11.0
Land tenure
The terms of reference for this inquiry ask the Commission to report on ways to achieve better outcomes in the remote and discrete communities. This chapter discusses elements of the land administration system that could be improved to better facilitate service delivery and enable economic and community development.

**Key points**

- Aboriginal and Torres Strait Islander people in the remote and discrete communities have large and growing land holdings—if remote communities are to move away from a reliance on externally provided services, they will need to be able to better and more easily use these land assets.
- History has left a patchwork of tenure arrangements and resource rights, particularly in Cape York, which has constrained economic activity and limited home ownership opportunities.
- Much progress has been made to remove these constraints and enable Aboriginal and Torres Strait Islander communities to use their land assets. However, significant work remains to be done.
- Separate native title interests overlay tenure across most remote and discrete communities. The resolution of competing interests is critical to enable land use.
- Indigenous councils remain trustees over township land in the discrete communities, which may cause conflicts of interest and constrain economic activity.
- While capacity is emerging amongst Indigenous land holding bodies, they often lack the capability to effectively negotiate economic and/or community development opportunities.
- Statutory planning schemes that overlook future development prospects can hinder communities taking advantage of economic and community development opportunities.
- While many land tenure issues are beyond the scope of this inquiry, consideration should be given to:
  - giving more recognition to the importance of enabling land for economic and community development
  - building the capacity of land holding bodies
  - completing cadastral surveys across all discrete communities
  - resolving the ‘Katter’ leases
  - consolidating tenure and native title interests
  - completing the conversion of DOGIT land to Aboriginal Freehold
  - resourcing land bodies to manage land for public good outcomes
  - moving key functions responsible for resolving tenure issues to community control.
11.1 Current status

Why land tenure is important

The ability for individuals to use, transfer and borrow against land assets is a key feature of successful modern economies (Rodrik 2000). For much of the land controlled by Aboriginal and Torres Strait Islander people living in remote and discrete communities, this ability, until recently, has been absent:

* Governments continue to spend large amounts of taxpayer funds for extremely modest results. They are not addressing core problems. Until private property rights—private housing and private business—are introduced, governments will continue to spin their wheels. (Hughes et al. 2010)

* It is clear that a major reason why social and economic participation in remote and discrete Aboriginal and Torres Strait Islander communities is much lower, and government delivery levels are much higher and more difficult than on other parts of the Queensland is because of the failings of the land administration system in these communities. This dysfunction is also directly linked to what many Indigenous leaders have described as the ‘structural disempowerment’ of Indigenous people living in discrete communities. (Cape York Land Council sub. 20, p. 3)

In most parts of the state where economic activity occurs, land tenure arrangements are relatively straightforward—freehold and leasehold crown land provides defined individual property rights, and allow these rights to be freely traded in an open market. In the main, property boundaries have been gazetted and ownership is clear. These arrangements establish secure individual property rights that facilitate economic activities such as grazing, cropping and tourism ventures, and encourage home ownership and a private rental market in remote areas.

In most of the remote and discrete Aboriginal and Torres Strait Islander communities, tenure arrangements have not been this clear—in discrete communities, up until 2008, there were no legal mechanisms to allow any form of individual property right, including the ability to own a home or establish a business (Limerick 2012).

Land tenure is also important for service delivery. Under current Australian law, any permanent fixtures on land are the property of the landholder (Crabtree et al. 2012). In the discrete communities, land is owned collectively by residents, with Indigenous councils acting as trustee. Service providers and tenure holders both need tenure arrangements that provide surety for their ongoing activities and interests.

Current tenure arrangements

While Indigenous Queenslanders can purchase ordinary freehold or leasehold land, most landholdings by Aboriginal and Torres Strait Islander people in remote and discrete communities is Aboriginal freehold or land held in trust.

The laws governing Aboriginal freehold land are established under the Queensland *Aboriginal Land Act 1991* (ALA) and *Torres Strait Islander Act 1991* (TSLA). These Acts allow for the grant of inalienable freehold title to Land Trusts and Corporations for the broader Indigenous group—that is, land is held collectively and cannot be sold, mortgaged or transferred.

The ALA and TSLA allow land to be used for economic purposes; however, the resource rights associated with tenure vary from location to location.

