

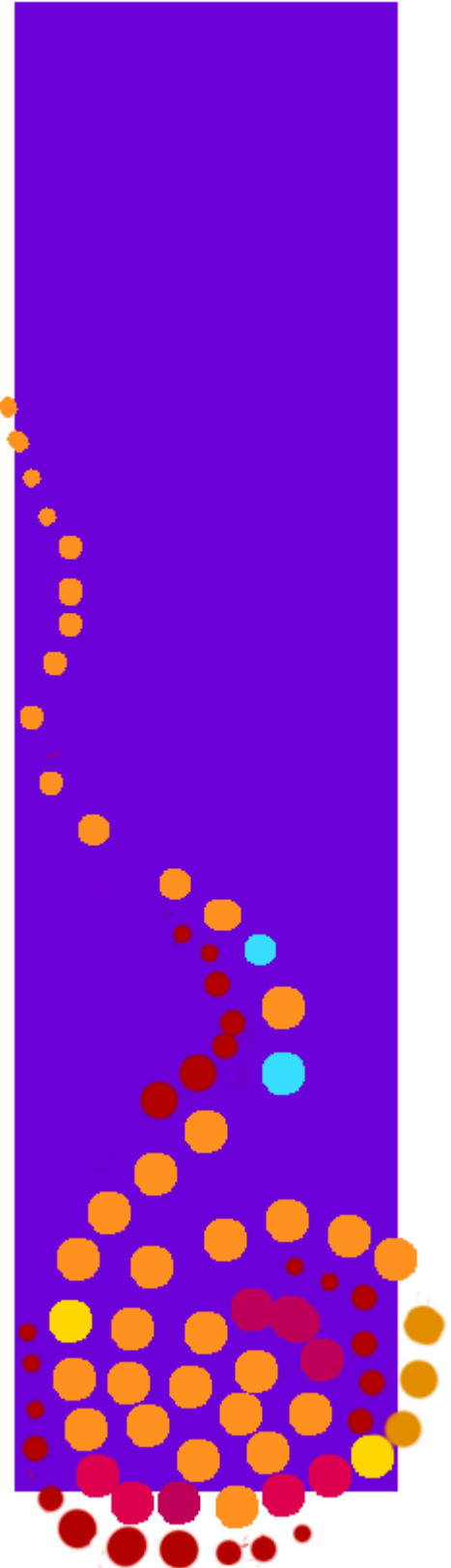
Building Reconciliation

PROTOCOL

BETWEEN
THE QUEENSLAND GOVERNMENT
AND
THE QUEENSLAND INDIGENOUS
WORKING GROUP



QUEENSLAND GOVERNMENT



PROTOCOL AND PROCEDURES

BETWEEN


THE QUEENSLAND INDIGENOUS WORKING GROUP

AND

THE QUEENSLAND GOVERNMENT

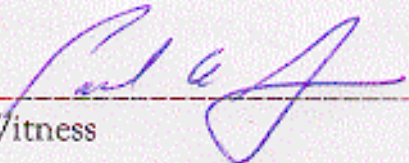
EXECUTED as a Protocol:

SIGNED for and on behalf of
the Queensland Government by



Peter Beattie
Premier of Queensland


in the presence of:



Witness

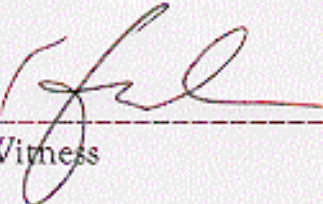
Paul Smith
Executive Director
Native Title Services

SIGNED for and on behalf of
The Queensland Indigenous
Working Group by



Terry O'Shane
Chair

in the presence of:



Witness

Tony Johnson
QIWG Co-ordinator

PROTOCOL

BETWEEN

THE QUEENSLAND INDIGENOUS WORKING GROUP

being the association in paragraph A of the Introduction of this Protocol, of Level 12, National Mutual House, 144 Edward Street Brisbane (the QIWG).

AND

THE QUEENSLAND GOVERNMENT

of Level 15, 100 George Street, Brisbane.



