

## PRIME MINISTER AND CABINET

### Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017

With regard to the intent to amend legislation that will allow the sale of ex-ATSIC land under 200(1A): “The appropriate consenting authority may give the individual or body written notice stating that the appropriate consenting authority’s consent is not required in relation to any disposal of the interest by the individual or body.”

RESPONSE: the Department wishes to confirm that the proposed amendments to the ATSIC Amendment Act 2005 do not apply to any land owned by ATSIC or similar statutory organisations. The legislation applies to interests in land purchased by Indigenous organisations using grants provided by ATSIC and predecessor organisations.

- Important points for the Committee to consider in relation to the proposed amendments are:
  - the relevant assets are owned by the organisations, not by government;
  - the Commonwealth grant funds were received by the organisations between 15 and 40 years ago. In many cases no additional funding has been provided to the organisations for upkeep of the properties/assets in the last ten years; and
  - the proposed amendment would allow the Commonwealth to remove the Commonwealth’s current interests enabling the organisation to act autonomously when dealing with the asset.

QUESTION: What safeguards are there that the amendments listed in the Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017 are explicitly purposed to allow for the sale and lease of lands for the purpose of Aboriginal economic development?

RESPONSE:

- The intent of the amendment is to increase autonomy for affected organisations and allow them to manage their own assets in a way that will benefit their organisation and the community they represent.
- The proposed amendments enable the appropriate consenting authority (that is, the Commonwealth, the Indigenous Land Council, or Indigenous Business Australia) to apply the legislation in a discretionary manner.
- The Commonwealth will adopt a risk-based approach to determine if its interests should be waived. The Commonwealth will primarily consider the governance of the organisation and the organisations capacity to act in the interests of the Indigenous community it represents as well as the age and value of the original grant.

- Once a consenting authority waives the consent rights in a property, the rights cannot be reinstated. The organisation will be able to use the property as it sees fit. This could include continuing the existing use, leveraging the asset for greater community or economic development, including through a mortgage to raise funds or through the sale of the asset.

QUESTION: What assurances can the department provide to ensure that the intent is not to remove Aboriginal assets and the holdings from Aboriginal people and communities without their consent but only with the consent of the Commonwealth?

RESPONSE:

- Community organisations own these assets as freehold interests. The Commonwealth does not own them nor have the power to remove or deal in these assets or holdings. Currently, the Commonwealth can only provide consent (or decline to do so) in relation to dealings proposed by the organisation that owns the property. The proposed amendments will not give the Commonwealth any additional powers over the properties.
- It is expected that if the legislation is passed, implementation will occur in one of two ways:
  - i. an organisation will approach the consenting authority to seek consent to deal in their property/asset. An assessment process would be undertaken and a decision made as to whether consent requirements would be waived.
  - ii. the relevant consenting authority can proactively contact organisations to see whether they are interested in pursuing the waiving of consent requirements. If so, written agreement between both parties will occur.
- A decision to waive the Commonwealth's consent requirement would occur with the agreement of the relevant organisation.

The Commonwealth will put in place a governance committee to consider decisions to waive the Commonwealth's interest. This would comprise several consenting authority delegates (one from the Department of the Prime Minister, Health, or the Attorney-General's Department and one each from Indigenous Business Australia and the Indigenous Land Council).

QUESTION: What safeguards are there that the legislation will not be used to waive the consent of appropriate consenting authorities to shift control of assets to another entity?

RESPONSE:

- See above response. The assets are freehold owned by the organisation. Consenting authorities do not currently, and will not under the proposed legislation, have the power to shift control of the assets to another entity.
- Once a consenting authority waives the consent rights in a property, the rights cannot be reinstated. The organisation will be able to use the property as it sees fit. This could include continuing the existing use, leveraging the asset for greater community or economic development, including through a mortgage to raise funds or through the sale of the asset.