Parliamentary Committees

Interim report

Inquiry into the future and continued relevance of government land tenure across Queensland

Report No. 17

State Development, Infrastructure and Industry Committee

November 2012

State Development, Infrastructure and Industry Committee

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Acknowledgements

The committee thanks those who briefed the committee, and participated in the inquiry process. In particular, the committee acknowledges the assistance provided by the: Department of Natural Resources and Mines; Department of National Parks, Recreation, Sport and Racing; Department of Tourism, Major Events, Small Business and the Commonwealth Games; and the Department of Environment and Heritage Protection.

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Abbreviations

CA	Conservation Agreement
Committee	State Development, Infrastructure and Industry Committee
CYRO	Cape York Regional Organisations
department	Queensland Department of State Development, Infrastructure and Planning
DOGIT	Dee of Grant in Trust (tenure type)
DPI	Former Department of Primary Industries
DSE	Victorian Department of Sustainability and Environment
Gecko	Gecko - Gold Coast and Hinterland Environmental Council
ILUA	Indigenous Land Use Agreement
NSW	New South Wales
NT	Northern Territory
Strategy	State Rural Leasehold Land Strategy
UCV	Unimproved capital value
UV	Unimproved value
VMA	Vegetation Management Act 1999
WA	Western Australia

Chair's foreword

On behalf of the State Development, Infrastructure and Industry Committee (the committee) of the 54th Parliament of Queensland, I am pleased to present the committee's Interim Report number 17.
On 7 June 2012, the Legislative Assembly agreed to a motion that the committee inquire into and report on the future and continued relevance of Government land tenure across Queensland and that, in undertaking this inquiry, the committee should particularly consider the following issues:

- Ensuring our pastoral and tourism industries are viable into the future;
- The balanced protection of Queensland's ecological values;
- Ongoing and sustainable resource development; and
- The needs and aspirations of traditional owners.

Further, that the committee take public submissions and consult with key industry groups, industry participants, indigenous Queenslanders, and relevant experts.

On 14 September 2012 the House agreed to amend the terms of reference, providing that the State Development, Infrastructure and Industry Committee table an interim report to the Assembly by 30 November 2012, and a final report by 30 March 2013.

The committee has taken its responsibility in conducting this inquiry very seriously. On 11 July 2012, a detailed briefing was provided to the committee by officers of:

- The former Department of Environment and Resource Management
- The Department of Natural Resources and Mines
- The Department of National Parks, Recreation, Sport and Racing
- The Department of Tourism, Major Events, Small Business and the Commonwealth Games
- The Department of Environment and Heritage Protection
- The Department of Agriculture, Fisheries and Forestry

In agreeing to extend the reporting date for the Inquiry, the Minister has asked the committee to focus on the following issues in the interim report:

- Enhancing security of tenure for existing Delbessie leases due to expire within the next 2 years.
- Options for converting short term leases into more secure and transferrable forms of tenure.
- Simplification of tenure types across state lands.
- Strategies to relax covenants creating barriers to diversification on existing leasehold properties.
- Options for retaining the benefits of the land-care objectives embedded in the Delbessie agreements while reducing the administrative burdens associated with the current form of these agreements.
- A review of the method for calculating rent on leasehold properties.

The committee has received and considered the submissions and heard evidence from a large number of people. The committee wishes to acknowledge the contribution of everyone who participated in the inquiry and I wish to thank the committee's secretariat for their support and assistance throughout the inquiry process.

I commend the report to the House.

Ted Malone MP
Acting Chair

November 2012

Recommendations

Strait Island Affairs to investigate successful examples of the development and implementation of joint management arrangements of National Parks with traditional owners.

Recommendation 28 **83**

The committee recommends that the Minister for Natural Resources and Mines liaises with the Minister for Local Government to consider options for addressing the anomalous position of Mr Reginald Pedracini's current leasehold valuation arrangements.