As of 2017, the state has transferred almost six million hectares of land in remote areas—mostly on Cape York—to Aboriginal Freehold (DNRM 2017) (Figure 56, p. 237). The Commission understands from discussions with the Remote Indigenous Land and Infrastructure Program Office (RILIPO) and Cape York Land Council that most transfers of land were made to Land Trusts.
In the discrete townships, the predominant form of land tenure is a Deed of Grant in Trust (DOGIT) where the council holds land tenure on behalf of all residents. The ALA and TSLA provided a specific provision for the government to transfer DOGIT land to Aboriginal Freehold, but the Commission understands that this is yet to occur in most discrete communities.

The ALA and TSILA allow for the creation of 99-year leases in a simple, flexible framework without ministerial approval. These leases can only be granted or transferred to non-Indigenous people under certain circumstances. Leasing of DOGIT land is also governed by the ALA and TSILA.

The Aboriginal and Torres Strait Islander (providing Freehold) Amendment Act 2014 amended the ALA and the TSILA to provide for the conversion of town areas in discrete communities to ordinary freehold. Once granted, this would allow the land to be sold or transferred to any party, including non-Indigenous people. However, as noted by Terrill (2015), the conversion to freehold is likely to be challenging (and expensive), since it would involve the extinguishment of any native title interests. This may be a disincentive—the Commission understands that there has been little interest in pursuing conversion of land to ordinary freehold in the discrete communities.

Native title coexists with land tenure, a further complicating factor

Native title confers certain rights to traditional owners of land, where these rights have not previously been extinguished and an ongoing connection to land can be established (Native Title Tribunal 2010). The rights conferred by native title vary and may include the right to possess and occupy an area to the exclusion of others (exclusive possession)—generally only recognised where land has not been previously utilised or is already held by Indigenous Australians.

Native title coexists with land tenure and the interests may be held by different parties. For example, native title exists over most discrete townships; however, the tenure is held as DOGIT by council on behalf of all residents. The residents of discrete communities may have no traditional connection to the land, but are likely to be descended from people who had been settled there for historical reasons. The holders of native title are traditional owners, who may or may not reside in the community.

Indigenous land and native title are not mutually exclusive with economic development, and many successful developments on Aboriginal land coexist with native title interests (COAG 2015, p. 23). This is consistent with the view of stakeholders the Commission spoke with.

There is an opportunity to do more to support land owners and native title holders in leveraging their respective interests to promote economic development. Enabling activity on jointly held land requires the negotiation of an Indigenous Land Use Agreement (ILUA), which sets out the conditions (including any compensation measures) by which native title holders will allow any future acts that may interfere with any rights conferred through their native title interests. However, the evidence is that these negotiations can be expensive and protracted.

Cape York has particularly challenging land tenure

Cape York requires some special mention. It has a large Indigenous population and a large proportion of Queensland’s discrete communities are situated here.

It has some particularly difficult land tenure challenges, both because of the wide range of tenure types and the fact that native title rights have been, or are being established—across Cape York, 90 per cent of the land area is subject to a native title claim (National Native Title Tribunal 2017, see Figure 57, p. 236). Where it has been determined, most of the Cape York native title area is exclusive native title, meaning that traditional owners control access to land.
The land administration system

The land administration system (LAS) determines the ability of Aboriginal and Torres Strait Islander people to effectively use their land assets (Box 11.1). Currently, the land administration system is excessively complex making the resolution of land tenure issues a difficult and lengthy process.

Box 11.1 Land administration system in the communities

The land administration system (LAS) allows for the creation of legally secure and certain interests in land and is essential for using and managing interests in land.

Land administration is a broad topic and involves the interaction of many interdependent parts—nevertheless, the LAS facing remote and discrete Aboriginal and Torres Strait Islander communities is more complicated than in the rest of the state.

Legislation covering land use is covered in at least seven separate State and Commonwealth Acts (four of which are Indigenous-specific):

- Land Act 1994
- Land Title Act 1994
- Planning Act 2016
- Aboriginal Land Act 1991
- Torres Strait Islander Land Act 1991
- Aboriginal and Torres Strait Islander Land Holding Act 2013
- Native Title Act 1993.

