserves, departmental reserves and Land Holding Act leases which are also known as Katter Leases. Cape York Regional Orgs are determined to enable homeownership and economic development within the village areas of these Aboriginal local government areas. I emphasise the village area, the developed part within the local government area, which is only a very small fraction of the overall land within the local government area. The key reform that should be achieved is that the land within the village areas should be converted from DOGIT, Aboriginal reserve, shire lease, departmental reserve or Katter Leases, to the tenure of fee simple freehold. Outside the village areas the land should be transferred to Aboriginal freehold under the Aboriginal Land Act.

Critically, land tenure reform must be accompanied by land administration improvement. The Aboriginal local government areas generally speaking are one huge parcel of land. The entire local government area is one lot or maybe two large lots. That creates a problem for any person who wants to take up a private interest in land since it requires that party to survey and subdivide their small lot out of the larger lot, then have the lot registered on the government land register, and address native title if native title continues to exist on that land. They have got to go through all that process before they can actually get a registered interest in land. This is far too complex, it is too costly and it is unreasonable.

Compare that to the mainstream system where all that sort of work is already done. You just go up and buy a block of land, you do not have to do any of that land administration work. There is quite a lot of land administration improvement work currently underway being undertaken by the Queensland government. It is being done by Department of Aboriginal and Torres Strait Islander and Multicultural Affairs through the Remote Indigenous Land and Infrastructure Program Office which is based just down the road here in Cairns. Although they are doing a lot of good work, they are not reaching the critical threshold which is really required to achieve development to take off in these communities. They are going about 90 per cent of the way, but they are just not going that final mile. Because they are not doing that they are sort of missing the benchmark that is really required to enable development to take off.

What we want to see them achieve is a permanently registered lot over every parcel of land which is used for a discrete purpose. Where it is a piece of serviced land within the village there should be a permanent lot created over the top of that. Native title needs to be addressed within the village area and it needs to be done for all land use purposes. Currently the emphasis within Queensland government is just on social housing. We want to see this land administration work done to provide for social housing, private homeownership, business development, municipal service delivery, government service delivery—any land use purpose that occurs. Again that is really just replicating what happens in the mainstream. If you look at any other town in Queensland that is the way they are set up. For the program office down the road to do the extra bit of work there is really not much more investment or effort required. For that small amount of extra investment you will get a massive return. We would really like to emphasise that the Queensland government should actually take a policy to extend the land administration work to be a comprehensive solution for the entire township.

Having done the land administration work and the tenure reform to convert it to fee simple freehold, then the land should be distributed within the village area to appropriate parties. Land which is currently used for municipal service delivery should be given to the council, but land which is used for housing or commercial activity at the moment should be given to a traditional owner corporation who initially would hold all the lots in the township but then go through a process of selling off those lots to individuals who are interested in becoming homeowners.

Of course homeownership and economic development must also be connected to an efficient financial system which basically provides access to capital so that we can actually have homeownership and economic development occurring. Through the work we have been doing with the Cape York Institute we have identified that there are models of community banking systems which could be used which would not only provide community benefits, but they can also be used to protect Aboriginal ownership of land into the future which would mitigate against Aboriginal land being purchased by non-Indigenous people. That is our first point: concentrating on Aboriginal land which is under government land tenure.

Our second point is around government land tenure such as pastoral leases where native title continues to exist. Cape York Regional Orgs do not oppose per se the upgrading of these tenures provided the provisions of the Native Title Act are observed. The upgrading of existing tenures to freehold could only occur with the consent of traditional owners and the relevant native title parties to surrender their native title rights and interests via an Indigenous land use agreement. Given that significant benefit would accrue

to the holder of the upgraded land tenure, significant benefit must also accrue to the native title party who would surrender their native title rights to enable the tenure upgrade to occur. So therefore there needs to be significant benefit provided for the native title party for that to happen. We would like to discuss with you further about ways in which Indigenous land use agreements can, in fact, provide mutual benefit for both the landholder and the traditional owners of that land.

Our third point is around government land tenure where native title has been extinguished. We submit that the upgrade of government land tenures in these areas presents an opportunity to address previous injustice because in historical times the traditional owners of that land were dispossessed of the land without any recompense or with their agreement. They have not been able to enjoy native title rights in more recent times so they are really left out of the picture completely but nonetheless they are still the traditional owners of the land and people know it. We are saying that this really represents an historic opportunity to redress some of that past injustice and identify that those traditional owners, even if their native title has been extinguished, there should still be an opportunity for them, through this upgrade of tenure, to also enjoy some sort of social and economic benefits from that upgrade process. That benefit should be granted to those people, not in the form of welfare but in a way which does assist them to engage in the real economy. We would like to discuss some innovative ways of approaching those ideas as well.

Our final point relates to Aboriginal cultural heritage which may exist across government land tenures. Most current land uses on government land tenures, such as pastoral leases, tend to have a lower impact on cultural heritage because they do not involve significant alteration of the landscape and ground disturbance, but as we have heard through this inquiry to date we understand that the upgrade of the tenure is with the intent to intensify land use and diversify land use. If that was to happen, if you started clearing more land, cultivating land, getting access into areas which are not currently accessed, increasing population densities in areas which have low population at the moment, then there could be significant impacts on cultural heritage. Because of this, comprehensive planning should be undertaken to identify areas of high cultural heritage significance and these areas should not be considered for land use intensification. There have been quite a lot of studies, land use and cultural heritage studies such as the Cape York Peninsula Land Use Strategy, or CYPLUS, which was completed a few years ago. This could be used to build a platform for a comprehensive planning system which would inform where cultural heritage exists. Where land use intensification is proposed, all practical and reasonable actions must be taken to protect cultural heritage consistent with the duty of care under the Aboriginal Cultural Heritage Act. That is our summary of our points and we are happy to discuss further.

Mr Schuele: There are two additional points I would like to make to the committee. In particular, in the case of homeownership, there is not a single example of homeownership on any Aboriginal or deed of grant in trust land in Queensland. In that I include all Aboriginal towns or villages. So, not one example in Queensland. This is not due to a lack of aspiration or desire or, indeed, capability, but it is simply that the tenure and land administration system is currently incapable of delivering outcomes. This is a very important point. Fee simple freehold, and the committee knows this but I will point it out again, would mean that the land would be administered under the Land Act 1994 instead of the Aboriginal Land Act 1991. Going to Shannon's point about the town or village area, that footprint that is embedded within the larger deed of grant in trust area, that is all we are talking about in terms of the fee simple freehold option. We want to make sure that that footprint is big enough to allow for future growth. So it is not a tight footprint around existing houses, it has to recognise a bit of a growth footprint and other infrastructure that is there. That would bring that town area out of the Aboriginal Land Act into the Land Act. The Aboriginal Land Act 1991 has many problems and we are still going to have to deal with those problems. As a vehicle to facilitate choice, homeownership and economic development it is a complete failure as a piece of legislation. You have to remember that piece of legislation controls all Aboriginal land and DOGIT land and other Aboriginal tenures in Queensland currently. Thank you.

CHAIR: Perhaps to you, Shannon, in relation to the land council areas you were saying is in one tenure, obviously to separate that out into individual lots will mean that there has to be surveying and individual lots identified so that they can be sold on.

Mr Burns: That's right.

CHAIR: Basically you are saying you would look to bring an act into parliament or this committee would make a recommendation that the Aboriginal Land Council be subdivided, with your affiliate's permission to actually subdivide that up, so that it can be allocated or sold off to individual persons?

Mr Burns: That's right. Basically, if you look at a cadastral map of these communities showing the land boundaries, the basic analogy is if you took an aerial photo and then overlaid it with a cadastral map you would see that for every rooftop you have got a lot created around those, as well as the parks and the reserves and the various other bits and pieces of land in the township.

CHAIR: I was not actually talking about the townships. I think that is a separate issue. I am talking about the large area. You need to subdivide those so they can be bought by individuals or allocated to individuals.

Mr Burns: We would not propose subdividing that at this point. We would wait for individuals to come forward with a proposal for the piece of land they were interested in and make their submission to the council as the trustee of that land to lease that piece of land under the Aboriginal Land Act. We are proposing that the Aboriginal Land Act leasing regime continue to exist on the land outside of the village areas.

CHAIR: We are looking at tenure and trying to give individuals a say over their own piece of ground. What you are saying to the committee does not reflect that. I would assume that, if they were only going to get a lease off the Aboriginal Land Council, that does not actually give them a secure title to go to a bank and borrow money against that title.

Mr Burns: There are ways that we have been discussing within the institute of how to do that. We are saying reform the land tenure to convert it from DOGIT to Aboriginal freehold, which is the transfer process under the Aboriginal Land Act, which is already provided for. We are saying accelerate those processes and transfer the DOGIT areas to Aboriginal freehold, which is then held by a land trust. Then the land trust would grant 99-year leases over that land or leases for a shorter period, depending upon the purpose and the use, to individuals to use that land if they wanted to own a house out of town or if they wanted to use it for some sort of economic activity. We do think that there are ways of attracting capital to finance loans to purchase those leases if we do set up this community banking system whereby the community bank would loan the money to the person to buy the lease. If the person defaulted on paying back the mortgage, then it would be the community bank which resumes the land. So, therefore, the land does not go out of the ownership of the community.

CHAIR: To put a controversial view to you, though, are we not only substituting the Queensland government for the land council? I think the view of this committee is that we would like to see individuals own their piece of land rather than the land council owning it and leasing it back. Is that too controversial?

Mr Schuele: We are in wholesale agreeance with you about individuals owning the dirt that they have their house or business on. We are saying that in the town or village areas, which is the footprint for the town, we should have a private ownership model but that the communities also have the option of considering at what pace that free market opens up in those places. It is up to the community to work that out. We have to give them the tools to empower them to do that.