Recommendation 29 **83**

The committee recommends that the Minister for Natural Resources and Mines liaises with the Minister for National Parks in consultation with the Cook Regional Council to establish an agreement on procedures for road closures in Cape York.

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) is a statutory committee established on 18 May 2012 by the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly (the Standing Orders).[1] The committee consists of both government and non-government members and its primary areas of responsibility include:

- State Development, Infrastructure and Planning
- Energy and Water Supply
- Tourism, Major Events, Small Business and the Commonwealth Games.[2]

In relation to its areas of responsibility, the committee:

- examines legislation, including subordinate legislation, to consider the policy to be enacted and the application of the fundamental legislative principles, as set out in section 4 of the *Legislative Standards Act 1992*;
- considers the Appropriation Bills (acting as estimates committee);
- assesses the public accounts and public works of each department in regard to the integrity, economy, efficiency and effectiveness of financial management; and
- has a responsibility to consider any other issue referred to it by the Assembly, whether or not the issue is within a portfolio area.[3]

The committee may deal with these matters by considering them and reporting and making recommendations about them to the Assembly.[4]

1.2 Inquiry process

1.2.1 The referral

On 7 June 2012, the Legislative Assembly (the Assembly) agreed to a motion that the committee inquire into and report on the future and continued relevance of Government land tenure across Queensland and that, in undertaking this inquiry, the committee should particularly consider the following issues:

- Ensuring our pastoral and tourism industries are viable into the future;
- The balanced protection of Queensland's ecological values;
- Ongoing and sustainable resource development; and
- The needs and aspirations of traditional owners.

Further, that the committee take public submissions and consult with key industry groups, industry participants, indigenous Queenslanders, and relevant experts.

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194, *Standing Rules and Orders of the Legislative Assembly* as amended 14 September 2012.
[2] Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended 14 September 2012.
[3] Section 92(2) *Parliament of Queensland Act 2001*.
[4] Section 92(3) *Parliament of Queensland Act 2001*.

1.2.2 Reporting deadline

On 14 September 2012 the House agreed to amend the terms of reference, providing that the State Development, Infrastructure and Industry Committee table an interim report focussing on rural pastoral leases to the Assembly by 30 November 2012 and a final report by 30 March 2013, which will deal with the remaining issues in the Inquiry's terms of reference.

1.2.3 Public submissions

The committee advertised its inquiry in June 2012 by seeking submissions through:

- a media release to a number of media outlets
- letters to 151 stakeholders including:
  - all local government bodies in Queensland
  - peak agricultural organisations and rural bodies
  - Tourism peak bodies, organisations and individual operators
  - Environmental organisations
  - Indigenous organisations
  - Professional bodies such as surveyors
  - relevant research organisations
- emailing 450 current subscribers registered to receive information from the committee and
- placing advertisements in the following:
  - the Courier Mail, Cairns Post, Rockhampton Bulletin, Toowoomba Chronicle and the Townsville Bulletin on 23 June 2012
  - the Koori Mail on 27 June 2012
  - the Queensland Country Life on 28 June 2012
  - the Dalby Herald; Longreach Leader; Mount Isa North West Star and Roma Western Star on 29 June 2012
  - the Gold Coast Bulletin; Mackay Daily Mercury; Sunshine Coast Daily on 30 June 2012.

One hundred and three submissions were received and considered by the committee. A list of submissions is included at Appendix A. All submissions have been made public and are available at http://www.parliament.qld.gov.au/work-of-committees/committees/SDIIC/inquiries/current-inquiries/01-Government-land-tenure

1.2.4 Public briefings

On 11 July 2012, the committee received a public briefing from the following Queensland Government Agencies and Departments:

- Department of Natural Resources and Mines
- Department of National Parks, Recreation, Sport and Racing
- Department of Tourism, Major Events, Small Business and the Commonwealth Games
- Department of Agriculture,
- Fisheries and Forestry Department of Environment and Heritage Protection.

A list of officials who attended is included at Appendix B.