Much of the land under Aboriginal and Torres Strait Islander control is also subject to range of conservation and heritage controls, including provisions of the:

- Vegetation Management Act 1999
- Nature Conservation Act 1992
- Water Act 2000
- Mineral Resources Act 1989
- Aboriginal Cultural Heritage Act 2003
- Cape York Peninsula Heritage Act 2007
Communal versus individual property rights

Communal property rights can impede economic development and wealth creation in the communities, and result in tension between the interests of traditional owners and long-term residents. Access to land for economic activities needs to be balanced with the maintenance of cultural capacity through tenure security. These issues are further explored in Box 11.2.

Box 11.2 Are individual property rights important?

Hughes et al. 2010 argue that communal property rights are an impediment to home ownership and economic development in remote communities. They argue that common land tenures and collective management have discouraged entrepreneurship and individual responsibility, and entrenched community dysfunction. They conclude that this has led to the low levels of productivity, economic activity and high levels of government dependence evident in discrete communities.

The authors consider a normalisation of tenure arrangements as key to changing outcomes in Indigenous communities, arguing that individual property rights are key to kick-starting economic development and business activity. Home ownership is seen as a pathway to wealth creation, and the authors advocate giving title to long term social housing tenants at no cost, in combination with tenure reforms aimed at generating individual property rights.

Critiques of collective tenures have also argued that these systems constrain democracy. Ascribing leadership to only those able to prove an unbroken traditional use of their land excludes those from outside the group, even if they have a legitimate interest for historical reasons—this may be a real issue for the many residents of Queensland’s discrete communities who are not traditional owners of the land, but whose ancestors may have been forcibly settled in these communities.

Further, communal governance arrangements are more likely to suffer from partisanship or nepotism, and tend to distribute benefits to the select favourite clique. This is further exacerbated by collective decision-making restricting the scope for individual action and risk-taking.

Others, such as Small and Sheehan 2008 support using a rights-based framework—access to land and security of tenure is regarded as a means to achieve human rights, including cultural rights that may restrict the activity of individuals. While using land for economic activities is not excluded, the emphasis is maintenance of cultural capacity through tenure security.

This view would appear to agree with the views of most Indigenous spokespeople. Noel Pearson, a prominent advocate for private ownership rights, is clear in his support for land rights, stating that communalism is ‘the very basis of Aboriginal Culture’ (cited in Bradfield 2005).

However, Pearson is also clear that collectivist tenures need to work with modern economies:

*Private ownership is a real issue for Indigenous reform and development. Communal land tenure works for hunter-gatherer economies but modern economies depend on property rights. There is a clash between the cultural imperatives of communal tenure and the development imperatives of private tenure.* (Pearson 2007)

*The stultifying communalism of Aboriginal communities is the product of our bureaucratic dealings with the state rather than a true reflection of our ancient traditions. Until Aboriginal communities break out of the strictures of collectivism and free individuals and*
Significant progress has been made

Until recently, the land administration in the discrete communities was almost non-existent. Cadastral surveys had not been conducted, meaning it was impossible to identify individual land parcels in communities—as a result, public infrastructure, including roads and housing, were often constructed without thought for property boundaries (Moran 2016).

Significant progress has been made in improving land administration in the discrete communities, largely led by the work undertaken by the Remote Indigenous Land and Infrastructure Program Office (RILIPO) (Box 11.3).

**Box 11.3 Remote Indigenous Land and Infrastructure Program Office**

In 2009, the Queensland Government began a process to drive changes to land administration and town planning to enable long-term leases for home-ownership and economic investment. This process was managed by the Remote Indigenous Land and Infrastructure Program Office (RILIPO), an office of the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP). Unlike in other jurisdictions, RILIPO has been successful in moving the planning landscape in Queensland discrete communities towards normalcy (Forrest 2014). Actions include:

- undertaking cadastral surveys of the land to define property boundaries
- completing road encroachment surveys
- conducting lot surveys and state government asset surveys
- facilitated the implementation of town planning schemes in 14 communities, with two others nearing completion
- completing development applications and other administrative work to enable long-term leases to be executed
- resolving outstanding title issues on blocks of land (although the ‘Katter Leases’ remain largely unresolved).

RILIPO also coordinates infrastructure development and native title compliance in the communities, including Indigenous Land Use Agreements (ILUAs) between native title holders and other parties.