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INTRODUCTION

- A. The QIWG is an unincorporated association of Representative Aboriginal/Torres Strait Islander Bodies of Queensland pursuant to Section 202 *Native Title Act 1993* (Cth), the Aboriginal and Torres Strait Islander Commission, the Aboriginal Coordinating Council and the Islander Coordinating Council.
- B. Both the Queensland Government and the QIWG are committed to the process of consultation in regard to policy and legislative issues which affect Aboriginal people and Torres Strait Islanders and each will participate in an open and honest way.
- C. In addition to consulting the QIWG about the *Native Title (Queensland) State Provisions Amendment Act (No 1) 1998* and the *Native Title (Queensland) State Provisions Amendment Act (No 2) 1998*, the Queensland Government, through Premier Beattie, has indicated that it will consult with the QIWG about other policy and legislative matters related to native title, land management, resources and cultural heritage.
- D. The purpose of this document is to record the parties' understanding about some further consultations to be conducted between the Queensland Government and the QIWG, and to set out ways in which the further consultations will be conducted, so that the parties can arrange their affairs with an understanding of their respective roles and responsibilities.
- E. The Department of the Premier and Cabinet shall be responsible for overseeing the implementation of the Protocol. This will include facilitating relevant consultation processes by assisting and participating in consultation, and by providing for relevant necessary administrative arrangements such as those arising from the operation of clause F.
- F. Where members, staff or consultants of the QIWG are requested by the Queensland Government to participate in consultative meetings with Government officials, reasonable travel and accommodation expenses for attendance of members, staff or consultants will be met by the Queensland Government up to an agreed sum.
- G. The QIWG members are to consult with the QIWG's constituent organisations and appropriate people in the Aboriginal and Torres Strait Islander communities, providing comment and their own expert personal insights to the Queensland Government on issues raised.
- H. This Protocol does not prevent the Queensland Government consulting with other Indigenous parties as it sees fit on a case by case basis. However, in every consultation with Indigenous parties, the Queensland Government will have due regard to the representative mandate of those parties when taking into account and lending weight to the parties' views.
- I. The specific issues outlined below are not an exhaustive list and may be added to or amended from time to time as agreed by the parties.
- J. This Protocol may be varied by the agreement of both parties or terminated on the request of either party.

- K. The Queensland Government's consultations with the QIWG will generally involve native title, land management, resource and cultural heritage issues. As stated above under clause H, however, the Queensland Government reserves the right to consult any body, group or person in regard to any issues as it sees necessary at the time.
- L. The Queensland Government will notify the QIWG about impending policy reviews on matters referred to in clause K above, and will consult the QIWG in the various stages of policy development towards legislation on these matters.
- M. Without limiting the meaning of the term "consultation", in every consultation referred to in clause K above, the Queensland Government will at least:
- provide to the QIWG a reasonable opportunity to contribute to the development of the relevant Queensland Government policy, including by allowing a reasonable time for the making of written submissions by the QIWG. If in relation to a particular matter, circumstances beyond the control of the Queensland Government cause it to be not possible for the Queensland Government to provide a reasonable time for the making of submissions by the QIWG, the parties will meet to reach agreement on an alternative way for the QIWG to communicate its views and submissions to the Queensland Government;
 - provide to the QIWG a reasonable opportunity to review and comment upon any consequent legislation at key stages of its development; and
 - take into account the views expressed by the QIWG in formulating such policy and legislation.
- N. From the date of this Protocol, the Queensland Government will inform its officers and agents of the terms of this Protocol, and will direct its officers and agents to act in accordance with the terms of this Protocol.
- O. The Introduction forms part of this Protocol.
- P. The parties agree that this Protocol is not intended to create any legal relations between them.
- Q. Relevant to this Protocol, the position of the Queensland Government is that it reserves the right to exercise its sovereign power to make a final policy decision, which may or may not concur with views put by any group during a period of consultation.
- R. Relevant to this Protocol, the position of the QIWG is that Governments should obtain the informed consent of indigenous people before passing laws or taking other action which affects their rights or interests.

CURRENT SCHEDULE OF ISSUES FOR CONSULTATION

1. CULTURAL HERITAGE LEGISLATIVE REVIEW

- *Objective*

The Queensland Government, the Indigenous community and industry groups support a review of the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*. It is proposed that new legislation be introduced in 1999. The review is being co-ordinated by the Department of the Premier and Cabinet and involves the Environmental Protection Agency, the Department of Mines and Energy, the Department of Aboriginal and Torres Strait Islander Policy and Development and the Department of State Development. An advertisement inviting public comment on the discussion paper was published in February 1999, and the period for the receipt of public submissions closed on 29 March 1999, although some parties have been granted extensions.

