

AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

REPORT No.10 ON THE

ABORIGINAL AND TORRES STRAIT ISLANDER LAND HOLDING BILL 2012

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 29 October 2012, the Agriculture, Resources and Environment Committee tabled Report No.10 in relation to the Aboriginal and Torres Strait Islander Land Holding Bill 2012.

The Queensland Government response to the Report is provided below. In addition to this information, the Minister for Natural Resources and Mines, as the responsible Minister for Native Title matters in Queensland, would also like to clarify additional information in relation to the extent that the Bill affects Native Title.

The Report raises a number of points from stakeholders in relation to the application of Native Title and the effect that provisions in the Bill may have on Native Title. Clarification is as follows:

- The State is bound by the *Native Title Act 1993* (Cth) and all processes under the Bill must comply with that Act.
- In relation to the provisions relating to the Land Holding Act leases and lease entitlements:
 - There is a clear legal basis for the State's position to grant a lease entitlement under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* as it is a 'pre-existing right-based act' under the *Native Title Act 1993* (Cth).
 - Where the proposed relocation of a lease boundary includes new land, over which native title survives, then this can only be done in accordance with the requirements of the *Native Title Act 1993* (Cth). This would generally require a registered Indigenous land use agreement.
 - As any grant of tenure must comply with the *Native Title Act 1993* (Cth), therefore if the native title holders' consent is required, then the grant of tenure could not occur without first obtaining that consent.
- In relation to provisions for the subdivision of a DOGIT – there is no effect on native title or cultural heritage – the provisions simply provide for changing the property description of the land. In the normal course of events, subdivision would only occur in the process to grant a tenure.
- In relation to the provisions to amend the *Land Act 1994* to clarify Indigenous Access and Use Agreements:
 - Whilst the amendments provide for a rental discount as an incentive for lessees to resolve their participation in native title claims, the outcome (where there is take up) is that the lessee simply withdraws as a respondent to the Indigenous party's native title claim while the lessee's interest under the agreement, the lease and a determination is protected.

- The agreement itself does not determine native title (resolution of native title is still subject to the native title claims process and the decision of the Federal Court); nor does it override a Federal Court decision about what native title rights exist on the leased land.
- The Bill provides that agreements for the purposes of the *Land Act 1994* are consistent with not only the *Land Act 1994* but also both native title case law and the provisions of the *Native Title Act 1993* (Cth), including respecting the relationship between the lessee's and native title party's particular rights.
- Further, the agreements for access to and use of the land are entirely voluntary, it is not mandatory for either party to enter into an Indigenous Access and Use Agreement or an Indigenous Land Use Agreement.
- If an Indigenous party wants to pursue access and use rights through the native claim process they can do so – they do not have to enter into an agreement prior to the native title claim being resolved through the Federal Court.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

The committee recommends that the Aboriginal and Torres Strait Islander Land Holding Bill 2012 be passed.

Government Response

The Government thanks the committee for its Recommendation.

Recommendation 2

The committee recommends that the House note that when setting reporting timeframes for Bills that the maximum time allowable under the Standing Orders should be given where consultation with Aboriginal and Torres Strait Island communities and other communities that are isolated is required.

Government response

The Government notes that this recommendation is to the House in relation to the timeframes for Parliamentary Committee reports on bills.

Recommendation 3

The committee recommends that the Minister liaise with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs to produce and disseminate information in relation to the Bill in languages familiar to Aboriginal and Torres Strait Islander communities, such as, but not limited to, Creole.

Government response

The Government notes this recommendation. The Minister for Natural Resources and Mines will consult with the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs to consider the development of a whole of government position on future production of consultation material in other languages.

Recommendation 4

The committee recommends that the Minister provide the Parliament with an interim report on the operation and effectiveness of the Act after three years from the date of commencement.

Government response

The Government supports this recommendation. The Minister responsible for the administration of the new Act will report to Parliament within three years of the Acts commencement to provide an update on the resolution of outstanding lease entitlements under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*. This will be an interim report prior to the statutorily required review within 5 years of the commencement of the Act.