*Source: Unpublished RILIPO advice; DATSIP 2017.*
11.2 Key issues and challenges

Stakeholders tell us that much is still required to improve land administration

Although there have been significant gains in resolving native title issues, completing surveys over townships and the transfer of land to Aboriginal Freehold title, stakeholders told us significant work remains to be done to remove impediments, to allow greater land use for economic development and to facilitate home ownership.

Stakeholders have raised concerns that land administration is not meeting the needs of Aboriginal and Torres Strait Islander people living in remote and discrete communities:

- It is clear that the LAS is dysfunctional in Cape York ILGAs and other remote and discrete Aboriginal and Torres Strait Islander communities, and it lags far behind the standard of LAS services that the rest of Queensland enjoys and depends on to successfully enable social and economic participation. (Cape York Land Council sub. 20, p. 3)

Partly, these concerns relate to a lack of a clear plan for moving forward:

- The LGAQ has resolutely advocated for an overarching plan for land tenure reform in Queensland’s Indigenous local government areas. The LGAQ, and its seventeen (17) Indigenous local government members, recognise that appropriate land tenure underpins and enables regional economic growth and community advancement.

- Ultimately, without a certain and secure land administration framework, Queensland’s discrete Indigenous communities will continue to be reliant on grant funding and external service delivery. (LGAQ sub. 14, p. 35)

The concerns of stakeholders may be exacerbated by a perception that government action to reform land administration arrangements in communities has been driven by government rather than community priorities. For example, actions to conduct cadastral surveys in discrete communities were largely seen as being precipitated by a need to secure tenure and progress housing construction under the National Partnership Agreement on Remote Indigenous Housing (NPARIH) rather than as a response to long-standing complaints from community.

However, there were also concerns about slow progress and a lack of consultation:

- We already have complex land tenure arrangements in the Torres Strait, and history has shown (as with the unresolved ‘Katter’ Land Holding Act leases) that insufficient processes leave a divisive legacy which can have significant impacts on community wellbeing.

- It is vital that departments, and their contractors, obtain all necessary Native Title approvals before bringing plant, equipment and supplies to sites. Too often this fails to occur, resulting in breaches of requirements under cultural heritage and Native Title legislation, and causes understandable anger and distress for affected community members (and adverse impacts on Council’s relationships) (TSIRC sub. 12, p. 30)

Stakeholders also told us that, although significant progress has been made recently with surveying town areas in discrete communities, many land users still do not have a registered interest in land (that is, the lot is yet to be surveyed and registered).
The land administration system constrains the ability of Indigenous land holders to capture market opportunities

The Commission has not assessed the extent to which market opportunities may be available to Aboriginal and Torres Strait Islander land holders residing in remote discrete communities. However, a range of challenges exist, including:

- large distances to market
- insufficient infrastructure, including roads and telecommunications
- high costs of doing business
- difficulties recruiting specialist staff.

Despite these difficulties, the literature suggests that there are economic development opportunities that are not being harnessed (Altman 2001; Cape York Institute 2005; Forrest 2014). These might include eco-services and land management, customary or hybrid economy products, mining, forestry or other commercial ventures (SCRGSP 2016a).

What is clear, is that market opportunities in remote locations are currently rare, so when new opportunities arise they need to be quickly harnessed by Indigenous organisations—this is hampered by slow and costly land approvals and tenure resolution processes.

A confusing array of tenure types exist in remote Indigenous land holdings

The Commission has been advised that there is a complex array of tenure types in remote and discrete Aboriginal and Torres Strait Islander communities:

Some of the regions greatest challenges include ... land tenure complexity due to Native Title in 14 of our 15 communities (with Hammond Island still being at claim stage) and a patchwork of land tenure models implemented over many generations. (TSIRC sub. 12, p. 6)

This would appear to create unnecessary confusion and cost:

Land tenures in ILGAs include Deed of Grant in Trust (DOGIT), Aboriginal freehold, Aboriginal freehold lease, Land Holding Act ('Katter') lease, Aboriginal reserve, Reserve for Departmental and Other purposes, USL, road reserve, and fee simple freehold. Each of these tenures includes a unique set of rights and interests, and are held by a variety of parties. The mix and proportion of tenures varies in every ILGA and is especially variable within town areas. The mix of rights and resources provided by the various tenures, quite often in adjoining or adjacent lots in a small community, creates confusion and uncertainty for people wanting to engage and invest in enterprise. Alternatively, because of land administration issues, the rights and interests associated with various tenures are ignored and the land is used for purposes inconsistent with the purpose of the tenure, which creates further confusion and conflict. (Cape York Land Council sub. 20, attachment A)

Yarrabah Shire Council notes that tenure issues make it challenging for council to accommodate service providers and places large burden on their stretched resources:

These parties all have their own leasing team or solicitors who require lease terms and have internal policy relating to tenure security ... these often do not account for the specific requirements of the Aboriginal Land Act 1991, or are intensely bureaucratic in their execution. These place unnecessary strain on Council resources ... it also eats in to the overall funding allocated for the given project. (Yarrabah Shire Council sub. 11, p. 14)
There are also long-standing issues with leases issued under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (the 'Katter' leases). More than 200 lease applications were approved under the Act—providing applicants with entitlement to a long-term lease—but have not been finalised. In many cases the original applicant has since deceased, and resolution needs to occur with the beneficiaries of their estate.

The introduction of the ALA in 1991 has created issues for the Katter leases, effectively putting them in limbo (Queensland Government 2016b). These technical issues were resolved with the passage of the *Land Holding Act 2013*, but many of the practical issues remain unresolved. Katter leases are further discussed in chapter 12 (Housing).

**Progress on conversion of DOGIT to Aboriginal Freehold**

The ALA (section 91) requires the state to transfer DOGIT land to freehold 'as soon as practicable'. The Commission understands that this would involve the transfer of land tenure to an Indigenous Corporation, but this is yet to occur.

One reason this transfer has not occurred is that there are unresolved issues related to the transfer of infrastructure constructed on DOGIT land. Under Australian law, most permanent fixtures on land are considered to be the property of the tenure holder (Crabtree et al. 2012). This means that any transfer of DOGIT land to an Indigenous Corporation would also involve the transfer of these assets.

Currently, the Commission understands that government infrastructure is held by Indigenous councils without leasing arrangements (the exception is housing recently transferred to 40-year leases)—governments may be hesitant to change this, since legislation affords some comfort while councils remain trustees of land assets.

Councils also own and manage a large number of assets that would be transferred under any shift to Aboriginal Freehold tenure. They also stand to lose significant lease revenue—for example, the Queensland Government currently pays lease fees of $2,800 for each home to Indigenous councils in lieu of rates (from personal correspondence with DPHW officers).

The Commission understands that it is possible to address these issues through leasing arrangements, although this may not be straightforward.

Key issues might include:

- reaching agreement between any new land holding body and infrastructure 'owners' about the terms of lease agreements
- identifying any legislative impediments—for example, social housing managed by the state would appear to not be rateable; therefore, councils would not have an immediate source of revenue to replace leasing revenue currently paid by the state.

**Communal ownership can make it difficult to create a bankable interest in land**

Lending and investment allows individuals and businesses to build in the assets they own and enables the pursuit of economic opportunity, such as home ownership or start-up funds to initiate a small business.

Loans with banks generally need to be secured with an asset so that if a borrower defaults, the bank can sell the asset and recoup its debt. The inalienability and communal nature of land interests including native title and Aboriginal land mean that these land interests are not readily 'bankable' (Crabtree et al. 2012).

Under the ALA and TSILA, bankable assets can theoretically be created through the issuing of long-term leases. These long-term leases can preserve the underlying communal title, while creating a transferable interest which can be used as collateral for a loan (COAG 2015). However, to issue a transferable lease, the native title interests of traditional owners first need to be addressed.
Native title and tenure interests are difficult to resolve

As discussed earlier, native title interests can be addressed through an ILUA which sets out agreed activities allowed on land holdings, including any compensation arrangements for future acts which impede native title interests (see Box 11.4). The ease by which an ILUA can be settled will likely depend on the extent to which there is an alignment between the future interests of the tenure holder and those of the native title holder.