On the land around the broader footprint—so if you are talking about a 100,000-hectare DOGIT, we are talking about 50 or 60 hectares that is the town footprint and the other 990,000-odd hectares is the broader area. We are saying that that would still be controlled by the Aboriginal Land Act. You still have transfer processes from the DOGIT title to the Aboriginal freehold and then you can do leasing on top of that. The lease would describe the rights of the lessee under that system, which is quite reasonable. We know that the Australian Capital Territory operates completely under a leasehold system. We are saying in the town footprint area we have to move from DOGIT to fee simple lots. It is up to the community, but they have to decide how free they want to make their markets.

CHAIR: I was not actually questioning the township. I was talking about the large area.

Mr Schuele: I apologise.

CHAIR: That is fine.

Mr Schuele: We would have the same principle in the area outside except it would be via a leasehold mechanism.

Mr PITT: I have question to Shannon or Mick. Given that there is a great deal of concern about the fact that collective tenure has its own set of issues—and acknowledging what the remote program officer is already doing—with respect, I think much of what I am hearing today is already happening. It sounds as though it is some sort of a new concept. It is happening in a sense. I take Shannon's point about the ACT. I question why it needs to be fee simple and risk extinguishing native title in the township area as opposed to doing the Canberra model and having 99-year leases. Earlier today we heard from a tourism witness about length and security of tenure in terms of attracting investment. My question is: why move to fee simple when 99-year leases retain the ability to have native title as well as the lease arrangements?

Mr Burns: Fee simple would extinguish native title, but we are saying you then give the fee simple title to the traditional owners. Therefore, they own freehold title to the land, which is a far stronger property right than native title. Then you are able to engage in the full range of economic activity on that land and attract capital and have security of tenure for the people who then take up ownership of land—

Mr PITT: How is native title to be resolved if it is not willingly surrendered or purchased?

Mr Burns: How is it resolved if it is not willingly—

Mr PITT: How is it to be resolved if it is not willingly surrendered or purchased? You are going to end up with a patchwork approach, and that is a very problematic thing for a township as well.

Mr Burns: As I was saying before, if a traditional owner was offered the choice of having native title over a piece of land or freehold ownership of it—because freehold ownership gives you a far greater range of property rights than native title does—then we think it would appeal to people to have that.

Mr Schuele: The point I would make is that, because we do not have the ACT model at our disposal at the moment and we have been working in this area for a number of years and we have had a close look at it—and I know you have as well, Mr Pitt. The point is that we have the Land Act there and it is ready to go; it is the institutional structure. We do not need to replicate the model, but what we do need to do obviously—and I fully take your point about it is not just the risks that we create but also the potential for division and non-agreement. This proposition has to be taken to the community and it has to be agreed to by the community before it can occur. There are risks involved with it, but with the appropriate safeguards

built in to the fee simple freehold model, then we are going to have the best of both words without having to recreate a leasehold approach that runs in parallel to the fee simple approach that the rest of us benefit from and have taken for granted for a long time in Queensland.

Mr Burns: Can I add one further point about the land administration work? You are right, the program office is doing a lot of the land administration work. They are doing a lot of the survey and a lot of the subdivision and they are sorting out a lot of the encroachments where government services are occurring on DOGIT or council activity is taking place on a government reserve—all those sorts of things. But it is being driven solely by social housing. They are only doing that land administration work where a social house is going to be leased back to the state. They are not doing the commercial properties; they are not doing houses which are not going to be leased to the state. They are going into communities and doing 90 per cent of what is required. They are getting survey teams and all sorts of land administration teams and various people to sort out the problems. However, they are going down the street and they are going, 'Social house, social house, social house, shop'—they skip the shop because it is not going to be leased to the state for social housing—and then they start on the other side doing the other houses. So they are leaving these islands of land which do not have the land administration work completed. If somebody wants to come and lease that shop, that individual has to go and do the survey, the subdivision et cetera and that discourages them.

Mr PITT: There is also a point that, as part of that process, they are working with the local government in that town planning process that they are going through and that picks up the other. So they are working hand in glove to do that work. I am not trying to be half-smart, but a lot of what I am hearing is possible and is happening already. I just get concerned that we have not even got to the end of this process yet before we are going into solution mode about what the next big thing is going to be. I think we need to get to that first stage, look at how that is going to operate and look at the opportunities for home ownership. As we know, finance is a big issue around that. Sometimes it is larger than the land tenure issue, and then see where we go from there.

Dr Harwood: May I make a few comments? Tourism is probably unlikely to occur in a village mostly because when people are going to remote places they want to engage with the remote environment. My concern is how would you lever capital from a block of land that is in a leasehold state, and we already have that particular situation with leasehold land as it stands within the state? I think what you are doing is recreating that problem. I have not got a solution for you. I am just saying that you need to be aware that if you just say, 'We will not address this issue over there in the balance for the area—I think they call it the balance of the area—then she'll be right', but I think you are actually going to create more issues than you are prepared to deal with.

Freehold ownership is a bit special because it is about ownership and possession and the ability to exclude, whereas leasehold is a lesser form of tenure and that is just about possession. When you are talking about whether or not it is leasehold and using the Canberra model—Canberra is an artificial environment. Sorry to say, but I do not think it is the best model to use. If you are going to be fee simple then be fee simple and do not be bothered with this leasehold business. Canberra is not the same as Wujal Wujal or Kowanyama. You cannot compare apples with eggs.

The other thing is that if you want to be able to lever some sort of capital out of your block of land, you are going to be far more able to do it if it is fee simple. The bank then has assurance that they can not only own the block of land but also possess it and exclude.

Mr Schuele: Just on a factual point, the land program office has been going for several years—I think four or five years. It has not been until recently that we have actually got some sanity around the point of registered lots that they are surveying and registering. That was partly because we have been advocating for it. They were a bit deceitful with the Commonwealth as to how the national partnership agreement on remote and Indigenous housing money was being spent. The Commonwealth was very interested in getting surveyed registered lots and the Queensland government was saying that it was doing that, but it was not until the recent amendments that were put forward last week that that was actually possible. It was not possible to subdivide a DOGIT until those amendments were put forward.

I take your point around some of the works being done. I also want to reinforce Shannon's point that the investment is there; we just need to have the right objective in mind. Whether you go fee simple or leasehold, it does not matter; you are still going to need that registered lot so that the community is able to understand what land it holds, what bits of infrastructure a council holds, what the house is situated on. So if we wanted to discuss social housing, home ownership or anything else, we must have that registered lot in place. I totally agree that some of the work has been done; it is just the objective. The objective has to be to get an individual registered parcel of land that is on the Queensland land register for that serviced piece of land with the improvements on it. Then we can go forward with a solution, whatever that may be. In terms of the steps that you are saying that we are at now, that is the critical step that we have to take now.

CHAIR: It has to be commercial.

Mr PITT: My last question relates to exit strategies for owners. If a person is granted freehold on a block and they are a person from that community and they might well be someone who is a traditional owner and they then wish to sell that block, if somebody not from the community comes in on that freehold block, again you can very quickly create a patchwork in that community which does go against the principles which you may have set out to achieve in the first place. Again, I just say that there are risks with the approach. I still have that concern about the slippery slope that relates to title.

Mr Schuele: I totally hear and understand your concerns about the risks—and we have exactly the same concerns about the risks. In terms of the risk that that land is alienated and lost, if it, say, was lent to by a mainstream bank, I think the community has to have a policy on that. Each community will have to work out a policy on that.

The other point is that currently under their trusteeship of the DOGIT, the council owns the houses. Even though the chief executive, under the Aboriginal Land Act, makes the valuation policy, the beneficiaries of that land—the residents of that community—already own the land. The point is that the proceeds of sale are going to the council. If the council so chooses, with support from government they can quite easily set up a tranche fund in to which the money goes. That money can be used to support secondary sales if there was no other buyer if you wanted to have a more closed market. Do you know what I am saying?

Mr PITT: I understand what you are saying.

Dr Harwood: It is still a controlled system, though, and it is not a free market system and that is not how mainstream operates. I think you would need to give those people the right to make those choices if they want to sell and who wants to buy.

Mr PITT: And that is the issue.

Mr Schuele: So our bottom line is: do not mess around with the underlying lot or the property right. Give that the same beneficial qualities or characteristics that fee simple has in the mainstream. Of course we are aware that these are discrete Aboriginal communities. They have to make some decisions around what they are going to do. The the Indigenous homeownership lease under the Aboriginal Land Act specifies that it cannot be sold to a non-Aboriginal person. There are cases in the communities at the moment where they would consider selling to a non-Aboriginal person but the Aboriginal Land Act does not permit that. The easiest way to fix that is to give the full choice over that. Fee simple creates full choice and full right to determine how you run your model going forward.

CHAIR: I think the important thing is to give value to that land. I mean, it has to actually be in the open market. I know there will be some issues around that. The committee has actually spoken to other groups that are saying that that is an issue for them. That is probably going to be quite difficult to overcome. I mean, if you are going to have a traditionally freehold piece of ground, that should not be constrained by the fact that you can only sell it to a certain person. That goes against the open market totally.

Mr Schuele: The really important point is that, whatever process comes out of that, we ask the families, the individuals, what they want to do as well as consider the views of the council, if you like. I do not want to get too controversial here at the moment, but I think it is very important. While we have been talking about the fee simple type rights, that is what a lot of families are saying to us. Some councils support that and others do not. It is getting back to individual and family rights over a piece of land.

Mr HART: I do not think we mind if you are controversial at all. I listened to what Curtis said earlier about there being an underlying principle to this whole process. Is there an underlying principle to this whole process? Do you think we understand what that underlying principle is or that previous governments have missed the point?