On 20 August 2012 the committee received a private briefing from:

- Mr Chris Boge, Special Counsel, Clayton Utz
- Mr Brian Noble, Partner, Clayton Utz

On 14 November 2012 the chair and the committee secretariat received a private briefing from:

- Mr Chris Boge, Special Counsel, Clayton Utz
- Mr Brian Noble, Partner, Clayton Utz

1.2.5 Public hearings

On 22 August 2012, the committee commenced a series of public hearings across Queensland. Hearings were held in the following centres on the dates indicated:

- 22 August 2012 - Brisbane – Parliament House
- 24 August 2012 – Roma – Explorers Inn
- 27 August 2012 – Mackay – Mackay Grande Suites
- 28 August 2012 – Cairns – Pullman Reef Casino Cairns
- 29 August 2012 – Rockhampton – Centrepoint Motor Inn
- 30 August 2012 – Alpha – Alpha Town Hall
- 3 Sept 2012 – Gold Coast – Crowne Plaza

These public hearings were advertised in the following:

- The Roma Western Star on 17 August 2012
- The Courier Mail, Cairns Post, Mackay Daily Mercury and Rockhampton Bulletin on 18 August 2012
- The Central Qld News on 22 August 2012
- The Gold Coast Bulletin on 25 August 2012

A list of witnesses who gave evidence at these hearings is included at Appendix C.

Transcripts from the public briefings and the public hearing, as well as Departmental responses to Questions on Notice taken at the hearings, have been made public and are available at http://www.parliament.qld.gov.au/work-of-committees/committees/SDIIC.

2 Historical Overview of Land Tenure Arrangements in Australia

In the words of Weaver,[5] "*The development of the pastoral leasehold system has its origins in the pastoral invasion of the continent*". The impetus to open up inland Australia in the early 19th century has been attributed to the opportunities it offered for profit in the export of wool, especially through the use of cheap, and in many cases, illegally obtained land. If it was possible to squat on Crown land then pasturage was cheap or free, thus increasing the profit margin well beyond that of land obtained through legitimate means. Therefore the incentives for squatting made a mockery of investing in freehold title and concerns began to emerge about the opportunism of squatters undermining legitimate business investment.

Various State Governments sought to deal with this problem in different ways. Initially squatters were issued with a license to "depasture" but these licenses were simply permission for squatters to become temporary users of a vast open common. However this was unsustainable because it led to environmental degradation in many staging areas. Squatters also incurred expenses and became involved in skirmishes defending their land from other squatters. These problems caused by the non-exclusivity of the license based system most likely provided the impetus from squatters for a more secure form of land title. By the mid nineteenth century squatters gained some security of tenure through a system of leasehold grants.[6] However this reform did not resolve the issue completely as squatters also needed access to capital so in 1843 legislation was introduced which allowed for stock and crops to be used as security on loans, in effect giving squatters much greater access to finance. Therefore this may have contributed to a greater acceptance of the leasehold system and removed some of the demand for freehold land.

The leasehold system is also considered to have emerged as a result of the failure of attempts at closer land settlement and the creation of small farm holdings via free selection processes.[7]

All the colonies suffered these problems. In South Australia an attempt was made to sell the land rather than simply grant it. However, the outcome of this policy was massive land speculation to the financial detriment of the colony of South Australia.[8]

In New South Wales the resumption of squatting land for the use by small farmers was no more successful.[9] New South Wales and Queensland were both plagued by drought, flood, depression and pastoral distress which led to declines in the settlement in the interior regions.[10] The response of both Governments was to encourage squatters to take up lands by again offering favourable lease conditions for long terms at very low rental based on the value of the land and the number of stock carried. In some cases these leases were contingent upon certain improvements being made or on responsible land management which in no way discouraged squatters from seeking leases.[11]

Due to these factors, leasehold may have become the preferred system of land holding because it represents a relatively low cost means of accessing large tracts of land allowing for more finance to be available to the land and stock it.