Creating incentives that align the interests and native title holders is likely to be a key to unlocking the potential of Queensland remote Indigenous land holdings—given the claims currently in progress, it is likely that native title will coexist with other interest for almost all of Cape York (National Native Title Tribunal 2017).

A Senior Officers Working Group report to COAG (COAG 2015) noted emerging concerns about land tenure resolution and suggested that a way forward was to invest both native title and tenure interests in the same body. This view was shared by some stakeholders; however, there were concerns that recent conversion of crown and DOGIT lands to Aboriginal Freehold had not sufficiently considered how native title and tenure interests could be aligned.

The Cape York Land Council (sub. 11, attachment A) expressed concerns that recent land transfer arrangements—where Aboriginal land tenures are being granted to Land Trusts, while native title interests are being determined by separate PBCs—are hindering development:

Whilst native title determinations and tenure transfers to Aboriginal ownership in land trusts are strongly supported, issues have arisen in some ILGAs where separate Indigenous corporations have been established to hold different rights and interests in the same area of land. This arrangement is cause for further confusion and conflict in communities, and presents significant obstacles to social and economic participation and government service delivery.

These concerns were echoed by the Cape York Institute:

The dual role of council as local government, and Land Trustee, also constrains development by stifling local entrepreneurial effort by setting up the council and the PBC for complex negotiations and conflicts over land. Where native title exists over land for which the Council is Trustee, there are interests held in the same land managed by two separate indigenous organisations—the PBC and the council—which inevitably leads to tension. (sub. 26, p. 16)
Box 11.4 Indigenous Land Use Agreements (ILUAs)

An ILUA is a negotiated agreement between native title groups and other parties (such as governments, pastoralists and mining companies) about the use and management of land and waters. ILUAs may cover many different things, such as the conditions upon which activities effecting native title may be carried out, arrangements for cultural heritage inspections and the avoidance of damage to cultural heritage, compensation to native title holders for the loss of native title rights, the way in which the exercise of native title rights may be carried out, and protocols for future negotiations concerning Future Acts.

When the National Native Title Tribunal registers an ILUA, it becomes binding for all of the native titleholders, for the group concerned.

In the course of advancing a native title claim, it is often necessary to negotiate various ILUAs with respondent parties—land councils and RILIPO may provide assistance to develop the ILUA and to settle the legal wording of the agreement.

It is possible that ILUAs can be developed in relation to land that is not under claim but this is unusual.

All ILUAs require an authorisation meeting (community meeting) to approve of and authorise the signing of the ILUA by the applicants on behalf of the claim group. Land councils and RILIPO may facilitate and arrange these types of meetings for the ILUAs it has been involved in developing.

In its role as the Cape York native title representative body, Cape York Land Council (CYLC) facilitates the negotiation and registration of ILUAs. Some recent ILUA activity of the CYLC includes:

**Mapoon Township Community Development ILUA (finalised 2015–16):**
- Anticipates the likely future development in the town area, including home ownership.
- Provides simplified processes and compensation formulas for native title consent for those acts.
- Enables development in Mapoon that is easier, quicker and less expensive for all parties.

**Peninsula Developmental Road (under negotiation):**
- Significant opportunities are being negotiated as part of the ILUA, including contracting of Cape York Aboriginal companies for the road upgrade and ensuring employment of Cape York Aboriginal people by other contracted companies.
- It is expected to realise economic and employment benefits over several years.

**Sandstone East Aggregate ILUA (signed 2016):**
- It transferred 54,510 hectares of land as Aboriginal freehold to the ownership of its Traditional Owners.
- Some of the land will be declared as a jointly managed National Park.
- The remainder will be available for economic uses such as grazing, tourism and other uses as Traditional Owners see fit.

*Source: Native Title Tribunal 2016; North Queensland Land Council 2017.*
Some stakeholders are concerned that Indigenous Councils holding land tenure creates conflicts of interest and stifles economic activity

There are concerns that allowing Indigenous Councils to hold land tenure places too much power in a single body:

*If you are a community member wanting to obtain a lease on town land in your community to set up a business, the price and process by which you obtain such as lease from council is likely to be highly uncertain, dependent on politics and your own personal standing with council, and the time taken to resolve will also depend on the capacity of the council involved. Having council as the trustee, puts them in the role of gatekeeper with complete control over whether any entrepreneurial effort can occur if it requires a lease in town. (CYI sub. 26, p. 16)*

The position of Indigenous councils on this matter is not clear, and the Commission is seeking further views on this matter. Nevertheless, several councils have noted that they would like to be able to focus on their core responsibilities rather than being responsible for all community activity. The Commission also notes that the Torres Strait Islander Regional Council has deferred all trustee decision-making to individual island communities.