- *Consultation*

The QIWG has been consulted and has provided a detailed submission in regard to principles and direction for the proposed new legislation. There will be an opportunity for further specific input by the QIWG in regard to the development of the legislation. The input will include negotiations between the QIWG and the Queensland Government to seek agreement on principles, which will underlie the model of legislation to be developed by the Queensland Government. The Queensland Government will consult other groups as part of its consultation obligation, including conducting regional forums for community discussion of a proposed model for the legislation.

- *Timing*

A discussion paper seeking public input was released in February 1999. Submissions were sought up to the end of March 1999. Negotiations in relation to agreed principles will occur about the middle of the year. It is proposed that there will be a model for legislation circulated for consultation in about August 1999.

2. SMALL MINERS SECTION 31 AGREEMENTS (SHORT TERM) AND ILUAS (LONGER TERM)

- *Objective*

The QIWG and small miner representative groups have agreed that a co-ordinated Right to Negotiate process will substantially reduce the significant backlog of applications for mining tenure.

The objective is to grant mining tenures over approximately one hundred and eighty applications for mining leases and mining claims in seven distinct areas over which there are fifteen native title claims. As part of the negotiation process, Indigenous Land Use Agreements ("ILUAs") will be sought for future small mining proposals in various areas.



- *Consultation*

There has been extensive consultation with the QIWG in regard to the development of Section 31 Agreements (short term) and ILUAs (longer term). The Queensland Government is also consulting with native title claimant groups and representative bodies as part of its “right to negotiate” obligation.

Officials from the Department of Mines and Energy and the Department of the Premier and Cabinet are heavily involved in the facilitation of this process.

- *Timing*

Consultation for this project began with the Native Title taskforce and s.29 Notices were placed on 16 December 1998. Key negotiations are continuing.

- *Acknowledgment*

The Queensland Government acknowledges the unusual burden placed on the Representative Bodies of Queensland pursuant to Section 202 *Native Title Act 1993* (Cth) caused by the Queensland Government’s simultaneous issue of over one hundred and eighty notices of application for mining tenures. The Queensland Government also acknowledges the crucial role of the QIWG, at no cost to the Queensland Government, in facilitating agreements for the grant of the mining tenures under Section 31 *Native Title Act 1993* (Cth).

3. BACKLOG OF MINING TENURES AND EXPLORATION PERMITS

The Queensland Government and the QIWG recognise that there is a backlog of mining tenure and exploration permit applications, and that many of the tenure and permit applications await the Commonwealth Minister’s approval of the Queensland Government’s future acts legislative scheme.

The QIWG objects to the practice of issuing notices of application for mining tenures and exploration permits *en masse*. The Queensland Government and the QIWG will work cooperatively to develop strategies to minimise the impact of the backlog on all relevant parties and which avoid inequality of outcomes as between the parties.

- *Timing*

The Queensland Government and the QIWG will commence these negotiations forthwith.

4. **NATIVE TITLE ACT 1993 (Cth) PROCEDURAL RIGHTS ILUA**

- *Objective*

The objective is to reach an alternative procedure agreement in relation to certain notification requirements under the *Native Title Act 1993* (Cth). This should result in a significant benefit to Representative Bodies, Native Title Bodies Corporate, Native Title Holders and Native Title Claimants as well as the Queensland Government.

The process will explore options for:

- limiting notification for some future acts that have minimal impacts, or for agreement upon a more simplified notification process; and
- consultation about activities, which may impact on native title but for which notification and consultation is not required under the *Native Title Act 1993* (Cth).

The process will also examine resource implications on Representative Bodies under Section 202 *Native Title Act 1993* (Cth).

- *Consultation*

At present information is being gathered on the effectiveness of the current process. A strategy will be developed for consultation with the QIWG, Representative Bodies and other interested Indigenous parties in relation to the possible development of an ILUA regarding notifications required by the *Native Title Act 1993* (Cth).

One possible strategy to resolve this complex problem will be to consider an ILUA to cover a single Representative Body area as a test case which may be adapted for other Representative Body areas.