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[5] Weaver, J. (1996) Beyond the Fatal Shore: Pastoral Squatting and the Occupation of Australia, 1826 to 1852, American Historical Review, 101, p. 982

[6] Bradbrook, , A MacCallum, S and Moore, A (1997) Australian Real Property Law, 2nd Edition, Law Book Company Information Services, North Ryde. P. 1-2

[7] Ibid.

[8] Ibid 6-4

[9] Roberts, S (1969) History of Australian Land Settlement 1788-1920, Macmillan and Co, Australia, Melbourne p. 309-312.

[10] Ibid p. 317-318

[11] Ibid., p. 311

All of these factors therefore contributed to the dominance of the leasehold system for pastoral production during the 19th and 20th centuries.[12]

[12] Pastoral Leases and the implications of the Wik decision at http://users.hunterlink.net.au/ddhrg/econ/The_Wik_decision.html p.2 accessed on 31/07/2012.

3 Overview of Current Tenure Arrangements on Queensland State Lands

The development of land management systems has historically and universally been driven by the need to satisfy human requirements for a secure home and fundamental necessities of life such as guaranteeing a future harvest for food security. These benefits have also been accompanied by aspirations for economic prosperity and the creation of wealth. It is generally acknowledged that less complex tenure systems provide greater incentives for productive land use and that while in many respects the details of formal land management systems have evolved differently in many countries, the basic elements remain common to all. In the words of the United Nations Economic Commission for Europe reporting on the social and economic benefits of a good land administration system:

> *Throughout the world, governments seek social stability and sustainable economic performance for their countries and their people. Countries with different histories, cultures and environments share common aspirations for certainty and for growth. A framework of land and property laws that recognise the rights and duties of the individual, but also the shared concerns of the wider community, is essential if these aspirations are to be realized.*[13]

The centrality of land and its management to people's lives ensures that there are a wide range of individuals and groups of stakeholders with a strong interest in the Parliament's referral of this matter for consideration by the State Development, Infrastructure and Industry Committee.

State and Federal Governments have a strong interest in this matter because they wish to ensure that land is managed in the public interest which therefore may involve them in matters of administration, valuation, information systems, taxation and economic development.

Historically, Local Government has actively engaged in land tenure issues through its involvement in land use planning and development.

The business sector has legitimate concerns about ensuring security of rights, access to loans, market opportunities and potential for development.

Individual citizens too are immediately affected by this issue in respect to their security of rights, effects on social stability, access to housing through mortgage finance, mobility and property transfer and improvement.

The wider community is also interested in, and affected by, land tenure as it relates to "public goods" such as national parks, forests and recreational reserves which largely depend on the regulatory intervention of government for their preservation and in order to avoid what has now become known as the "tragedy of the commons".

Clearly, with so many stakeholders potentially affected by the operation of the land tenure system, there are many compelling reasons why sound land tenure arrangements are beneficial to the State of Queensland. For example, it:

- Guarantees ownership and security of tenure
- Provides the basis for land and property taxation
- Provide security for credit

[13] United Nations Economic Commission for Europe Working Party on Land Administration, 'Social and Economic Benefits of Good Land Administration', 2nd ed, 2005, p 4.

- Guarantees the result of judicial procedures relating to land rights including rights of repossession of land
- Reduce land disputes
- Develops and monitors land and mortgage markets
- Protects State lands
- Facilitates land reform
- Promotes improvement of land and buildings
- Facilitates reliable land use records
- Improves urban planning and infrastructure development
- Supports environmental management
- Produces statistical data as a base for social and economic development

3.1 Land Tenure Distribution and Forms in Queensland[14]

In Queensland, approximately 68% of the land is State Land (via lease, license or permit) which is administered under the *Land Act 1994* (this excludes Commonwealth land and freehold land). The Queensland Government also administers a further 7% of the land in the State under the *Nature Conservation Act 1992* (some of which is administered jointly with the Australian Government via the Great Barrier Marine Park Authority and the Wet Tropics Management Authority). This means that the State Government is directly involved in the administration of almost three quarters of all land in the State of Queensland. (See Figure 1).