Statutory plans have constrained land use

Stakeholders have raised concerns that recent statutory plans have been developed without sufficient consideration for land suitable for economic activity—as a result, much land has been zoned as being suitable for conservation and environmental management use purposes. This is evident in the Aurukun Planning Scheme (Figure 55), which shows that all land area in the community, apart from the immediate township, has been zoned as for conservation and environmental management. Other planning regimes, such as those imposed through the Cape York Regional Plan, can add additional layers of land use regulation or restriction.

Stakeholders indicated that restrictive planning schemes, combined with the high cost of negotiating with native title interest holders, can make it prohibitively expensive to utilise land resources for economic development, effectively putting land out of reach of all but government and large corporations. Overly bureaucratic processes exacerbate the problem (Box 11.5). This has led to some communities seeking to change planning schemes—during consultation, a Prescribed Body Corporate (PBC) told us it has had to seek funding to develop a master plan and seek amendments to the planning scheme only recently developed for Yarrabah.
Figure 55 Aurukun Planning Scheme

Source: Aurukun Shire Council 2014, p. 133.
Box 11.5 Case study—home ownership leasing in Yarrabah

Yarrabah Shire Council provided the following example, which illustrates the difficulties it has encountered in trying to negotiate a home ownership lease for a community resident who has money in the Public Trustee of Queensland:

a) In 2015, Council as trustee received an expression of interest for a home ownership lease for a client of the Queensland Public Trust (client).

b) The client is homeless and required tenure over land the community culturally and historically acknowledges belongs to him, which required formalisation through a 99-year home ownership lease. This was approved by Council.

c) In September 2015, the Public Trust was provided with an Agreement to Lease and all relevant details to finalise a home ownership lease for the client in response to their request for that information, to release $4,000 for the land payment.

d) On the 14th October, the Public Trustee required further costings and details, the contact in Council who could provide those costings was given to the Public Trustee.

e) On the 8th March next year, after the Council officer returned from Maternity leave, an update was requested from the Public Trust about the case status.

f) On the 11 April, a response was received from Public trust that the Trust Officer had left. She stated that she was unable to give an update and requested an overview.

g) 13th February 2017, the Trust Officer Council. This information had been offered or provided 12 months earlier. However, all information was provided in full again.

h) In response to an email from the client’s Worklink officer, who had enquired about the status of the lease – given the client was still homeless and quite distressed – further contact was made to the Trust Officer on the 16th May 2017 asking if she could update on this case. The response was simply, ‘Not at the moment’.

i) It has been nearly two years since the initial contract was given to the Public Trust to finalise to enable the client to have a home. This matter is still unresolved and with the Public Trust to finalise.

j) The client is still homeless.

Source: Yarrabah Shire Council sub 11, p. 8.
11.3 Potential solutions

Given land tenure issues are much broader than the scope of this inquiry, any changes would need to undergo a full technical and legal assessment before adopting any solutions. However, a number of options could be considered—the Commission is seeking further views prior to the finalisation of recommendations to government.

Recognise the importance of a land tenure system that works for Aboriginal and Torres Strait Islander people

While the Commission acknowledges the work being done by RILIPO, a more strategic approach could be considered. For example, the government’s strategic policy for increasing economic participation—the Moving Ahead strategy (DATSIP 2016d)—makes no mention of land tenure issues or how the large Indigenous land holdings might facilitate economic development.

Build the capacity of Indigenous bodies to better utilise land assets

Extensive legislative and technical expertise is required to maximise opportunities from land interests. While there is a recognition that this capacity is growing amongst Indigenous organisations, work remains to be done. Regional bodies need to be sufficiently resourced to provide technical, governance and other support for Indigenous organisations managing land interests. The Commission understands that RILIPO has sought additional budget allocations to undertake this work. However, some consideration should be given to who is best placed to manage these functions. For example, it is possible that communities would be better served if some functions were under community control.

