



Cape York Land Council Aboriginal Corporation
ICN 1163 | ABN 22 965 382 705

7 November 2017

Queensland Productivity Commission
PO Box 12112
George St Brisbane
QLD 4003

Dear Queensland Productivity Commission

CYLC comments on QPC draft report regarding the Inquiry into Service Delivery in Queensland's remote and discrete Aboriginal and Torres Strait Islander communities.

Cape York Land Council (CYLC) recognises the significance of the Queensland Productivity Commission (QPC) *Inquiry into service delivery in remote and discrete Aboriginal and Torres Strait Islander communities* (the Inquiry), and the important opportunity the Inquiry provides to identify and address the underlying causes of disadvantage in Queensland's remote and discrete Indigenous communities, including in Cape York.

CYLC welcomes the release of the Inquiry draft report and is strongly supportive of its content. The draft report's identification of key issues and the proposed resolution of these issues is generally consistent with approaches that CYLC has previously advocated. However, before the draft report is finalised and submitted to the Queensland Government CYLC provides the following comments for consideration.

The draft report proposes structural, service delivery and economic reforms. CYLC's comments on the draft report are primarily based around the land reforms necessary to enable these structural, service delivery and economic reforms.

Structural Reform

CYLC supports proposed changes to service delivery structures to transfer decision making and accountability for service delivery to communities. CYLC supports that new community representative bodies should be established to fulfil planning and decision making roles. Shire Councils should not fulfil this community representative body role because Councils are an arm of the Queensland Government and their roles should be consistent with local government service delivery functions.

As proposed in the draft report, CYLC supports that the to-be-established community-level representative bodies would:

- determine priorities and establish community level plans and monitor progress against this plan;
- provide a one-stop-shop for service providers to undertake community consultation; and
- manage tenders for service provision.

CYLC also supports the proposal in the draft report that a regional body should support the community level representative bodies and would:

- provide governance capability, advice and assistance to community level bodies, including for the development of community level plans;
- coordinate and assist communities to take advantage of economies of scale and scope;
- work with communities to determine region wide resourcing needs and priorities; and
- work with mainstream service providers to develop regional policy, ensure that community plans are adhered to, and that service provision to communities is appropriate.

CYLC considers that Land Councils could potentially fulfil the role of a regional body to support the community level representative bodies. Similar to the Torres Strait Regional Authority example quoted in the draft report, CYLC has already developed capacities as an established regional body with a broad mandate to support the aspirations of Cape York Aboriginal people, and exercises these capacities to support the functions of Registered Native Title Bodies Corporate (RNTBCs). CYLC's networks with Cape York communities and State and Commonwealth government agencies, awareness of corporate governance, strategic planning and service delivery processes, and skills in the negotiation and implementation of plans and agreements makes CYLC highly suited to this role.

Service Delivery Reform

CYLC supports the proposal to shift government's involvement in service delivery to the role of funder and co-purchaser rather than funder, purchaser and direct provider of services. An arrangement where government is the funder and co-purchaser of agreed outcomes in cooperation with communities would empower communities to drive their own development and service delivery.

Economic and Community Development Reform

CYLC has long advocated for a shift in government policy direction from sustaining Cape York Aboriginal communities as welfare ghettos to a development agenda where local economies are supported to form. Under a development agenda local Aboriginal people would be supported to own homes, establish businesses, create local jobs and build wealth. Over time, the success of a development agenda, the increase in individual and community responsibility, and the growth of private spheres of activity would diminish the quantum of government services required to be delivered to closer to the mainstream average.

CYLC applauds the identification in the draft report of the inadequacies of the land administration system (LAS) as a key obstacle to development. As an organisation with expertise and experience in both land and Aboriginal development on Cape York, CYLC clearly recognises that it is land tenure, land ownership, land use planning and statutory controls, native title consent and other elements of the LAS that constrain service delivery and development. Indeed, land issues are at the root of many social and economic problems in Cape York communities, but fortunately, land issues will not be excessively difficult to address. Return on investment from land reforms would be the easiest and most significant to achieve so these reforms should be vigorously pursued by government.

Chapter 11 of the draft report is of particular interest to CYLC because it addresses land issues. Land issues in Cape York Aboriginal communities are particularly complex for a number of reasons including:

- historical underinvestment in the LAS has resulted in uncertainty and inadequacy around the creation and recording of interests in land;
- a failure by government to adequately progress long outstanding land transfer and trusteeship issues and to disentangle the trusteeship of Indigenous land from local government functions and government control over DOGIT tenure and Indigenous Reserves.