The total Queensland state landholdings under the *Land Act 1994* amount to 118,420,876 hectares worth $66 billion. This is comprised of 24,500 leases (of various types) valued at $6.2 billion, 3 million hectares of road valued at $43.5 billion, 27,500 reserves valued at $15 billion and 21,000 unallocated parcels of land valued at $1.7 billion which constitute less than 1% of all state land. The other significant state land holdings are the 1009 protected areas and state forests managed via the *Nature Conservation Act* which occupy 11,843,193 hectares valued at $1.9 billion. Land gazetted under the *Nature Conservation Act* places restrictions on tenure and use of land. The remaining 25% of land in Queensland is held in freehold and the value of this land is $453.4 billion.

The Queensland Government receives $100 million per annum in rent from State land and the annual sales income is between $10 million and $20 million.

The State can gift land to Local Governments for agreed purposes and the land is then held in trust for the community. Examples of this form of tenure arrangement are sport and recreation facilities and the Deed of Grant in Trust of land to Aboriginal and Torres Strait Islander communities. A Deed of Grant in Trust issued prior to 1994 may be mortgaged but those issued after this time may not. The Minister must consent to the lease of any Deed of Grant in Trust Land and endorse it prior to its registration in the Land Registry.

[14] Unless otherwise indicated, all the information cited in this section of the report was provided in a written briefing to the Committee provided by the Department of Environment and Resource Management on 26 July 2012.