Mr Schuele: I think you guys are very close to understanding the underlying principle. I would urge you to seek more information where you are not quite sure about that underlying principle. I think the previous government made some great inroads, if you like. The previous government introduced the 99-year lease under the Aboriginal Land Act, and that was a positive move. They set up the land program office to sort through some of these issues. I come back to the point that this approach is not viable or sustainable unless you have a registered lot and you have a clear process that can establish and sustain the ownership of that piece of land. So what I am saying is that it has to be a secure interest in land and we have to consider how far communities want to make it transferrable, if you like.

Mr HART: Just to clarify, in your own words, what is the underlying principle that we are talking about?

Mr Burns: The underlying principle is that these communities at the moment are virtually welfare ghettos and that there is virtually no opportunity for people to become homeowners and very limited opportunity to set up businesses and create employment and create economic activity which allows people to get off welfare and start standing on their own two feet and owning their own house and looking after themselves, which is what people want to do. Of course, we know that that welfare situation is what is creating a lot of the other social issues in these communities as well. In order to break that welfare cycle, we need to set up land arrangements.

Mr HART: So are you saying self-determination?

Mr Burns: I guess it is a form of self-determination, yes, where people can choose to work and set up a business and own their own house.

Dr Hardwood: To me it is about equality. It is just about being equal and having the access to equal rights and equal processes. At the moment it is not equal.

Mr Schuele: For me it is also about protecting and managing those risks for people but not, if you like, impairing the rights that we are giving through concern about the risks that we are creating. The Aboriginal Land Act 99-year Aboriginal homeownership lease is an example of that, where you are impairing, if you like, the property right because of the risks that you are concerned about managing.

Mr HART: So governments have overly protected people in the past and we should be letting people sink or swim? Is that what you are saying?

Mr Schuele: I do not think plunging anyone off a cliff top is the answer, but we need to manage a process. We need to be clear about the situation we are dealing with and what we are trying to create and where we are going to head in 15 or 20 years. The point is: if you set up a form of homeownership now that has limitations on it, then we are going to have to deal with these issues again in 10 years. The simplest way to deal with it is to set up a bona fide gold standard right now and then build all the other structures around it. But do not mess around with the underlying right.

CHAIR: At this point I would like to call the others to come forward—the Queensland Traditional Owners Network. I have Vincent, Dale and Kim.

ELSTON, Mr Kim, Director, North Queensland Land Council

MUNDRABY, Mr Dale, North Queensland Land Council

MUNDRABY, Mr Vincent, North Queensland Land Council

CHAIR: David has a question in relation to your segment. If we can just clear that up, I will pass on to David.

Mr KEMPTON: I would not pre-empt the outcome of this committee's work, but there is no secret that the Newman government policy is to provide freehold for Aboriginal people in Queensland for the purpose of homeownership. I am just concerned at your language about community participation, traditional owners or, if you like, native titleholders having these blocks in the village, a community bank and other constraints to prevent outside people owning these properties. Understand that freehold is freehold. If communities elect to take on freehold, they take on freehold and you could get people from outside owning that property. You cannot constrain it. I think we have to take the training wheels off this process and just let freehold evolve. As soon as people start living in their own homes, they are creating an economic base in their communities. I think all this talk about constraints and limiting who owns it and what happens smacks of a bit of the old paternalism. I think we need to let this go as freehold—I agree with this lady here. Whatever models we might be looking at, we need to create an opportunity for Indigenous people in Queensland to own their own homes.

Mr Schuele: We agree wholeheartedly with your sentiment, but the point that fee simple cannot be aggregated into a trust of some nature and rules put around how that fee simple is used and disposed of is possible and I think it is advisable in some cases. In other cases it certainly is not advisable. I just give you the example of the community of Mossman Gorge. That is a small community. There is a limit on land. They have some freehold lots now. It is within their rights to incorporate those fee simple freehold lots into a trust model and to control how they want to use their land. In other cases there is a big investment problem in these places. I think you are absolutely correct around not impairing incentives and making sure that fee simple is fee simple freehold and that is understood and is allowed to run. I think communities should have some option to look at it themselves and to make decisions and choices around that. I take your sentiment totally, David.

CHAIR: David, if you would like to introduce yourself and make a short statement, we will go on from there.

Mr Claudie: I am Dave Claudie. I am a Kuuku I'yu Northern Kaanju traditional owner and custodian and chairman of the Chuulangun Aboriginal Corporation, which is based on the Kuuku I'yu homelands on the upper Wenlock and Pascoe rivers in Cape York Peninsula. Chuulangun is leading the homelands development, economic development, environmental and cultural heritage protection of the Kuuku I'yu Ngaachi.

I am here to speak about the submission made by the Chuulangun Aboriginal Corporation and to respond to any questions the committee may have in relation to the submission. I will speak in particular about the needs and aspirations of the Kuuku I'yu Northern Kaanju traditional owners, but my comments also have applicability for the wider Cape York.

First, it is important to make the point that there are two systems of land tenure in Australia—the Indigenous land tenure system, which is based on Indigenous governance, and an overlaying patchwork of introduced tenures which is the government land tenure system.

I will speak about land tenure, governance and management on the Kuuku I'yu Ngaachi. The KINK Ngaachi encompasses some 840,000 hectares—that is our traditional homelands—and comprises some 30 clan estates, each with its associated bloodline and 'story' which form the foundation for the governance and management of our Ngaachi. This foundation of Indigenous land tenure is overlaid by various government imposed land tenures including Aboriginal freehold, pastoral lease, homestead lease, permits to occupy, reserves and national parks.

Almost 200,000 hectares of our homelands are under Aboriginal freehold, transferred under the Aboriginal Land Act in 2001 and forming part of the Mangkuma Land Trust. It is over this Aboriginal freehold that in 2008 we declared the Kaanju Ngaachi Indigenous Protected Area, which is managed by Chuulangun on behalf of the traditional owner custodians under the national reserve system. We plan to declare more areas of our homelands as IPA to be managed under IUCN category IV, protected area managed for conservation and recreation purposes.

Our economic development is based on sustainable land and resource management and includes employment of rangers, environmental services, low-key tourism such as campgrounds and cultural tours in association with our industry partners, and the development of microenterprise based on Indigenous knowledge of plant medicines. Despite much of our homelands being under 'outside' management and introduced land tenures, we have developed strong relationships with the landowners and managers, including with neighbouring pastoralists, and we are joint holders of a permit to occupy over Moreton Telegraph Station at the northern part of our homelands. We have a MOU with Oz Tours which is based on our mutual goals of sustainable and culturally appropriate economic development on homelands, the generation of employment on homelands, and support for the local economy.

Recognition of Indigenous rights and interests in land is central to the future shape of tenure, management and development in Cape York. Very little legislation, especially regarding land tenure and NRM, is shaped with input from traditional owners, and it rarely reflects their rights and interests or their governance, autonomy and Indigenous social structures. There is a need to engage traditional owner custodians and their representatives, that have been chosen by them, in a program of review of government land tenure, legislation and land tenure processes to better consider and reflect traditional owners' rights and interests in social, economic and environmental matters.

The agreement of traditional owners on land use decisions takes place at individual, family and language group levels. Within this is an array of rights and interests in land that must be carefully differentiated and respected. However, a history of rights conflicts, paternalism, policy failure, lack of trust and inability to adequately address Indigenous needs have led to seriously damaged relationships between government and Indigenous peoples. This is only compounded by poor cross-cultural communication between government and traditional owners. There is a need for purpose-built engagement structures.

I will now speak about Indigenous access and use agreements on government land. The process of coming to agreement with regard to Indigenous access and use on government land tenure is filled with complexities and inconsistencies. Traditional owner custodians have the right to choose their own representatives with regard to development of agreements that concern their homelands. Agreements should be instigated by the correct traditional owners for a given area and they should have independent legal advice when negotiating with government and other parties. It is a native title right to choose one's own representation, and this should be met in all dealings with regard to land tenure, land use and management. Any reform of the government land tenure system should ensure that this happens.

I will now speak about different governance systems, boundaries, culture and customs. Traditional governance and customary tenure is very different to the tenure arrangements of government. Lines on the government's maps do not correlate to the traditional owner's customary boundaries. This can lead to confusion in relation to who is speaking for what country and incorrect modelling and representation for land trusts and landholding bodies. This has implications for the transfer of land to Aboriginal people, ILUAs and IMAs, including in the current state land dealings on Cape York. It is important that the correct traditional owners are involved in this process. A prime example is the current Batavia state land dealing on 235,000 hectares of the northern Kaanju homelands and a proposal for the grant of the land to a corporation where only three of the 40 or so members are actually from the area of concern.

The landholding acts of government take a regional approach to land tenure that is inappropriate and non-Indigenous and thus inherently problematic and inconsistent with Indigenous title and governance. Landholding groups including many land trusts are artificial groups that have been legitimised by government policies and processes. One possible solution to this matter would be to change the mapping of tenure on Cape York so to be able to better reflect the traditional governance boundaries. In the event that this is not possible, then the models used for land trusts and landholding bodies need to be better considered.

The Cape York Peninsula Representation and Governance Group, CYPRaGG, is a proposal to assist government in negotiating Indigenous governance and representation. Governments and lawyers often describe Indigenous governance as 'difficult' and 'vexed', but it is neither of those things to us. No 'expert' can help negotiate these issues better than Aboriginal people themselves who have traditional connection through blood line to particular country on Cape York Peninsula. The CYPRaGG, comprised of Indigenous reference groups, or IRGs, from across Cape York, would facilitate the formation of land trusts, landholding entities and PBCs based on the tribal grouping, which is the more appropriate level at which Aboriginal people govern and manage their country.