- *Timing*

Detailed discussion involving the Queensland Government and the QIWG in regard to options is proposed to commence by mid 1999.

5. **REVIEW OF LEGISLATION AND POLICY RELATING TO INDIGENOUS TITLE TO, AND MANAGEMENT OF, NATIONAL PARKS AND PROTECTED AREAS**

- *Objective*

Native Title may well be found to exist in areas declared as National Parks, although this will have no impact on valid dedications of National Parks made before 23 December 1996. There are also prospects for land, in which indigenous communities have some form of title, being incorporated into National Parks or other protected areas.



This would not diminish the continued interest of Indigenous communities in that land, however. There is a consequent need for appropriate mechanisms by which those communities can contribute to the management of those areas as National Parks or other protected areas.

The Cape York Peninsula Land Use Strategy and Barron Gorge National Park native title claim, along with a number of national parks claimed under the *Aboriginal Land Act 1991*, are examples of current issues which require resolution within a consistent policy framework.

Traditional hunting and gathering rights impacted by the *Nature Conservation Act 1992* will probably await the outcome of the Yanner case.

Legislative amendments will be considered once policy objectives are established.

- *Consultation*

The QIWG will be consulted along with specific claimants in order to progress a consistent policy approach.

- *Timing*

In furthering this consultative process, the QIWG has written to the Premier making specific observations and proposals concerning the approach to be taken to involve the indigenous community in the review.

6. USE OF THE ABORIGINAL LAND ACT 1991 AND THE TORRES STRAIT ISLANDER LAND ACT 1991

- *Objective*

The *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* may be used to assist in the resolution of native title claims.

The provisions of these Acts that apply to National Parks would also be included in any review conducted under Part 5 above.

- *Consultation*

Consultation will be ongoing as required.

- *Timing*

Timing will depend upon the resolution of issues.

7. LEGISLATIVE REVIEW TO INCORPORATE NATIVE TITLE ISSUES INTO THE FOLLOWING:

Petroleum Act 1923

- *Objective*

The *Native Title (Queensland) State Provisions Amendment Bill (No. 2) 1998*, which integrates native title processes with the processes of the *Mineral Resources Act 1989*, does not deal with exploration and development of petroleum or pipeline tenures. Although the Native Title Task force consulted extensively with petroleum industry representatives in July-September 1998 on petroleum tenure issues and native title amendments to the *Petroleum Act 1923*, a final position was not reached and it was decided to extend the current review of the *Petroleum Act 1923* to include native title issues.

- *Consultation*

A document for public discussion has been released. Public submissions on the discussion document were sought prior to 1 April 1999. Negotiations will need to occur between the QIWG, representatives of the Petroleum Industry and the Queensland Government. It is anticipated that a relevant Bill will be introduced in 1999.

Land Act 1994

- *Objective*

- (i) The Public Benefit Test of some provisions (particularly the ability to hold Grazing Homestead Perpetual Lease Tenures) is currently being considered by the Queensland Government.
- (ii) As demonstrated in the Western Yalanji outcome and the approach to Cape York, there is a growing interest by lessees in achieving upgrades in tenures as part of negotiated native title outcomes.

As a general rule, the QIWG does not support the upgrading of non-exclusive tenures to exclusive tenures in areas where native title may have survived.

The aim of the Queensland Government is to establish:

- a clear and robust process for future negotiations with respect to the many competing public interests; and
- an agreed strategy for progressing negotiations.

The Queensland Indigenous Working Group will actively participate in relevant negotiations.

Legislative and policy development will be considered to achieve these objectives.



- *Consultation*

The Aboriginal and Torres Strait Islander Commission and the Indigenous Land Commission have been included in consultation to date. The QIWG will now be included in the consultations.

- *Timing*

Not yet resolved.

Forestry

- *Objective*

- (i) Review of the *Forestry Act 1959*.

The Act will be the subject of a general review. Issues include general modernisation which may include renaming as the "Forest Management Act"; ecologically sustainable development objectives and definitions; legislative basis for forest codes of practice; indigenous cultural heritage; other regulatory reforms including enforcement powers; role of private forestry; consolidation/development of public forest tenures ("Forest Parks", etc for recreation and conservation); clarification of relationship with the *Nature Conservation Act 1992*.

