

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
SUPPLEMENTARY BUDGET ESTIMATES 20-24 OCTOBER 2014

Prime Minister and Cabinet Portfolio

Department/Agency: Indigenous Business Australia
Outcome/Program: 2 – Indigenous
Topic: Palm Island Land Tenure

Senator: Senator the Hon Ian Macdonald
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Question:

Senator IAN MACDONALD: Perhaps this is not the right place to ask this question. I should ask the former Queensland government. Is land on Palm Island unrestrictedly transferable? Do you know that? You may not know that.

Mr Fry: I am not across those levels of detail but we can certainly provide them on notice.

Answer:

99 year leases of residential land on Palm Island (as with other Deed of Grant in Trust communities (DOGIT)) for home ownership purposes are restrictedly transferable under the *Aboriginal Land Act 1991*. See Attachment A.

Grants of 'Freehold' under the recent *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014* are also restricted in that the initial grant of freehold must be to an Indigenous community member.

ATTACHMENT A

The *Aboriginal Land Act 1991* is the principal legislation for regulating land tenure arrangements on Aboriginal Deed of Grant in Trust (DOGIT) land through provisions for land administration and land dealings. The Act provides for the creation of a registered interest in land through the granting of leases. The objective of leasing Aboriginal DOGIT land is to enable home ownership and social housing, encourage economic development, and facilitate the construction of essential community infrastructure.

When considering an expression of interest for the grant of a lease over Aboriginal DOGIT land trustees are responsible to ensure compliance with statutory processes before the lease can be granted. These considerations may prevent the grant of a lease or place conditions on the lease that constrain certain activities.

Aboriginal shire councils, as trustees of Aboriginal DOGIT land, must comply with the requirements of the Land Act 1994, Aboriginal Land Act 1991 and Native Title Act 1993 (Cth).

Under the Aboriginal Land Act 1991, leases on Aboriginal DOGIT land may be granted by trustees to:

- an Aboriginal person
- the State or
- another person.

For the purposes of:

- private residential use
- commercial development
- public housing
- public infrastructure
- residential accommodation—public service employees
- another purpose.

Note that:

- not all parties are eligible for all lease purposes
- the trustee may only grant a lease after all due processes have been satisfied and any associated approvals granted
- ministerial consent will be required prior to the granting of some leases.

Leases to Aboriginal people

A trustee may grant a lease to an Aboriginal person, without the Minister's consent, for:

- private residential purposes for a term of 99 years
- another purpose for a term of less than 30 years

and with the Minister's prior written consent for:

- commercial purposes for a term of between 30 and 99 years
- another purpose (other than private residential purposes) for a term of between 30 and 99 years.

Leases to another person

- A trustee may grant a lease to another person, without the Minister’s consent, for: private residential purposes to support a lease granted for commercial purposes for a term of up to 99 years
 - commercial purposes for a term of less than 30 years
 - another purpose for a term of less than 10 years
- and with the Minister’s prior written consent for:
- another purpose for a term of between 10 and 99 years.

Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014

The key principles of freeholding are that:

- Allowing for freehold in a community is optional. The trustee, in consultation with the community, determines whether to allow for freehold and if so where and how it will occur.
- Native title must be either surrendered or previously extinguished before freehold will be granted.
- The grant of freehold is initially restricted in who can receive it, after that there are no restrictions on who can purchase the freehold land—just as it is for any other freehold in Queensland.
- Freehold can only be granted in the township areas; the remaining community land remains trust land and can be developed through leasing.
- The model is self-funding—any costs will have to be recovered from the purchase cost the trustee puts on the land.
- The Queensland Government is not charging for the land and only receives the standard fees that apply to land transactions.
- There must be a planning scheme in place.