The creation of separate land trusts or PBCs for each traditional owner group within a particular area would mean that administrative functions and capacity building of each entity could then occur at a community level. In this way governance systems would be enabling the right to self-determination, autonomy and self-government at the traditional owner governance level. Local IRGs comprising of the traditional owners for an area would provide advice and be major decision makers with regard to planning, land management, homes and economic development for their particular homelands. Homeownership leads to economic development of our homelands.

I will now speak about environmental protection, homelands development and the conservation economy. We have to create some sort of economy and thereby relevant people having ownership of our homelands. The land tenure system of government provides little support for traditional owners to take opportunities to develop their preferred sustainable livelihoods on their homelands, engage in employment and participate in the economy and sustainable development. There is a lack of coordinated strategies and investment in remote area development—for example, tourism, the carbon market, natural resource management and alternatives to mining—and this is holding back the ability for economic potential to develop in remote homelands and communities. There is a direct role for government to facilitate an investment strategy in a remote area 'conservation economy' and in capacity building for Indigenous landholders and entrepreneurs which would further support Indigenous people to access the benefits of their land which may have been transferred government land.

There is also an issue of equity. Historically, Indigenous people have been denied the benefits of economic development taking place on their homelands, and this continues in many forms today. A social justice approach to the issue would result in a range of compensatory and advancement measures, as of right. Traditional custodians need more funds at the grassroots level and better land tenure arrangements and investment strategies to enable them to benefit economically from their rights and interests in land.

Contemporary environmental approaches are integrating traditional custodian rights and responsibilities to look after country. Unfortunately, centralisation of effort under land and sea centres controlled by local councils and regional city based organisations is diverting resources, frustrating or limiting efforts on homelands, and failing to deliver and secure economic outcomes. There is a need for government to devise more appropriate land tenure arrangements and to recognise, support and work with locally originated, owned, operated and controlled Indigenous organisations on country.

Studies show that people living and working on their homelands benefit from a range of social, cultural, economic and health outcomes, as well as improved employment, training and capacity-building opportunities. Despite this, there is inadequate recognition and limited support of, and even hostility towards, the value of a homelands approach to development in remote areas. Government needs to steer away from a restrictive and collectivised approach to Indigenous development issues under the narrow frameworks of welfare reform and dependency and move away from the assimilationist mentality which concentrates programs and service delivery into centralised communities and 'growth' towns.

In conclusion, we urge the government to support an agenda of reform of the land tenure system that will see recognition of proper Indigenous governance, kinship and blood line. If the government is serious about this, there needs to be reform of the ALA, serious overhaul of the state land dealings processes and proper assessment of the future and continued relevance of government land tenure that considers the rights, interests and aspirations of the correct traditional owner custodians for a given area. New legislation and reform of existing legislation should be formulated from the inside out and appropriately recognise the legitimacy of Indigenous customary law, governance, kinship and blood line. At the same time, Indigenous law needs to be recognised in all acts of government.

How many Indigenous people up in Cape York, or throughout Queensland for that matter, are talking for themselves to the government? You need to talk to the right people.

CHAIR: Thank you very much for that, David. Would you mind if we table that document that you are reading from?

Mr Claudie: I am happy to table it.

CHAIR: I seek leave of the committee to table that document.

Leave granted.

Mr Claudie: There is a map there too with all the tenures.

CHAIR: We have that on *Hansard* but it will be valuable for us to have your document as well. We are running short of time but I want to get opinions and statements from everybody else. Vincent, would you like to talk to us?

Mr V Mundraby: I would like to thank you for giving us a couple of minutes to have a chat. I acknowledge the traditional owners. I am also the director of the North Queensland Land Council and I am the Yarrabah ward representative. Yarrabah has been one of the largest Aboriginal communities in Queensland. We have about 4,000 people and around 300 houses. So when you start crunching the numbers about homeownership, one of the things that we were trying to achieve over the last 20 years was developing an ILUA which actually came together under a native title determination. So now that we actually have these determinations, within the last nine years of those negotiations we have had block-holders, which are residents of Yarrabah community, who have made themselves party to the claim to achieve some tenure of land. Through that they have actually negotiated 30-year leases which should be granted shortly. However, there is a great divide between the concept of the great Australian dream for Yarrabah people and how governments perceive the concept of homeownership in Yarrabah.

What I want to talk about is the framework and how elements of the framework of achieving a tangible outcome for homeownership in Yarrabah could be identified within the various ILUAs that have been developed between the state government, the traditional owners and the council. What we must remember is that over time the local governments have gone through an evolution from deed of grant in trust legislation to the Local Government Act, and within that there was a certain time frame for these councils to transit from one piece of legislation to the other and undergo all the upskilling so that they were fully prepared for when these leases or applications for leases actually came forth from the community.

So within that we have looked at the corporate structure of these Aboriginal communities and they do not have the capacity due to some of the issues that we heard about previously. Some of these blocks or leases would need to meet some set boundaries and applications and ground proof by traditional owners due to the cultural heritage values of the land and the underlying tenure and how native title is still preserved on these tenures. So I just want to talk about the framework that is identified within these various ILUAs. It may involve two or three of the ILUAs at the one time. To give you an example, there is a local government ILUA at Yarrabah. Then there is the block-holders ILUA. Then there is the traditional owners and the protected area ILUAs and also the cultural heritage agreement between the traditional owners, the state government and council.

While we are talking about the framework, there are some elements that we need to be aware of—for example, the town common area or the township area. Under the ILUAs at Yarrabah, the council have the right to operate as a local government authority within the town area. There would be mechanisms identified for the protection of cultural heritage within the town area and the interaction between that. External to the town area there are mechanisms of veto due to the protection of cultural heritage areas and how that land needs to be managed. But also there is a mechanism that actually looks at the transition between the internal township area and external of the township area and how we can develop lands that are external through the permission of traditional owners and the inform and prior consent process that could be identified under the Native Title Act due to the determination of native title on these tenures that actually identify the societies. I will say no more—my uncle actually spoke about connection to people and country.

Just talking about the concept of home ownership in Yarrabah and more so within the township area, it is a hollow concept. I think you have more chance of going across the great divide from here, due to the fact that after nine years of struggle and negotiations some of the block holders have the land but the access and the Queensland government housing infrastructure that sits on it is not theirs. It is owned by the Queensland government, owned by the council. All this time they were negotiating for a cake and they got a doughnut. I cannot see how home ownership or the concept of the great Australian dream will be achieved while we have a group of residents who have been fighting for land for nine years, but then council will not sell the land to them. With the poorest of the poor, as we heard, in regards to these postcodes, the houses are going to be sold to them for some incredible price of nearly half a million dollars. The cost of building these houses on these communities is an issue. There is an issue of how to get the houses off the local government housing asset registry and how we sell the local government assets to the poorest of the poor.

I am conscience of the time. One of the issues is compliance of these ILUAs, which actually took 20 years to develop with the local government, with the traditional owners, with the residents and with the block holders. There is no compliance. Even though we have ILUAs registered in the federal court that actually identify cultural heritage areas, we have local government planning schemes that do not give credence or respect to these registered ILUAs. We talk about animal protection. The natural resource management plans that are developed by traditional owners could actually sit underneath the strategic plans that the council would need to develop, the planning schemes. I am aware that the councils would have to develop their own natural resource planning scheme. There is commonality and uniformity there, which could be complemented.

A lot of the councils still do not make the transition from the Deed of Grant in Trust to the Local Government Act. That is an issue in itself, although not on the Indigenous people's side; it is a local government issue; it is a council issue. At the moment they are trying to take over as much land as possible because of the fiscal formula that is applied to councils.

Also, as my uncle said, we have things in place like the Indigenous protected areas agreement. We have determinations. We need a lead agency or a framework that actually demonstrates leadership; leadership in regards to compliance and, instead of reinventing the wheel, how they actually complement existing frameworks. Just in the Yarrabah area, we signed off on agreements with Minister Mal Brough in regards to welfare reform. We have had numerous pieces of legislation and acts so we do not know how to act now. We just want the great Australian dream. Once you identify the actual ILUAs that are in place, economic development comes out within that. If you have a framework that gives compliance, recognition, equity and tangible outcomes for the needy, especially in the 4871 postcode area, I think we could achieve it. Thank you.

CHAIR: Thank you, Vincent. Kim?

Mr Elston: Firstly, I acknowledge the traditional owners of the country upon which I am. Secondly, I thank the committee for allowing us this moment to put some matters to you. I am the Director of Legal Services, Research and Policy at the North Queensland Land Council. That is a large area. It starts at the Daintree River and goes to Sarina, out to Richmond, back up to the Norman River to Normanton and back across. We represent approximately 35,000 Aboriginal people in our area. The two DOGIT communities are Yarrabah, which Vincent has spoken about, and Palm Island. They are the two largest Indigenous communities in Queensland. Obviously, they are right next to regional centres such as Cairns and Townsville.

We are Commonwealth funded and our mandate is to seek the recognition and protection of native title rights and interests on behalf of Aboriginal people within our rep body area using the functions of the Native Title Act. Firstly addressing home ownership, personally I think it is a wonderful idea to give Aboriginal people, Indigenous people, the choice to own their own land and home. I think, though, there is a need for employment, business opportunities and sustainable economic development in these communities to support that ownership, because without that the ownership will disappear. I think they have to be linked to give them the ability to be sustained over a long period.