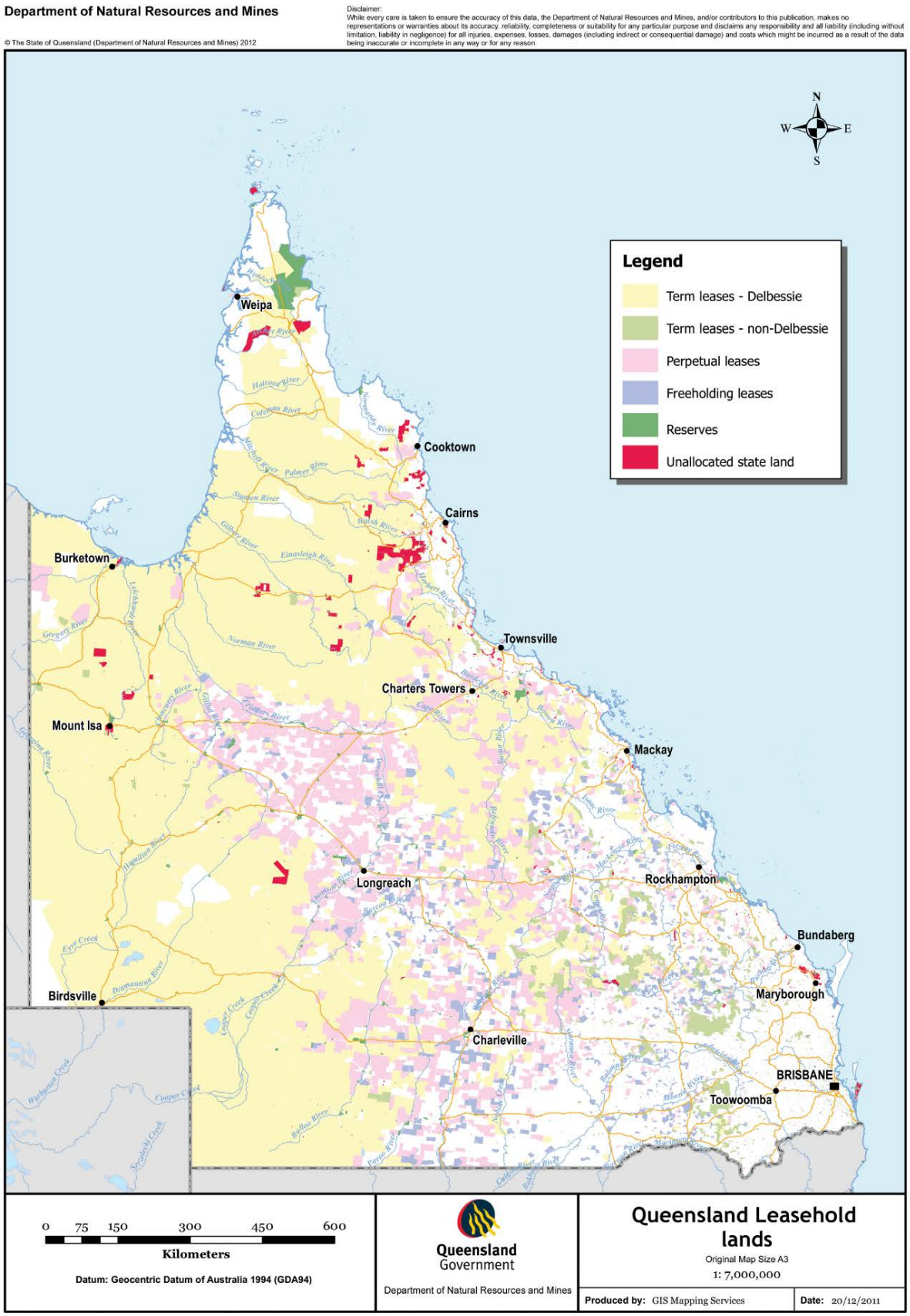

Figure 1: Queensland Leasehold Lands
Source: Department of Natural Resources and Mines 20/12/2011

One of the major differences between leasehold and freehold land is that lessees must comply with the purpose and conditions of the lease and the provisions of the *Land Act 1994*. Lessees must also pay rent and obtain permission from the Minister to sell the lease, sublet, subdivide or amalgamate land. All lessees have a duty of care to the land under the *Land Act 1994*. Unlike freehold land, leasehold land is not subject to land tax. Resource Acts which grant mining exploration permits and licenses are tenure blind and apply equally to freehold and leasehold land.

Survey issues become critical during tenure conversions and freehold sales to create certainty of boundaries and enable registration of land ownership. Subdivisions of leasehold converted to freehold are subject to *Sustainable Planning Act 2009*. Decisions are made on basis of viability and the surrounding planning scheme.

Every step in tenure conversion requires consideration of the *Native Title Act 1993.* Rural leasehold strategy issues are being dealt with via registered agreements between the lessee and the Minister. The agreements apply to leases which are more than 20 years and larger than 100 hectares. Leases can be issued for 40-75 years if the land is in good condition and indigenous access and use has been agreed and arrangements are in place to protect significant natural environmental values. These agreements are known as Delbessie Agreements. The Delbessie Agreement framework offers a template process for addressing native title issues and negotiating Indigenous land use agreements. Delbessie Agreements also focus on the condition of the leased land, especially the degree of risk of land degradation.

There are currently 5 types of leasehold tenure in Queensland. (See Table 1 for a summary of current land tenure arrangements in Queensland under the *Land Act 1994*)

1. Term leases which are granted for periods between 1-100 years.
2. Perpetual leases which are held by the leaseholder in perpetuity.
3. Freehold leases where a freehold title has been approved but the leaseholder is paying off the purchase price by annual instalments and the title to the property is not issued until the debt is fully paid.
4. Road licence when a road has been temporarily closed - this tenure allows the licensee to use the land until such time as the licence is surrendered or cancelled.
5. Permit to occupy for the short term occupation of State controlled land. This type of tenure cannot be sold, sublet or mortgaged.

Owned leases may be sublet as long as the material purpose of the use of the land remains the same.