Point of Clarification

The committee invites the Minister to clarify how he proposes to take into account traditional Indigenous law and custom when determining the owner of a lease in circumstances where the original applicant is deceased.

Government response

The extent that traditional Indigenous law or custom may be taken into account will depend upon the extent that the *Succession Act 1981* or section 60 of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* already provides for that law or custom to be taken into account.

Recommendation 5

The committee recommends that clause 13 of the Bill be amended to change the name of 'Community Reference Panel' to 'Stakeholder Reference Panel' to more accurately capture the composition of the panel and remove any potential misconceptions about the representation on the panel or the functions of the panel.

Government response

The Government supports this recommendation so as not to cause community members confusion about the purpose, representation and membership of each community's panel. Amendments will be introduced during the consideration in detail stage of the debate of the Aboriginal and Torres Strait Islander Land Holding Bill 2012 to implement the Committee's recommendation.

However, it proposed to rename the community reference panel for a trust area as the "Land Holding Act stakeholder reference panel".

Recommendation 6

The committee recommends that the Minister provide a report to Parliament in relation to the progress and efforts made to resolve the invalid applications within a year of the Bill commencing.

Government response

The Bill does not “resolve” invalid applications. Clause 26 of the Bill provides the chief executive to give a hardship certificate in certain circumstances. An invalid application might satisfy those circumstances. The Minister responsible for the administration of the new Act will report to Parliament within one year of the Act’s commencement to advise on the number of hardship certificates that have been given under clause 26 of the Bill in response to “invalid” applications.

Point of Clarification

The committee seeks the Minister’s clarification in relation to the costs associated with the surveying of DOGIT communities and if possible, the likely timeframes for completing the surveying of these communities.

Government response

In relation to the survey costs for individual leases resolved under the Act, the State Government will undertake and fund the necessary survey costs.

In relation to the broader issue of complete survey program for whole Aboriginal and Torres Strait Islander communities, the Queensland Government through the Minister for Natural Resources and Mines and the Minister for Housing are corresponding with the Federal Government about the issue of whole of township surveys. There currently is in principle support for the concept to finish the surveying for communities, subject to funding.

Further to this, the Department of Natural Resources and Mines is currently working with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (through the Remote Indigenous Land and Infrastructure Program Office) on a number of activities, including the provision of surveying in 34 Aboriginal and Torres Strait Islander communities. The survey program includes road network, reserves, existing and new social housing dwelling leases, and Land Holding Act granted leases and lease entitlements. Other agencies are also taking advantage of this work to obtain surveys over current infrastructure and proposed new sites.

The Department of Natural Resources and Mines and the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs will work together to implement the most cost effective way to resolve survey issues, in line with any outcome between the State and Federal Government for whole of community surveying.

Recommendation 7

The committee recommends that the Minister establish a working group comprised of representatives from the Department of Natural Resources and Mines, Indigenous local and regional Councils dealing with DOGIT land, and a representative from the peak surveying body in Queensland to consider how to best resolve issues in relation to surveying DOGIT land.

Government response

Once negotiations with the Queensland and Federal Government are finalised in relation to the survey program for all Aboriginal and Torres Strait Islander communities, the Government will meet with the relevant stakeholders for that community to ensure the survey program that is implemented in that community takes into account all Government initiatives currently underway to ensure the survey program is undertaken in a timely and cost effective manner.

Point of Clarification

The committee seeks clarification from the Minister as to the cost burden on individuals whose matters are dealt with by the Land Court, and the capacity of the Land Court to hear and deal with matters referred in a timely fashion.

Government response

The Government can not state what will be the cost burden for an individual in a particular matter where that individual chooses to appeal to the Land Court. It is anticipated that the cost burden will be minimal.

The Department is aware of the concerns raised and will work with relevant parties to identify ways to keep costs to a minimum.

It is anticipated that the Land Court will have capacity to deal with matters in a timely fashion.

Point of Clarification

The committee asks the Minister to clarify what services may attract a fee under this Bill and that the Minister ensures that all efforts are made to provide information in relation to fees as early as possible.

Government response

The Government has no plans at this stage to offer services under the Bill subject to a fee.