

Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Bill 2010

Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Rachel Nolan MP

Title of the Bill

Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Bill 2010 (the Bill).

Objectives of the Amendments

The objectives of amendments to the Bill are to clarify the relationship between an existing lease and a townsite lease over Aboriginal land or Torres Strait Islander land; extend the time period for establishing further land trusts under the *Aboriginal Land Act 1991* (ALA) and *Torres Strait Islander Land Act 1991* (TSILA); and undertake technical amendments to the ALA and TSILA.

Achievement of the Objectives

Clarify the relationship between an existing lease and a townsite lease over Aboriginal Land and Torres Strait Islander land

This will be achieved by amending Clauses 61 and 165 of the Bill to state that existing leases over Aboriginal land and Torres Strait Islander land become subleases of a townsite lease, if a townsite lease is granted over the same land as the existing leases. The current provisions in the Bill do not make it clear that existing leases become subleases.

Without the clarifying amendments, the potential exists that where a townsite lease is granted, disputes may arise over the relationship between the existing lease and the townsite lease. This may frustrate the future development of Indigenous land and become a burden on the parties as they seek to resolve the relationship.

Extend the period for establishing further land trusts under the ALA and TSILA

This will be achieved by amending Clauses 89 and 187 of the Bill to extend the time period to 31 December 2011 to allow land trusts to continue to be established. The Bill's provisions currently provide, through transitional provisions, that a land trust may only be established on the grant of land, on or before 1 July 2011.

Current negotiations for the transfer of certain lands have been on the basis that the lands will be held by land trusts. It was expected that these transfers would be finalised by 30 June 2011, however not all transfers were achieved by that date. It is expected that all transfers will now be finalised before 31 December 2011.

Amendments made now to extend the date for the establishment of land trusts will ensure that when the land is ready to transfer, at a time before 31 December 2011, the transfer will not be dependant upon a further Bill being passed at that time to enable the land to be granted to a land trust.

Technical amendments

Technical amendments to be Bill will be made in relation to:

- Duplicating parts of Clauses 71 and 73 that amend the ALA into Clauses 170 and 172 that amend the TSILA. These parts relate to deciding on access routes across Aboriginal land or Torres Strait Islander land, and clarify those sections in both Acts.

The parts to be duplicated in the TSILA assign responsibility for deciding on access routes across Aboriginal land subject to a townsite lease to the holder of the lease, rather than responsibility being held by the trustee of the land. This recognises the lessee's rights in relation to making decisions for land they hold an interest in. The amendments in the TSILA will use the term 'Torres Strait Islander land'.

Clauses 73, 80, 172 and 177 that assign responsibility for deciding on access routes will be broadened to capture the holders of other registered interests in Aboriginal land and Torres Strait Islander land. This recognises other registered interest holders' rights in relation to making decisions for land they hold an interest in.

The Bill's current provisions do not contemplate the situation where an access route crosses an interest held in Aboriginal land and Torres Strait Islander land, and the Aboriginal land and Torres Strait Islander land (in the one instance). In such a case the agreement of the holder of the

interest, and the trustee of the Aboriginal land and Torres Strait Islander land (for the land not subject to the interests) would be required. As such Clauses 73, 80, 172 and 177 will be amended to clarify this.

- Clauses 71 and 170 to be amended to clarify in the ALA and the TSILA that a reference to the term ‘trustee’, is referring to the trustee of Aboriginal land or Torres Strait Islander land, respectively.
- Clauses 89 and 187 to be amended to omit a reference to the amending Act.
- Clause 111 to be omitted.
- Clause 123 to be amended in part by omitting the inclusion of a definition into the *Nature Conservation Act 1992*. The definition has now been added to that Act through the *North Stradbroke Island Protection and Sustainability Act 2011*.
- Clause 182 will be amended to address an error in the Bill relating to section 133A of the TSILA.

Alternative Ways of Achieving Policy Objectives

There are no viable alternatives that would achieve the desired policy outcome.

Estimated Cost for Government Implementation

There will be no administrative costs to government to implement the proposed amendments.

Consistency with Fundamental Legislative Principles

The amendments to the Bill do not infringe on fundamental legislative principles.

Consultation

The amendments are technical in nature and no further consultation was undertaken with stakeholders. Consultation was undertaken with DOC and Crown Law and they support technical amendments made.

Notes on Provisions

Clause 1 amends clause 61 (Replacement of pt 5A (Provisions about particular land trusts)). It clarifies at section 82YK of the ALA ‘Lessee of townsite lease taken to be lessor of existing leases’ the relationship between existing leases on Aboriginal land and a townsite lease that issues over them.

It provides that existing leases on Aboriginal land become subleases of the townsite lease and the lessee of the townsite lease is substituted as the lessor for the existing leases.

Clause 2 amends clause 71 (Amendment of s 84 (Use of Aboriginal land preserved)). It clarifies at section 84 of the ALA that the ‘trustee’ as identified in this section is the trustee of Aboriginal land.

Clause 3 amends clause 73 (Amendment of s 86 (Access to land)). It clarifies section 86 of the ALA as it relates to the entities that must agree upon access routes over Aboriginal land to a part of that land that is occupied and used by the State or Commonwealth.

It provides that where an access route is required over Aboriginal land that is partly subject to a townsite lease or other registered interest, and partly not subject to any of these interests, and the route is over these areas of land, that the agreement of the relevant owners of the land is sought.