Vincent pointed out the differences in housing in Yarrabah. I was involved on behalf of the Manbarra people. I legally represented them in negotiations with the previous state government in regard to Palm Island and developed an Indigenous land use agreement that has been registered. It returned to the traditional owners of greater Palm Island about 40 per cent of the island, which you really could not build a

house on because it is the rugged part of the island. They have developed a business plan, which has gone to the government, for cultural tourism off their section of the island. However, we are in the process of and are waiting for the state government to forward us a draft of the 99-year lease that they are going to get for that area. To get that they had to make some concessions. The parties to the ILUA are the state government and the Palm Island Aboriginal Shire Council. There was housing to be built near the airport. There is a great need for housing on Palm, just like Yarrabah. I am sorry to say that my understanding—and I have not been over there for about six months—is that no dirt has been turned; nothing has happened. I know the surveying has been done, but nothing has happened. I did raise this with Minister Macklin and the Commonwealth. It took so long to get that agreement and now nothing is happening. I would encourage the government to look at that, because there are desperate needs in both those communities and we do have agreements that can allow for housing. That is one point that I wanted to make.

In relation to the land tenure conversions, in that area that I have described we deal with pastoralists, we have national parks, we have state forests, we have nearly every tenure that the government issues. I would be submitting, that in relation to land tenure conversions, there is a need for the government to recognise the native title rights and interests on the land that has been transferred. That can be done through an Indigenous land use agreement, which will also give protection to the cultural heritage on that land, because it will have a cultural heritage process under Queensland's Aboriginal Cultural Heritage Act. There is one instance, and I know David would be aware of this, of the Karma Waters Western Yalanji determination, where a pastoral lease was converted to a perpetual lease, the non-extinguishment principle applied and it is in that ILUA. So you have a model that actually does do it.

Obviously, because I represent Aboriginal people in that area I do not proffer surrendering native title, but in a lot of instances there has been surrendering to allow for development but, at the same time, to get benefits, not just cash but employment and business opportunities within those developments. Not every shoe fits every foot here. I have worked at Cape York, as David knows, through the early part of 2001, 2002 and 2003. Those communities are extremely remote. Yarrabah is a short drive over the range here. To get to Palm Island, you can get on the barge or catch a light plane that takes 15 minutes to get there. Sometimes there has to be some flexibility in this arrangement that meets those needs which are quite different, apart from the common needs such as housing, employment, business opportunities and the chance to close the gap and be able to say, 'I am equal and I own my own home and I have a job'. I acknowledge and thank you for the opportunity to put written submissions to your committee, which we will be doing over the next few days.

CHAIR: Thank you. Kim, I understand that you were not involved to start with and you will make a submission to the committee. We need to have that reasonably quickly so that we can agree to have it as part of the draft. We welcome you along and thank you very much for coming along. Does anybody else have a comment?

Mr D Mundraby: We have pretty much addressed the issues and concerns that I have. Just in terms of the tenure again, as Kim highlighted, in our region basically we live amongst that, as well as two World Heritage areas and high, medium and low-protection areas. There are a number of groups running their own ranger programs in terms of land management. A key aspect of long-term sustainable operations is these corporations developing their own economy, which is basically using the land on which they are working on now. Whilst we do have the bee keepers, the horse riders and all those other interests out there, the fundamental and one of the additional stakeholders are the traditional owners. We ask that we be consulted equally and appropriately, as the lady at the end of the table mentioned earlier. Again, I thank the panel for their time.

CHAIR: I thank you all very much for coming along. I think we have gained a valuable cross-section of opinions. I should allow a little bit of time for any questions from the committee. I reinforce the fact that we are here to listen. From the comments you have made, certainly there are some issues over and beyond the land tenure system. The principle we are endeavouring to work on is that we give individual people the right to own their own piece of land and they make the decision as to whether they borrow money to build a house or create their own determination. In that respect, of course, it creates issues in terms of the traditional owners. Obviously, we have to be conscious of where we go with the recommendation we will be making to the government. It is a unique opportunity to create an environment where individuals can have the right to own their own home, as every other Australian has the right to do. The government will take notice of the report that we present. I am presumptuous enough to say that that is what we are looking for. Are there any other questions from committee members?

Mr HART: To the four gentlemen who joined after the first session, if the government went along the path of freehold land, do you think that people would accept the ultimate extinguishment of native title as part of that at the end of the day or would they always want to have that as some sort of fallback position?

Mr Claudie: I think people would question it a bit more in terms of whether they do have that native title right in the first place before they make that decision. In terms of having some sort of ownership around it, native title has to provide some sort of ownership in order to deal with—because the Native Title Act is a federal act, it does not belong to the Queensland government. So the federal government act is saying for Queenslanders, 'Yes, you have the native title right towards ownership, but it is up to the Queensland government for the tenure stuff.'

Mr HART: I am talking about moving to freehold.

Mr Claudie: That is what I meant by the Queensland government. For the people moving to freehold or making any decisions there, they have to have some sort of ownership within the native title framework.

Mr V Mundraby: Yes, there will be. In our traditional estates, once we go through an informed and prior consent process with the people there will be identified areas that could be turned into freehold. Also, it is not only on the Indigenous owned tenures like Yarrabah; this mountain range that we have, looking over across the inlet, is determination. We had that determined in 2006. So if there are areas within the national park that would want to be opened up and, through agreement with the traditional owners, turned into a tenure that could achieve an economic outcome for traditional owners and the broader community, then we are open to that. However, our rights and interests would need to be considered and protected. Cultural heritage areas within those tenures would need to be recognised and protected. So there is room for management and development within our country estate, but we would need to go through a prior and informed consent process to achieve that.

Mr D Mundraby: Whilst legislative change would no doubt speed up the process here, at the moment we are relying on our own structures and networks to basically coordinate the various agencies within government to carry out various activities.

CHAIR: Vincent, I think you made a very good point earlier. It is good for the poorest of the poor to have access to a freehold block of land, but that makes it very difficult for them to raise funds to build a house on. It would seem to me that there are some huge issues around just the entitlement of a freehold block of land and how you progress that forward. That is not the committee's role, but it would seem to me that we need to be conscious of that fact as well.

Mr V Mundraby: Under the planning scheme for the local government there could be room to negotiate the different types of buildings that could be established on these different tenures. It comes down to the town plan, the building and the planning scheme and what that would look like. Due to the fact that this is the first time the land is going to be regulated to some extent, we would need a longer, drawn-out process that is actually set aside under the Local Government Act to do town planning schemes.

In Yarrabah, as I said, we have 4,000 people and 300 houses. So once the Yarrabah council starts their planning scheme there is going to be a category of dispossessed people—homeless people—in Yarrabah for the first time in our history. They would not be able to live in the illegal dwelling because it does not fit the standard of building and it does not fit in with the town plan. Of course, we would need a longer time frame to actually educate the people—actually let them know there is going to be an impact before the bulldozer pulled up the next morning to take away their humpies, where they were living on the esplanade for 120-odd years. This is the impact that we are actually going through.

It is all good talking about the warm and fuzzy homeownership—the great Australian dream—but whilst we are looking at these tenures and these communities that we are living in, we are going to have a category of dispossessed, homeless people. A lot of these people would need assistance to fill out forms or assistance to go to the right service agency if it is not in Yarrabah. They have no credit history; they have not been renting. Those are the problems we are actually coming up against. The only thing we know is that the train is coming along the track because the council is going to do a town planning scheme. We do not know when, we do not know how and we do not know the implications of it. That is the great divide that I actually talk about. It is all right at the other end of the rainbow, but how far do we have to walk to get there?

CHAIR: And you actually have to develop the economy of that community by diversification—being able to create jobs et cetera—so they then have the basis for borrowing some money. It is a bit like where you put the horse before the cart or the cart before the horse. You actually have to develop an economy within that community somehow or other to enable all this to happen.

Mr V Mundraby: That is right. I talked about the fiscal formula. To my knowledge, the Yarrabah council gets so much funding from the state government for the amount of freehold land they have and for X amount of roads within the community. The Yarrabah council can talk for themselves, but they would need a bit more funding to assist themselves to go through this transition so that they could assist us. There are a multitude of problems in regard to social welfare. If we are looking at these communities, there could be Centrelink problems in regard to not declaring that they have been living in humpies and did not have a tenancy agreement for all their lives. We could be looking at the start of families in Queensland here getting ripped apart by child welfare agencies and the other service providers because the family unit cannot be kept together. That is the reality of it.

Mr Claudie: Aboriginal people will have that freehold. That is what I am saying. They will go for freehold if they are given the rights of being recognised inside, say, the Aboriginal Land Act, inside the land trust structures. That land trust structure is what we call a hybrid land trust structure. You have 10 different tribes of Indigenous people in there when they each have their own homelands to go on. With the DOGIT, what we did for the Aboriginal corporation to be formed on that homelands for us mob was to actually get our own money to come in so that we can build our own houses but it is owned by the corporation; it is not owned by the individual. And then what we do is say, 'You pay rent for that for the time you stay there,' to

the traditional owners or whatever—the outside mob. But the traditional owners' first priority would be coming to landownership stuff. In order to get freehold, we sort of move it into freehold. But then again, towards the ownership of it, it has to be the traditional owners from that area.

CHAIR: Thanks, David.

Dr Hardwood: I just wanted to offer the NPA lands, the northern peninsula. The council has an economy that turns over something like $19 million or $20 million in about five or six businesses that are owned by their council. One of those is a housing development company. I actually think there is a solution in this and there are jobs out of that. Yes, if there is some seed funding for housing construction I think something really good can come out of it because then people can have jobs which means they can pay mortgages. If they are paying mortgages, there is a sense of pride and self-determination that comes from within.

CHAIR: I think it is fair to say that—it applies to everybody—unless you have skin in the game, you are less likely to take ownership. I think this committee is about trying to create an atmosphere where individual people have the right to ownership and have skin in the game so that they actually take control of their own lives and take control of their destiny. From what your group has raised, we certainly were aware of the issues but it is certainly going to test our mettle in terms of providing a report to the parliament. I think at this stage we have run over time, but I really appreciate your coming today. Hopefully you have gained something out of talking to us. We really appreciate the fact that you have come forward and talked very frankly, I believe, in your determination. I thank you again and appreciate very much your input here today.