The Commission notes that land councils are currently providing capacity support for tenure resolution, even though this may be outside of their original charter of operations. Stakeholders had mixed views about whether this was working effectively. Consideration should be given to whether land councils are best placed to provide this support or whether these functions could be consolidated into the regional bodies discussed in Chapter 8.

Consolidate tenure arrangements

Government should ensure that work being done to undertake cadastral surveys in discrete communities is completed—this would mean that each parcel of land being used for, or planning to be used for, a discrete purpose is surveyed and registered as a lot, and the parties with an interest in each lot are recorded on the Land Title Register.

All stakeholders should consider whether benefits would result from merging native title and tenure interests, and, if so, what mechanisms might best encourage merging native title PBCs and land trusts into single entities where this would facilitate better and more efficient use of land.

Consideration needs to be given to how the interests of both native title holders and persons with an historical interest could be brought together—the Commission notes that, while there was general agreement amongst stakeholders that holding both native title and tenure interests in a single body would make it easier for land dealings to occur, there was no consensus on how this could be achieved or whether this was possible in practice.
Consolidate efforts

Broad-based ILUAs provide an opportunity to resolve native title:

*A process ILUA provides simple, inexpensive and quick processes for the consideration of native title consent for a range of future acts, including leasing of land and associated developments and a cultural heritage management process for development.* (Cape York Land Council sub. 20, p. 4)

The Commission understands that RILIPO has been active in facilitating the development of town ILUAs, but that these are yet to be completed. The Commission would like to better understand who is best placed to undertake these functions, including whether these functions could move to community control.

The Commission also recommends that the government commit to avoiding the use of project-specific ILUAs wherever possible, as this will avoid duplication and waste—this may require projects working to community timeframes rather than those demanded by government processes.

Complete conversion of DOGIT land to Aboriginal Freehold

Government could commit to completing the conversion of DOGIT land to Aboriginal Freehold. A timeframe for this should be negotiated with key stakeholders.

Ensure that communities are enabled to proceed with development opportunities

Government could work with communities to fully assess land values, determine appropriate uses and ensure these are captured properly in statutory-compliant planning schemes. The Commission commends current Queensland Government action to work with communities to develop forward-looking planning strategies (Queensland Government sub. 27, p. 13). This work may need to be driven more by Indigenous stakeholders. Consideration should be given to what role regional bodies may play in enabling better statutory planning under the broader reform agenda.

Economic opportunity

Where Indigenous corporations agree to manage land for public-good environmental outcomes, consideration should be given to how these bodies are resourced to provide these outcomes.

Ensure Indigenous involvement in implementing changes

To achieve change, there will need to be cooperation between agencies, councils and Indigenous land holding entities. In the reform regions, regional bodies could work with these parties to develop an action plan that outlines actions, responsibilities and timeframes.
Draft recommendation 10

The Queensland Government should progress land tenure reform and establish a plan that sets out a roadmap and timeframes. The plan should consider how:

- land tenure and native title interests can be consolidated or integrated to provide more rapid resolution of differences
- broad-based Indigenous Land Use Agreements (ILUAs) can be used to facilitate the resolution of land tenure and native title interests
- existing planning schemes can be modified to better facilitate future economic development
- the functions to support these actions should be allocated—including whether any functions should be moved to community control
- Deed of Grant in Trust (DOGIT) land in townships should be converted to Aboriginal Freehold
- to complete the survey and registration of land parcels currently in use (or planned to be used) in discrete communities
- to build the capacity of Indigenous land holding bodies.

Seeking further views

The Commission is seeking further views on how the administration of land in communities could be improved. In particular:

- Are there functions in the land administration system that would be better placed under community control—for example, would there be benefits from moving some of the functions currently performed by RILIPO to community control?
- What arrangements might assist the merging of native title and land tenure interests?
- What impediments are there to moving DOGIT land to Aboriginal Freehold and how can these be overcome?
- How can funding from the Australian Government be harnessed to better support Aboriginal and Torres Strait Islander people to use Indigenous land holdings?
Figure 56 Land transferred to Aboriginal Freehold
Figure 57 Native title claims - Cape York region

Source: National Native Title Tribunal, 2017.