- (ii) The Regional Forest Agreement

The Regional Forest Agreement (RFA) process is currently underway for South East Queensland. A framework agreement between the Queensland Government and Native Title Representative Bodies (NTRBs) has been raised in principle, to deal with relevant indigenous issues.

A parallel Memorandum of Understanding between NTRBs and RFA non-Government stakeholder groups, dealing with the same issues is currently under discussion.

The QIWG will be involved to assist the relevant Representative Bodies. A process to resolve tenure and management issues will be instigated. As part of this process, the Government will endeavour to negotiate one or more alternative procedure ILUAs to set out a legally binding negotiation process between Government agencies and Aboriginal people. The parties will use their best endeavours to reach agreement by 29 February 2000.

Further, nothing in the above precludes the State from entering into separate Area, Body Corporate or Alternative Procedure ILUAs with native title parties within any part of the South East Queensland RFA area in relation to the RFA or other matters. However, native title parties to such ILUAs will be entitled to an opportunity to benefit from the terms of any alternative procedure ILUA of the kind referred to in the preceding paragraph so that they do not suffer any detriment as a result of entering into any prior agreements.

- *Consultation*

- (i) No consultation framework has been designed as yet. Given the widespread interests of indigenous communities in forest reserves, the QIWG will be included in the program of consultation as a stakeholder.

- (ii) Consultation on the South East Queensland RFA so far has involved the inclusion of the Foundation of Aboriginal and Islander Research Action, and Goolburri and Gurang Land Councils on a Reference Panel. The QIWG will be included in the consultations henceforth.

- *Timing*

The Queensland Government will keep the QIWG informed of timing issues as negotiations with the Commonwealth progress.

Integrated Planning Act 1997

- *Objective*

A review of the *Integrated Planning Act 1997* to provide critical analysis of the effectiveness of the various mechanisms in the Act is proposed.

- *Consultation*

Details of the consultation mechanism have not yet been developed. The Queensland Government will consult with the QIWG in the proposed review.

- *Timing*

The review will commence around July 1999.

Compulsory Acquisition Legislation

- *Objective*

A number of legislative amendments are required to compulsory acquisition legislation as a result of the amendments to the *Native Title Act 1993* (Cth).

Amendments to the *Native Title (Queensland) Act 1993* were made on 30 September 1998 to immediately reflect the removal of the term "Compulsory Acquisition Act" from the *Native Title Act 1993* (Cth).

Further amendments to compulsory acquisition legislation are required to allow the enhanced procedural rights in section 24MD(6B) to be provided to native title holders when native title rights and interests are compulsorily acquired for infrastructure facilities. These amendments could not proceed until the Land and Resources Tribunal Bill was introduced to ensure that there would be an independent body as contemplated by section 24MD(6B). That Bill was passed in March 1999.

- *Consultation*

The QIWG will be consulted in mid 1999 about the proposed amendments to the compulsory acquisition legislation.



- *Timing*

The Land and Resources Tribunal will not operate until later in 1999. It is anticipated that the compulsory acquisition amendments will be introduced to reflect this.

Infrastructure

- *Objective*

The *Native Title (Queensland) State Provisions Amendment Act (No.2) 1998*, which integrates native title processes with the processes of the *Mineral Resources Act 1989*, does not deal with the creation or variation of a right to mine for the sole purpose of the construction of an infrastructure facility associated with mining.

- *Consultation*

The QIWG will be consulted in relation to specific proposals regarding native title and the establishment of infrastructure facilities associated with mining.

- *Timing*

As part of the ongoing process of introducing Queensland's Native Title legislative package, a discussion paper will be released to the QIWG and others regarding the objectives set out above, in or about August 1999. Bills, as necessary, should be prepared by late 1999.

Hard Rock Quarrying

- *Objective*

Hard rock quarrying is authorised by permits issued under Part 6A of the *Forestry Act 1959*. The *Land Act 1994* provides that deed of grant land in Queensland, which contains quarry materials, must include a reservation of the quarrying material to the State. Hard rock quarrying generally constitutes a right to mine and the right to negotiate provisions in the *Native Title Act 1993*(Cth) currently apply. It is proposed to conduct a review of the State's legislation to consider the application of alternative State provisions to hard rock quarrying.