Proceedings suspended from 12.10 pm to 12.22 pm

BUTLER, Ms Trish, CEO, Cape York Sustainable Futures

CHESTER, Mr Guy, Consultant, Cape York Sustainable Futures

PICONE, Mr Andrew, Acting Northern Australia Program Manager, Australian Conservation Foundation

TALBOT, Ms Leah, Cape York Program Officer, Australian Conservation Foundation

CHAIR: Ladies and gentlemen, can we reconvene the hearing. Would you like to introduce yourself, Andrew, and your organisation and give us a spiel on it and then we will move through to Guy and Trish.

Mr Picone: My name is Andrew Picone. Firstly, thank you for the opportunity to speak. I work for the Australian Conservation Foundation and I am the acting manager for the northern Australia program, which is based here in Cairns. In the terms of reference, there were two areas of particular interest to the Australian Conservation Foundation and they were with regard to the protection of Queensland's ecological values and the needs and aspirations of traditional owners. On those two points, I would firstly like to begin with a request to the Queensland government not to lose sight of the original intent of national parks. If I can quote, which I am sure you have heard previously in this inquiry, the cardinal principle and that is—

... to provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values.

So in hearing plans to open up national parks to all Queenslanders, ACF believes that national parks are already accessible to most Queenslanders for a range of recreational purposes. I will just refer to the national parks and then hand over to Leah for the second point around traditional owner aspirations. As I was saying, we would argue that national parks are currently accessible to most Queenslanders for a range of recreational activities. We would argue that any further access that is provided to national parks does not undermine the cardinal principle.

A second point around balancing the protection of Queensland's ecological values is that there is some importance—and I am sure I am reiterating a point made by previous conservation organisations—and there is a need to protect ecological values outside of parks, in particular, in areas that have been designated as nature refuges. So I would like to reiterate the point made by other groups that Bimblebox Nature Refuge is a good case in point and that we need to balance resource use and the protection of ecological values. That is a particularly important point.

Thirdly, to meet Australia's obligations under the convention of biological diversity, state and territory and Commonwealth governments agreed to a comprehensive, adequate and representative network of conservation reserves across all bioregions in Australia. This is yet to be completed. ACF strongly supports the growth of the national park estate throughout Queensland, but there is one point that we want to make and that leads into our second area of primary interest and that is that the expansion of the national park estate should be done with the free, prior and informed consent of the traditional owners and with joint management arrangements, such as what is happening up on Cape York. We think this is possible. There are definitely good conservation and Indigenous outcomes to be gained across Queensland and we think that Cape York is quite a good case study. So on Cape York, we are seeing a variety of state held lands being divested to Aboriginal ownership, including national parks. Most recently, we saw the former Mungkan Kandju National Park return to its traditional owners as the Oyala Thumotang National Park CYPAL—it stands for Cape York Peninsula Aboriginal Land—and is a unique tenure of national park with underlying Aboriginal ownership.

Since 2004 when this process commenced, nearly two million hectares of the most culturally and environmentally significant land—a lot of it state held land in one form or another—has been returned to traditional owners. A breakdown of this includes a million hectares of existing national parks—so the former Mitchell River, Lakefield, Iron Range and Mungkan Kandju have all been returned to Aboriginal ownership and renamed appropriately; about 300,000 hectares of new national parks and conservation reserves, which includes the protection of the McIlwraith Range; and about 700 hectares of land returned as Aboriginal freehold for various economic purposes. So that is a process that has been occurring in Queensland—in Cape York—since 2004.

ACF strongly support supports the Queensland government's process of returning national parks to Aboriginal ownership while negotiating new parks in this process as well as Aboriginal freehold with the consent of traditional owners. I think there is possibly around 1½ million hectares of state held land on Cape York that is yet to go through this tenure reform process, which I think is under the leadership of Minister Glen Elmes. Given that the cardinal principle of national parks also reflects cultural values, we believe that the state's approach to conservation and Indigenous outcomes on Cape York is not a bad model to look at for other parts of Queensland.

They are the two main points—that national parks have a purpose and we have an obligation to continue to grow those national parks but, in doing so, seeking the consent of the traditional owners and looking for joint management opportunities and the land tenure reform up on Cape York, we believe, are exceptional processes. Thank you.

CHAIR: Andrew, we might just break it there and I will allow Sustainable Futures to speak now and then we will come back.

Mrs Butler: Thank you for the opportunity to address you here today. Cape York Sustainable Futures is recognised as the largest membership based organisation in Cape York Peninsula, with members from the small business, pastoral, agricultural and tourism sectors, Aboriginal and Torres Strait Islander organisations and local, state and federal government departments and agencies. Cape York Sustainable Futures is an incorporated body and operates under the direction of a board of nine people, who meet quarterly. They also receive governance training to enable them to effectively represent the interests of the people of Cape York. CYSF liaises with all sectors of government and all relevant industry and business organisations to achieve its aims. CYSF, through its membership base and networks, received feedback of disillusionment within the community of Cape York. We found this out late last year and went on to undertake an environmental survey at that time. It was expressed to us that there is a direct link between economic growth and environmental management.

In 2010, CYSF published an investment prospectus that identifies many economic opportunities. We recognise that we need to have a diverse and vibrant, sustainable economy for future generations and that there is a need to be able to create wealth within the region where the benefits of such wealth are retained across the region. People in the community, along with the environment and the landscape, are a necessary part of a healthy community. This includes a healthy economy, where people are able to build wealth through private enterprise. We see that the impediments to sustainable development need to be removed and that the land tenure situation in Cape York needs to be addressed urgently. Earlier this year, CYSF commissioned Guy Chester to undertake and investigate land tenure issues on Cape York and I would like Guy to take over from this point.

Mr Chester: Thank you, Mr Chairman, and the inquiry. This presentation is to briefly summarise the overall recommendations and, obviously, our submission. Less than one per cent of Cape York is freehold land. The creation of land parcels for small scale economic opportunities on Cape York on the 90 per cent of the cape which is national park, Aboriginal shire lease, DOGIT or land trust or land lease, including pastoral leases, is potentially a time-consuming process with no certain outcome nor time frame or cost. There is a need for a simple approach, with a time-bound process that ensures that the cost of the creation of the tenure and the use rights once you have created the tenure is consistent with the commercial value of the land and use rights. I put it to the inquiry that it is not at present. There needs to be a process that reduces the risk capital nature of entering into the process, where there could be substantial sums invested in creating a lease or in creating a title, such as the ILUA process and such as the IDAS process, and which could along the way prohibit the development. A concurrent process, without catch-22 interdependencies and where any veto of restrictive conditions are known before a major expense is incurred, is required.

Ultimately, there needs to be bankable tenures. People want to be able to mortgage them. It is pretty simple. If you want economic opportunities, you have to be able to raise capital to do it. There is an urgent and ongoing need to resolve land tenure issues to encourage private investment across Cape York. Existing pastoral leases need greater security of tenure. The Delbessie and Cape York Peninsula Heritage Act arrangements include onerous constraints and complex processes to achieve the requirements for longer terms and renewals. Ninety-nine-year leases or freehold are recommended.

The diversity policy—this is the policy that allows other uses other than, for instance, grazing on a pastoral lease—needs to be relaxed and more economic opportunities, such as tourism, conservation and others, permitted for existing leases. We have the silly situation—excuse me for using the word ‘silly’ but I believe it is silly—where a pastoral lessee who wishes to have good land stewardship and obtains funding for that land stewardship for weed, feral animal and other controls for fencing et cetera, including a nature refuge agreement from the government, cannot not do that if the income from that is greater than the pastoralism. If they have ecotourism, which should put money back into the conservation of the land by its very nature, they cannot do that if they are going to earn more money than from the pastoralism. This can be changed with the stroke of a pen, of changing the diversity policy.

We need the opportunity on those pastoral leases for small-area excision of leases—yes, with the current concurrence of the existing lessees, but not necessarily to the existing lessees. If you have a pastoral lease, there is an opportunity for a roadhouse, an ecotourism lodge, or whatever. Allow that to be alienated but not necessarily have to go to the current pastoral lessees. They may not be the ones who want to lease it. It might be their children. It might be someone else in their family. It might be someone else with the rights. Give them that opportunity.

There needs to be an accessible mechanism for entrepreneurs, Indigenous and non-Indigenous, family, private and corporate entities to exercise or create small leases for specific purposes, or indeed small freehold parcels to facilitate economic opportunities in tourism, retail and services et cetera across Cape York. The time frame and costs of this need to recognise and be commensurate with the value of such lands in a remote area and with often only seasonal business potential. In other words, when you can only do business for six months, the land is not worth that much, yet you still have to go through very expensive, long-time processes to get through the red tape to create the tenure. There is an urgent need to cut the red tape and expense of ILUAs for pastoralists and entrepreneurs. A government facilitation service is recommended to realise Cape York opportunities. Give entrepreneurs a hand to get through the red tape. If you cannot cut it, help them with it.

The process to have leases for Indigenous and non-Indigenous businesses on DOGIT and Aboriginal freehold needs to be streamlined with proactive assistance and facilitation by government. The time frame needs to be much shorter, with no undetermined impediments after commencement. The cost of the process, including the ILUA and IDAS requirements—I trust the inquiry knows what I mean by ILUA and IDAS—

CHAIR: Yes.

Mr Chester: The ILUA and IDAS requirements need to be commensurate with the value of the land. That is where at present there is a major disjunct. To get through the IDAS and the ILUA process, to get to a lease on any of these tenures I have talked about, costs more than the land is ultimately valued. On Cape York, there are some leases due for renewal in the coming years. There needs to be specific recognition of these to ensure that they have security of tenure and access to any new tenure arrangements. This is a specific concern to specific lessees on Cape York.