- tensions between co-existing native title and land tenure, including the different rights afforded to Traditional Owners and historical community members, and the corporate structures established to hold and manage native title and land tenure rights;
- tensions between communal interests in land and individual interests in land; and
- tensions between environmental conservation and economic development land uses.

Competition between different parties with different interests and land use aspirations is not unique to remote and discrete Indigenous communities. However, these communities are unique in that their LAS includes:

- different types of rights and interest in land deriving from land tenure and native title;
- different ways in which rights and interests in land are held and recorded; and
- extreme levels of land use restrictions imposed by statutory land use plans and environmental management legislation.

In combination, these LAS elements create a situation where economic and community development are highly constrained.

However, intelligent, targeted and relatively simple actions could achieve significant and effective reforms to make the LAS fit for the purpose of enabling economic and community development and improving service delivery. These reform actions would make processes for securing tenure and using land easier to navigate and free from unnecessary and, in some cases, indigenous (land) specific constraints.

To reconcile coexisting interests and land use aspirations, in most cases the grant of a registered lease will be the most appropriate way to establish secure tenure for economic purposes such as home ownership and business development. Indigenous and non-Indigenous individuals and corporations therefore must be enabled to easily, quickly and inexpensively acquire a registered lease, and land trustees, native title holders, local governments and other relevant parties must also be supported to fulfil their roles in lease granting processes.

As an overarching objective, reform of the LAS, must result in the establishment of areas of investment-ready land and efficient processes to create registered interests in that land, usually in the form of a lease.

Land Reform Outcomes

Establishing investment ready land and efficient leasing processes must involve reforms to multiple aspects of the LAS, and then the implementation of these reforms on Indigenous land. Because current land arrangements vary between each remote and discrete community CYLC proposes that the following outcomes are agreed to be achieved for all land in each Indigenous Local Government Area and land around remote and discrete Indigenous communities located in mainstream local government areas.

- 1. Land Tenure and Property Rights.** The primary land tenure layer is inalienable and communally owned Aboriginal freehold, except for small areas where other tenures such as road reserves exist as appropriate. Aboriginal freehold property rights include rights to resources such as timber, gravel, carbon, water, vegetation, etc, and the right to grant legally secure and fully transferable leases and other interests in land to individuals or companies as a secondary tenure layer;
- 2. Native Title.** A native title determination has been completed, and land where native title continues to exist has been confirmed;

- 3. Holding of Interests in Land.** A single Indigenous Corporation performs the functions of (1) a Registered Native Title Body Corporate (RNTBC) to hold and manage native title rights and interests, and (2) a Land Trust to hold and manage Aboriginal freehold and other tenure rights and interests in land. The Corporation's constitution identifies how it operates in the interests of native title holders and Indigenous parties with historical interests in land;
- 4. Land Title Registration.** Each parcel of land used for (or planned to be used for) a discrete purpose (such as home ownership, business or service delivery, including social housing) is surveyed and registered as a lot. The party/ies with an interest in each lot are recorded on the Land Title Register. This includes existing land users, such as the local government and service deliverers, having registered leases over the land they use;
- 5. Native Title Consent.** 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 development, and a cultural heritage management process for development;
- 6. Land Use Planning and Management.** An assessment of land values and appropriate uses is performed and used to prepare a statutorily-compliant planning scheme that provides for appropriate development in the ILGA. Other legislation and plans do not constrain appropriate development. If the Indigenous Corporation agrees to manage some land for public good conservation outcomes then the Indigenous Corporation is appropriately resourced to achieve these agreed outcomes;
- 7. Capacity for Social and Economic Participation.** Indigenous Corporations, home owners, development proponents, local governments, and other social and economic participants and service deliverers have adequate capacity and support to participate successfully. Significant legal, accounting, governance and other relevant advice and support is provided by a regional level organisation/s which has suitable capacity and relationships with Indigenous Corporations;
- 8. Municipal Service Delivery.** Local government provides adequate municipal services to support home ownership and economic development, and annual State land valuations supports a local government rates system;
- 9. Development Prospectus.** A Development Prospectus, based on outcomes of the land assessment and land use planning, is prepared for each Indigenous Corporation to identify opportunities for social and economic participation based on land use and development;
- 10. Proactive Leasing.** The Indigenous Corporation proactively grant interests in land through the lease of lots for home ownership, commercial, service delivery and other purposes. Leases are proactively facilitated using: the Development Prospectus; leasing policies such as home ownership eligibility criteria and a price schedule; and a Trust Account to underpin home ownership and ensure finance options, equity and resale certainty.
- 11. Implementation Plan.** To achieve these outcomes an All Parties Implementation Plan, identifying actions, roles and responsibilities, timelines and resourcing should be developed and implemented by government and non-government parties for each ILGA. Required actions could include statutory reform, statutory implementation, policy reform and administrative actions.