Clause 4 amends clause 80 (Amendment of s 132 (Rights of access to interests preserved)). It clarifies section 132 of the ALA as it relates to the entities that must agree upon access routes over Aboriginal land to a person’s interest in land that is surrounded by, or in the vicinity of Aboriginal land and the only practical way of gaining access to the land is across the Aboriginal land.

It provides that where an access route is required over Aboriginal land that is partly subject to a townsite lease or other registered interest, and partly not subject to any of these interests, and the route is over these areas of land, that the agreement of the relevant owners of the land is sought.

Clause 5 amends clause 89 (Insertion of new pt 11, div 3). It amends proposed section 145 of the ALA ‘Continued operation of provisions for appointing grantees’ by extending the period in which a land trust may be established under transitional provisions relating to transferable land under

the ALA from ‘on or before 1 July 2011’ to ‘on or before 31 December 2011’.

Clause 6 amends clause 89 (Insertion of new pt 11, div 3). It amends proposed section 145 of the ALA ‘Continued operation of provisions about land trusts’ by correcting an incorrect reference to a section relating to transferable land under the ALA.

Clause 7 amends clause 89 (Insertion of new pt 11, div 3). It amends proposed section 145 of the ALA ‘Continued operation of provisions about land trusts’ and attends to an oversight in the Bill by providing that the period in which a land trust may be established under transitional provisions relating to claimable land under the ALA is until ‘on or before 31 December 2011’.

Clause 8 amends clause 89 (Insertion of new pt 11, div 3). It amends proposed section 146 of the ALA ‘Continued operation of provisions about land trusts’ by extending the period in which a land trust may be established under transitional provisions relating to previous part 5A of the ALA from ‘on or before 1 July 2011’ to ‘on or before 31 December 2011’.

Clause 9 amends clause 89 (Insertion of new pt 11, div3). It omits an incorrect reference to the amending Act in proposed section 147 of the ALA ‘References to previous provisions after renumbering’.

Clause 10 omits clause 111 (Amendment of s 163 (When a vacancy in an office must be filled)).

Clause 11 amends clause 123 (Amendment of schedule (Dictionary)). It omits a proposed definition insertion to the *Nature Conservation Act 1992*, as the definition is now in the Act.

Clause 12 amends clause 165 (Replacement of pts 4 and 5). It clarifies at proposed section 67 of the TSILA ‘Lessee of townsite lease taken to be lessor of existing leases’ the relationship between existing leases on Torres Strait Islander land and a townsite lease that issues over them.

It provides that existing leases on Torres Strait Islander land become subleases of the townsite lease and the lessee of the townsite lease is substituted as the lessor for the existing leases.

Clause 13 amends clause 170 (Amendment of s 81 (Crown’s use of Islander land preserved)). It clarifies section 81 of the TSILA that the ‘trustee’ as identified in this section is the trustee of Torres Strait Islander land.

Clause 14 amends clause 170 (Amendment of s 81 of the TSILA (Crown's use of Islander land preserved)). It provides at section 81 of the TSILA that where a townsite lease is granted over Torres Strait Islander land, for that part of the land that is subject to the lease, the lessee of the townsite lease is substituted as the trustee of the land for the operation of this section.

This reflects that for the granting of a townsite lease, a lease in perpetuity, certain responsibility in respect of decision making for the land are appropriate to be held by the lessee of the lease.

Clause 15 amends clause 172 (Amendment of s 83 (Access to land used by Crown)). It clarifies section 83 of the TSILA as it relates to the entities that must agree upon access routes over Torres Strait Islander land to a part of that land that is occupied and used by the State or Commonwealth.

It provides that where an access route is required over Torres Strait Islander land that is partly subject to a townsite lease or other registered interest, and partly not subject to any of these interests, and the route is over these areas of land, that the agreement of the relevant owners of the land is sought.

Clause 16 amends clause 177 (Amendment of s 129 (Rights of access to interests preserved)). It clarifies section 129 of the TSILA as it relates to the entities that must agree upon access routes over Torres Strait Islander land to a person's interest in land that is surrounded by, or in the vicinity of Torres Strait Islander land and the only practical way of gaining access to the land is across the Torres Strait Islander land.

It provides that where an access route is required over Torres Strait Islander land that is partly subject to a townsite lease or other registered interest, and partly not subject to any of these interests, and the route is over these areas of land, that the agreement of the relevant owners of the land is sought.

Clause 17 amends clause 182 (Replacement of s 133A (Dealing with particular trust property)). It corrects an error in clause 182 which amends section 133A of the TSILA where reference is made to a trustee. The section is to refer to lessee of a townsite lease.

Clause 18 amends clause 182 (Replacement of s 133A (Dealing with particular trust property)). It corrects an error in clause 182 which amends section 133A of the TSILA where reference is made to a trustee, and the trustee using an amount equal to the lease amount received for housing services for Torres Strait Islanders concerned with the land held by the

trustee. The section is to refer to lessee of a townsite lease, and the lessee using the amount equal to the lease amount received for housing services for Torres Strait Islanders concerned with the land subject to the townsite lease.

Clause 19 amends clause 187 (Insertion of new pt 10, div 3). It amends proposed section 140 of the TSILA ‘Continued operation of provisions for appointing grantees’ by extending the period in which a land trust may be established under transitional provisions from ‘on or before 1 July 2011’ to ‘on or before 31 December 2011’.

Clause 20 amends clause 187 (Insertion of new pt 10, div3). It omits an incorrect reference to the amending Act in proposed section 141 of the TSILA ‘References to previous provisions after renumbering’.