There is a need to facilitate Indigenous and non-Indigenous micro- and small-business enterprises to support tourism in national parks, to support tourism next to and within national parks. Arrangements for approvals and appropriate tenure with dealable security—with bankable, with mortgageable security—needs to be established, such as leases and concessions.

Finally, the Cape York tenure resolution process has been ongoing. That is a process of acquiring national parks and creating the CYPAL—the Cape York Peninsula Aboriginal land national parks. That appears to be continuing. There is ongoing negotiation, we understand. There is substantial community concern about priorities and the ultimate land tenure mix across Cape York. I was witness to 350 people turning up in Laura last December about this issue. The priorities for national park acquisition and likely overall national park estate should be publicly available. Thank you.

CHAIR: Thanks very much, Guy. I think we will just finish off with the Australian Conservation Foundation.

Ms Talbot: My apologies for coming in late. I want to acknowledge the traditional owners of the land on which we are having this forum today. I want to finish off what Andrew was saying about the conservation interests in Cape York and give a conclusion to that. ACF has been part of the northern Australian community for well over 40 years. We have had an office here in Cairns for well over nine to 10 years now with regard to the northern Australia program. Our work is central in Cape York and in the Kimberley region and in Kakadu. I suppose our work here in Cape York has done a lot to advance Australian Conservation Foundation progress in terms of recognising that conservation in Cape York needs to be quite different than conservation elsewhere in Australia. ACF is also adopting those principles on behalf of organisations elsewhere, and that is that conservation comes hand in hand with Indigenous people's rights and interests. We do recognise that there has been a past legacy of conservation being part of the dispossessing process that removed people from country.

As part of amending that and moving forward, we have recognised that there are processes that are happening in Cape York that we are very supportive of—Andrew has touched on those such as the tenure reform mechanisms, the national park reform process and many of the state land processes—and those we would like to see in line with our policies so that the conservation outcomes that do occur from those reflect Indigenous people's rights and interests. They also come with consent from traditional owners whose land is in question. I want to conclude by saying that ACF's vision for Cape York is to see a sustainable Cape York Peninsula that is unique, healthy and diverse amongst its interests and economies; that supports natural and cultural values; that has healthy and sustainable communities; that reflects all of the diverse interests such as pastoralism, mining and the rest; and that does support traditional owner governance processes and consent mechanisms. That is all I have to say.

CHAIR: Thank you very much. Leah, I think we are all on the same page with this. We all want sustainable communities in Cape York, or anywhere for that matter. I want to get your perception of a sustainable community. Do you see the community being sustainable in its own right if there is investment so that people have jobs and do not need to be on a welfare system? Indigenous people have their own right to own land and to develop their own operations et cetera as an individual. Is that part of what you are talking about?

Ms Talbot: Certainly. Just in response to that, yes, that is exactly what I am talking about. I agree with that. ACF certainly do believe that a sustainable future for Cape York has to be a lot of the different variety of opportunities that we have all talked about here today and in the previous session. It has to support traditional owner and Indigenous ownership of land. It needs to reflect a whole lot of industries that do have sustainable processes in place that protect the natural values and the cultural values—that is, something that is appropriate for the region that it is in.

CHAIR: I am listening to what you are saying and I am hearing what Cape York Sustainable Futures are saying. When I am sitting here listening to what you people are saying, it appears that you are both on the same page, but I do not believe that that is quite correct. Is that right, Guy, or not?

Mr Chester: I speak as a consultant to CYSF; I cannot speak on their behalf. What I hear and see on Cape York is that the vast majority of the community want to see a sustainable future which involves looking after the environment, land stewardship of non-government land—be it Indigenous non-government land or pastoral leases or whatever—and opportunities for modest economic development in

the communities, small businesses and home ownership and things. Nobody seems to be averse to that. While there might be some comment about national parks and about economic development in national parks, I ultimately think when we come down to the very modest ecotourism type development that we might be talking about there is 99 per cent congruence in people's vision and a lot of that one per cent is open to a lot of discussion. When it really comes down to it, I think people want to see good management and want to see Indigenous people with their CYPAL and national parks get something back out of them and see opportunities. I think there is a lot of congruence not only between these two organisations but between the people on the cape.

As further evidence of that, Ms Talbot and myself attended a workshop on environmental management of Cape York, as did one of the members of the inquiry, in February this year convened by Trish, the CEO of Cape York Sustainable Futures. There was huge congruence between all the variety of stakeholders of the future for environmental management—call it sustainable development—of Cape York. I am sure that the report that came out of that can be provided to the inquiry.

CHAIR: I guess that is no different to the people who live in the rest of Queensland.

Mr Chester: We are here to talk about Cape York.

Ms Butler: I think what we need to see is Cape York become more like the rest of Queensland instead of what it has been for the last 25 years or so. We really do need to bring it back to be one throughout the state.

CHAIR: Thank you. We are running short of time. We have another committee hearing here shortly, so I am giving as much opportunity as I can. Are there any questions from the committee?

Mr KEMPTON: I just want to make a point. Guy, yours was a very good submission, but you will add to it if you change the reference to a 99-year lease to a perpetual lease. There is quite a difference in that.

CHAIR: Are there any other questions?

Mr HART: Guy, when you mentioned an accessible mechanism for entrepreneurs to create a lease or freehold, have you got any ideas on what that might look like?

Mr Chester: I think it is fair to say that it is recognised—and I recognise—that the state government is constrained by the Commonwealth Native Title Act. That is not the only impediment and the state government has its own IDAS process. Unfortunately, in the middle of getting a lease on Aboriginal freehold or on DOGIT land, you need to get a CATL, I think it is called, a conditional agreement to lease. You have to go through the IDAS process. That means that, for a small scale entrepreneur to even get something to have a tenure on which you can go to a bank or go to another investor or go to a partner, you have to go through a $50,000 or $100,000 environmental and planning approval process. We might be talking about a fish and chip shop, a bait and tackle shop or a hairdressing salon at Lockhart River. We are not talking here about a five-star ecoresort or a new airport or something; we are talking about modest investment.

The main point I would make is there is a huge disjunct between the sum total of processes. I had government agencies—people in the old DERM—review this paper. This paper was a technical report for Cape York Sustainable Futures before it became a submission to you. We have all of the referee reports—if you like, the peer reviewing—by government agencies and they could not believe the processes when you add them all up, because people had not sat down and said, 'You've got to do this bit for native title. You've got to do this bit for the planning.' The local governments that are managing the DOGITs have to have all sorts of technical capacity about reviewing business plans that, to be honest, I think some of them do not have. So the process is exceptionally difficult.

CHAIR: Thanks, Guy.

Mr YOUNG: Very quickly, I agree with your statements in relation to ILUA, because, after all, it is only an agreement. Should there just be a set fee for an ILUA?

Mr Chester: The recommendation I would make is we need to resolve it. In no way should anything I am saying on behalf of CYSF or my own opinion be saying that we should be taking anything away from native title holders, but I do not see the current process as in anyone's interests, because it takes forever and costs more than the land is worth. I think there was some great work done with AgForce and by others—by the previous government—to get ILUAs on pastoral land. A lot more needs to be done so we can have a standard process. Yes, I think for a fish and chip shop, for a hairdressers, for a bait and tackle shop and for a small ecoresort there does need to be a streamlined process and a set fee and no uncertainties and a set time frame. If we set that up, we would have somewhere to go.

CHAIR: As there are no further questions, I think we can move on now. I really appreciate you coming in today. We believe that the contributions you have made will certainly help us in determining our final recommendations to the parliament. So I thank all of you who have come forward today.

ELMES, Mr Graham, Private capacity

ENGLISH, Mrs Anne, Solicitor, Appearing for D and S Struber

CHAIR: Ladies and gentlemen, we are running behind time, but we are certainly not going to pull up short. We now have leaseholders to give evidence. Graham, would you like to start off?

Mr Elmes: Thanks very much, Mr Chair. I appreciate you giving me the opportunity to address you. I am an elder of Cape York. I have been up there all my life. I was the third generation born there. This is something that I have been waiting for now for 30-odd years. Anyone who has lived up there, such as the member for Cook, Mr Kempton, would be well aware of the processes that we have gone through over the last 20 years of trying to get to the stage that we have got to now. For the last 20 to 30 years security of tenure has always been one of the major issues for the whole of Cape York—not just the pastoral industry but the whole of Cape York.

We believe that we have been left behind for the sole reason that everything else has come into play with the dynamics of our industry. I am only talking about our pastoral industry now. To give us some security and to give our financiers some security, we have to have a better tenure than what we have at the present moment. When you have a look at the tenure we have at the present moment for our pastoral leases, have a look at the small window of opportunity that we have to operate in the environment that we are operating in. When you have a look at what it costs us to get a kilo of beef from Weipa to Brisbane, at the end of the day every kilo of beef that comes out of Cape York has to be transported to Brisbane. Who pays that at the end of the day? We do. The pastoral industry pays for that. All those impediments come into play at the present moment as far as our industry is concerned.

I believe the only way to resolve our issue with pastoral leases in Cape York is freehold. Why I say we should be looking very seriously at that is that it takes a lot of pressure off the government as far as management of their land is concerned, and it gives the pastoralist and his finances some security that they know they can put a plan together for 10 to 15 years down the track. As it is now as far as our pastoral leases are concerned, if the conservation movement or the government has an environmental interest in that parcel of land—and we have already lost the sale of a property up there for that sole purpose. No-one was interested in buying the property for the sole reason that the environment department had an interest in the property. Under the Delbessie Agreement that interest may be when you renew the tenure, which is 10, 15, 20 or 30 years down the track, but that impediment is still part of that lease. Changing the tenure resolves that issue.