- *Consultation*

The Queensland Government will consult with the QIWG, relevant government departments and representatives of the quarrying industry.

- *Timing*

A draft discussion paper will be produced in or about August 1999.

8. INCORPORATION OF SOCIAL AND ECONOMIC IMPACT ASSESSMENTS (SEIAS) INTO MAJOR PROJECT DEVELOPMENTS

· *Objective*

Remote communities can experience significant impacts from development activities in their locality. There is scope within existing Impact Assessment processes for social impacts to be investigated, but there is concern that:

- opportunities for indigenous input are uneven and in some cases limited, reflecting the need for clearer and more comprehensive policies and standards in this area;
- appropriate use is not always made of information from social impact assessment in project approval processes;
- there is frequently a failure to monitor approved projects during and after construction to ensure the implementation of conditions attached to approved development projects.

Following on from these points, there is a need to consider how to enhance the institutional basis for SEIAs.

Improvements in SEIAs should be undertaken in consultation with people representing indigenous communities, including the QIWG. This would contribute to efficient and appropriate decision making in relation to development projects and allow developers to implement a range of measures to comprehensively manage approved activities within a region.

· *Consultation*

QIWG will be involved in discussions with the Department of the Premier and Cabinet, the Department of Aboriginal and Torres Strait Islander Policy and Development, the Department of Families, Youth and Community Care, the Department of State Development, the Environmental Protection Agency and the Co-ordinator General as they seek to develop better models for SEIAs and to enhance the institutional base for implementing those models.

· *Timing*

QIWG will be included in consultations forthwith.



9. IDENTIFICATION AND EXPLORATION OF SIGNIFICANT OPPORTUNITIES FOR ILUAS BETWEEN THE STATE AND INDIGENOUS INTERESTS

- *Objective*

Significant issues, which could be resolved through ILUAs, need to be identified and progressed.

- *Consultation*

Consultation will be considered along with the procedural review required in Part 4 above.

- *Timing*

The procedural review and consideration of specific ILUAs to resolve major issues will occur throughout 1999 and beyond.

10. ENVIRONMENTAL PROTECTION POLICY FOR MINING, PETROLEUM AND EXPLORATION

- *Objective*

The Queensland Government has put in place interim arrangements for the transfer of environmental protection responsibilities from the Department of Mines and Energy to the Environmental Protection Agency.

The Queensland Government's Environmental Protection Policies for Mining and Petroleum include matters relating to native title, cultural heritage and resource management.

- *Consultation*

Consultation is well advanced on the Environmental Protection Policy for Mining. The Queensland Government will provide the QIWG with a reasonable opportunity to comment on the Environmental Protection Policy for Mining prior to its finalisation. The Queensland Government will also consult with the QIWG on:

- Code of Compliance drafted in conjunction with the Environmental Protection Policy for Mining;
- the Environmental Protection Policy for Petroleum; and
- Codes of Compliance drafted in conjunction with the Environmental Protection Policy for Petroleum.

- *Timing*

The above consultations will conclude on or before June 2000.

11. GENERAL

Notices etc.

Unless otherwise agreed:

- the Queensland Government should address correspondence and notices to the QIWG to the Chair, who for the time being is Terry O'Shane, at the address shown on the face page of this Protocol, by telephone number (07) 3234 4280 or by facsimile number (07) 3210 6377. General inquiries may be directed to the QIWG Office Manager, who for the time being is Tony Johnson; and
- the QIWG should address correspondence and notices to the Queensland Government to the Director General of the Department of the Premier and Cabinet. General inquiries may be directed to Mr Paul Smith, Executive Director, Native Title Services, 61 Mary Street, Brisbane, by telephone number (07) 3222 2551, mobile number 0418 164 412 or by facsimile number (07) 3227 8004.

Review

The Queensland Government and the QIWG will meet within three months of the date of this Protocol, and within each period of three months thereafter, to review and update the Schedule of Issues for Consultation in this Protocol. Unless the parties otherwise agree, the principles of cooperation and consultation contained in the Introduction will remain unaltered.

Purpose

The Purpose of this Protocol is to record the parties' understanding of the matters set out in it. The parties agree that this Protocol is not intended to create any legal relations between them.