The implementation of actions to achieve these outcomes will primarily be the responsibility of the Queensland Government because its legislation and policies control most elements of the LAS. However, implementation of these actions will also require collaboration and cooperation between

the Queensland Government and other parties. For example, the Cape York Land Council will have a major responsibility in relation to native title outcomes; the Commonwealth Government could be involved in the resourcing of ILUAs, the assessment of land values and appropriate uses, and capacity building; and Indigenous Local Governments will need to be involved in municipal service delivery.

The Queensland Government therefore must not only commit to achieving these outcomes, but must also commit to recruiting the Commonwealth Government, Local Governments and other relevant parties to also fulfil their role in achieving these outcomes. This is a challenge of leadership that the Queensland Government must embrace.

Draft Report Recommendations

In light of the above, the recommendations to the Queensland Government outlined in the draft report's recommendation 10 could be amended as follows:

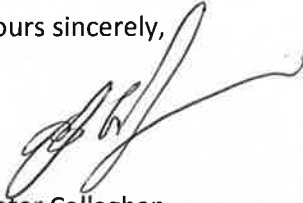
- The Queensland Government should progress reforms to the land administration system as it applies to remote and discrete Indigenous communities, and establish a LAS reform plan that sets out actions, roles and responsibilities, timelines and resourcing. Actions could include statutory reform, statutory implementation, policy reform and administrative actions.
- The LAS reform plan should have as its primary objective the establishment of areas of investment-ready land and efficient processes to create registered interests in that land, usually in the form of a lease.
- The LAS reform plan should be developed through consultation with, and commitment from, the Commonwealth Government, Indigenous regional representative structures such as Land Councils, and Local Governments.
- The LAS reform plan should identify the ideal LAS model for remote and discrete Indigenous communities and the outcomes of reform. The ideal LAS model will articulate outcomes relating to:
 - Land tenure and property rights;
 - Native title determinations;
 - Holding of interests in land;
 - Land title registration;
 - Processes for native title consent for proposed future acts;
 - Land use planning and management;
 - Capacity for social and economic participation;
 - Municipal service delivery;
 - Identifying opportunities for development; and
 - Proactive leasing.
- The outcomes resulting from an ideal LAS model are discussed in more detail in Box 11.6 below.
- The LAS reform plan should include Community Implementation Plans to identify the particular actions necessary in each remote and discrete Indigenous community to achieve the ideal LAS model. These actions will vary from community to community because the current LAS arrangements vary in each community.

Box 11.6 - Objectives for and Outcomes from an ideal LAS

- 1. Land Tenure and Property Rights.** The primary land tenure layer is inalienable and communally owned Aboriginal freehold, except for small areas where other tenures such as road reserves exist as appropriate. Aboriginal freehold property rights include rights to resources such as timber, gravel, carbon, water, vegetation, etc, and the right to grant legally secure and fully transferable leases and other interests in land to individuals or companies as a secondary tenure layer;
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- 7. Capacity for Social and Economic Participation.** Indigenous Corporations, home owners, development proponents, local governments, and other social and economic participants and service deliverers have adequate capacity and support to participate successfully. Significant legal, accounting, governance and other relevant advice and support is provided by a regional level organisation/s which has suitable capacity and relationships with Indigenous Corporations;
- 8. Municipal Service Delivery.** Local government provides adequate municipal services to support home ownership and economic development, and annual State land valuations supports a local government rates system;
- 9. Development Prospectus.** A Development Prospectus, based on outcomes of the land assessment and land use planning, is prepared for each Indigenous Corporation to identify opportunities for social and economic participation based on land use and development;
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If you wish to discuss any aspect of our submission please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Callaghan', with a long, sweeping flourish extending to the right.

Peter Callaghan
Chief Executive Officer
Cape York Land Council