As far as management of pastoral leases is concerned, the evidence is there from the management processes that we have had in place over the last 100 years. That is why there is an enormous amount of interest within our area. What we have been doing is managing it too bloody well. That is the whole crux of the issue. Now we have got to the stage we have got to under our management regimes everyone wants to be part of that. So we need some clarity as far as that is concerned.

As far as clearing is concerned, we have mechanisms in place even if it is freehold. We still have a process to go through. We cannot sell the timber off the land unless we get a permit and we pay royalties on it. That part of the process. All of the other legislation we have covers a lot of our issues so we should not be double dipping or doubling up with that at the moment.

As far as our industry is concerned now it is worse than it was in the 1970s beef slump. The pastoral industry in Cape York is right on the precipice of complete collapse. We have to give some better incentive to our industry wholeheartedly to get it back up on its feet. I believe there are a couple of ways we could go. To give the panel a bit of my past knowledge as far as freeholding is concerned, 30 years ago we could freehold our land in Cape York providing we paid for the price of the timber. What happened with that process was the forestry department would come and value your timber, and then if you wanted to freehold it you paid the value that they described the timber was worth. There was a process in place. Actually I think I might have been the last one to go through that process as far as Lakeland Downs is concerned. It cost us $70,000 to get our block freeholded. We paid for the value of the timber. That is what they put on the value of the timber. That was one process we had in place. The reason there was not a lot of freehold done in Cape York at that time was the economics of getting it done. Not too many of the properties could afford to pay for the cost of their timber.

So I believe there are a couple of options. There is the New South Wales option of a flat rate. There is the Victorian option with a PBC of three per cent. That would make it a hell of a lot more viable for a lot of our pastoralists up there, rather than having to value the timber. Because on a lot of the properties up there the timber on the properties is worth more than the property is worth. When I say ‘timber’ I am talking about hardwood. A lot of the timber on those properties is worth twice as much as the property is worth. For the property owner to be able to afford to pay for that is going to be quite onerous. I believe the technology that we have now—such as our property-mapping process that we do through AgForce, where our soil types and everything are mapped out—provides a controlling mechanism for how development can happen. That is about it.

CHAIR: Thanks, Graham. Anne, would you like to make a comment?

Ms English: I represent Dianne Wilson-Struber and Stephen Struber, who are the owners of Palmerville Station. We have put in a submission already and I have some further information that I would like to table for the committee's reference this morning, by leave.

CHAIR: Is permission granted?

Mr HART: Yes.

CHAIR: Approved.

Ms English: Thank you. Basically that particularises the concerns raised in our previous submission. By way of background, the problems or the issues that are dealt with in the submission substantially relate to a conflict of tenures—basically, the pastoral tenure vis-a-vis the mining tenures on the property and the issues that arise from that conflict of tenures on the one area of land. There is a plethora of mining tenures over this area of Palmerville Station. The issues are compounded by the EPA, as the relevant regulatory authority, being unable to properly monitor and enforce its own legislation.

By way of background, Palmerville Station is an area of 500 square miles. It is owned by the Strubers. It was acquired by Dianne Wilson-Struber's father in 1964 and has been run as a cattle station ever since. It contains old historical mining sites from the gold rush days on the Palmer River such as Palmerville, which is where the homestead is located. The station lies on both sides of Palmer River, which runs generally in an east-west direction.

The property virtually surrounds the R16 resources reserve that contains Maytown and the old mine works and areas associated with Maytown as well as the Old Coach Road north from Maytown to Laura. The Strubers ran a cattle business on the property and over recent years there has been a dramatic increase in the number of mining tenements granted over the property.

In the papers that I have submitted this morning there is now what is called a local area mining permit report that you can get from the department of minerals and energy, and that report discloses that there are currently 52 exploration for mineral permits either granted or applied for over the property. There are a total of 83 mining lease tenements, 38 of which are mining lease applications and 45 existing mining operations or mining leases. Therefore, there is effectively 135 mining tenements that relate to this one property. Is it any wonder the landholders feel like they are under siege from the mining interests? What does this mean for the landholders? It means time, expense and stress.

With so many mining related tenements to deal with, landholders like the Strubers are diverted from running their own business—cattle activities—on almost a weekly basis. To give you an example, I will list the sorts of things they have to undertake in order to respond to any one of these applications. In almost every case they are required to, one, read and consider the notices and applications from the miners; two, work out whether a response or objection is required; three, prepare and lodge objections and/or make contact with the miners and consult with them about it; four, take time to travel and consult with the mining registrar for compulsory conferences that are required, which could be a 10- to 12-hour round trip; five, investigate and inspect areas that are the subject of the mining lease applications, which depending on where they are on their property means sometimes a six-hour round trip; six, consultation and consideration of environmental impacts; seven, engagement of environmental experts for that advice; eight, consultation on compensation issues and briefing legal representatives for advice, usually requiring absence from the station of one to two days because of the distance; and, finally, in the case of granted production tenures, monitoring compliance with environmental codes of compliance because the EPA simply does not do it.

The EPA has neither the resources nor the time to travel to such remote areas to monitor compliance and the landholder finds himself having to do it. At the moment the information we have got is that EPA has staffing levels that would permit them to get to properties in remote properties like Palmerville once every two years. That is about it. The landholder gets frustrated as he knows the EPA cannot monitor the operations of the miners. So that is a role they have to take on themselves in order to ensure the impacts of mining are mitigated as much as possible. If you take those nine responses that the landholder has to do and then multiply that by 38 times for the current applications, then you have to look at monitoring the 45 existing operations and, to a lesser extent, taking administrative steps to engage with 56 explorers ranging from negotiating conduct and compensation agreements to reacting to notices of entry by explorers—and that is when they give them; a lot of them do not give them and do not comply with the law in that regard—you can see that there is a lot of time and effort taken away from the grazing business in order to respond to all of these mining issues.

The point is there should either be a limit to the number of mining tenements that are imposed on any one particular property or, alternatively, there should be proper recognition and provision in the compensatory provisions of the Mineral Resources Act for the time taken by landholders in responding to mining tenement applications that takes them away from their business. At present the legislation does not recognise explicitly the landholders' inconvenience, wasted time and energy as a cost to the landholder that should be compensated. By comparison, for instance, in the native title arena you get sitting fees and attendance fees plus administration costs to organise meetings that are routinely requested by traditional owners and are paid for by the mining interests. In that arena the attitude is the applicant pays the cost. There should be, in our submission, a cost-free situation to the landholders who are dealing with mining tenement applications or existing leases over their properties. There should not be a cost to the landholder.

They are trying to run their own business and they are being imposed on by an external third party at the convenience and wishing of the government effectively. What we are saying is there is little, if any, recognition given to the issue currently in contested Land Court cases.

New legislation regarding conduct and compensation agreements for exploration tenures only recognises the recovery of legal, valuation and accounting expenses, not the costs to the landholders' business of having them personally respond to tenement applications. In the case of Palmerville, historically you have had compensation awards where basically the landholder has been too busy to respond so he has not appeared in the Land Court and you have had compensation awards of as little as $1 per hectare, which is an insult—$1 per hectare. Currently the compensation awards are around the $10 per hectare for the areas of mining lease, which is currently what is awarded in the Land Court, and that simply does not reflect the cost to the landholder of each of those steps that I have outlined multiplied 38 times et cetera.

CHAIR: Is that all in your submission, Anne?

Mrs English: Yes. The further thing is, in relation to the EPA, the concern there is that they do not have a capacity to rapidly respond to concerns of contamination and non-compliance. So there should be resourcing for EPA for a rapid strike force.

CHAIR: Unfortunately, Anne, that issue of the mining leases is slightly outside of our terms of reference in terms of land tenure. But the point you are making is well taken.

Mrs English: I think, just on that point, one of your terms of reference is the sustainability of the pastoral industry and where it conflicts with other tenures that have issues with them. It really confines and restricts the ability of landholders.

CHAIR: The profitability of pastoral leases, yes.

Mrs English: That's right. In terms of the EPA and non-compliance, that relates to sustainable mining.

CHAIR: Point taken, certainly.

Mr KEMPTON: Mr Elmes, is it true in your opinion that the strength of a pastoral lease in the last 20 years in Cape York has actually diminished and in your view has that had an impact in turn on the cattle industry in Cape York?

Mr Elmes: I am a little deaf, sorry?

Mr KEMPTON: In your view is a pastoral lease in Cape York now not as strong as it was 20 years ago and has that had an impact on the cattle industry in Cape York?

Mr Elmes: What I can see happening there now, David, is we are in a quandary that, okay, from the government's perspective you have to make sure you have got an economical business that you are managing. Now, cost of the rent has to keep moving to substantiate you running that business and then, of course, our rates have to keep moving. So at the moment I believe that the tenure that we have is having an enormous impact on our pastoral industry because of those specific reasons. I believe if we could open it up we could get a bit more diversity within our area and maybe that would give our pastoral industry a bit of a leg-up.

CHAIR: Thank you very much. I am conscious of the time. I did allow extra time for the traditional owners to address us today. That is the reason why we have run over time. But we totally understand, Graham. We have had many presenters who have come in and talked to us about the issues. We really appreciate you both coming in today. We thank everybody who attended today. The committee has gathered some valuable information that will assist the inquiry into the future and continuing relevance of tenure across Queensland. I would also like to thank Hansard and the Parliamentary Service staff who assisted us here today. We had some real hassles earlier on but we are getting through that. I am sure the report will be excellent. I declare this segment of the hearings closed. I move that pursuant to section 50(2)(a) of the Parliament of Queensland Act 2001 the committee authorise the publication of the public evidence given here this day. Do I have a seconder?

Ms MILLARD: Yes.

CHAIR: The meeting is now closed. I thank again all who participated today and those who were in the audience.

Committee adjourned at 1.14 pm