Tenures are generally granted for purposes such as: aerodromes, agriculture, aquaculture, commercial/business, communication, community, cultural, development, education, environment, grazing – national park, grazing – reserve, road or stock route, grazing - state forest, grazing – unoccupied state land, industrial , industrial estates, investigation, marine facility, marine works, pastoral, public purpose, recreation, religious, residential, storage, transport facility, tourism, viaduct, water facility, transport, purposes ancillary to transport and other community and commercial purposes, the use flow and control of water and ancillary purposes, port and transport related (future strategic port land leases only); significant development; transport, port and transport related (future strategic port land leases only).

3.2 Types of Leases

Grazing Term Lease

Grazing term leases are used for grazing and agriculture and there are approximately 4,800 in Queensland. Most leases are for a period of 30 - 40 years but they can be as long as 75 years. The average size of a grazing term lease is 20,000 hectares but some of the largest leases are larger than 500,000 hectares. These leases are bought and sold on the open market at values approximately equivalent to the value of freehold property. Rent is paid annually and calculated on 5 year unimproved value of land multiplied by a prescribed rate of 1.5% which is set down in the *Land Regulation 2009*. The regulation caps rents until 2017. Examples of the range of current grazing term lease rentals are a 20 hectare property in Hughenden at $91 per week and 295,000 hectares near Charleville at $218 per week. Lessees can apply for renewal after 80% of a lease has expired. Some leasehold land rents have increased dramatically due to the property boom and there is concern about potential rent increases at the end of the rent cap in 2017. The Government has indicated that it will be reviewing the situation prior to this date.

In many cases, native title may exist over leases and if this is the case it must be managed in accordance with Australian Government legislation which may trigger a requirement to obtain consent from the native title holder to the lease transfer or change of purpose. For leases of 20 years or more, the appropriate mechanism for negotiating these changes in accordance with the *Native Title Act 1993* is an Indigenous Land Use Agreement (ILUA). Grazing term leases can usually be renewed (as long as there is no material change in the purpose of the lease) without triggering requirements for native title assessment. Providing the native title issues have been addressed, it is possible to convert a grazing term lease to a perpetual lease where there is no change in the material purpose of the lease.

Perpetual Leases for grazing and agriculture

Currently in Queensland there are 2,750 perpetual leases which are usually grazing homestead perpetual leases held in perpetuity. These leases are frequently located on better grazing lands. The average size of these leases is approximately 750,000 hectares. As part of the government's commitment to protecting the family farm and family companies, there are statutory restrictions in the *Land Act 1994* to ensure that these types of leases can only be held by individuals. The restrictions prevent individuals from holding two or more perpetual leases if the total area of the lease is much bigger than the usual size of two living areas.

The rent for perpetual leases and grazing homestead perpetual leases is calculated on same basis as term leases. Examples of the current range of perpetual lease rents are a 7,500 hectare lease near Hughenden at $25 per week, 10,000 hectares near Emerald is $482 per week and 800 hectares near Roma is $60 per week.

Freehold leases

Lessees of perpetual properties can apply to convert their existing leases directly to freehold or via a grazing homestead perpetual lease. Grazing homestead perpetual leases are deemed to have extinguished native title so native title issues generally do not have to be considered for this type of lease under the *Native Title Act*.

When a lessee applies for a tenure conversion from a perpetual lease to freehold title, it triggers the need to consider the State's ownership of forest products and quarry materials on the property. Generally this occurs via payment or terms of conversion which include a requirement for a special reservation to be put in place before freeholding tenure is approved. A tenure conversion of this type

also requires the involvement of local government to ensure that local planning issues and road requirements are accommodated.

The purchase price for perpetual leases and grazing homestead leases is calculated on the unimproved value of land as if it was fee simple freehold. *The Land Regulation 2009* offers a discount for purchase of the lease upfront instead of going through a freeholding lease. The purchase price is calculated as the unimproved value of the land being offered as if it were fee-simple freehold.

The approval process for conversion of a perpetual lease to freehold tenure requires the land to be surveyed. Any lease conversion for a property larger than 2,500 hectares must be accompanied by a restriction against it being held by a corporation. The Governor in Council can and does have discretion to waive this restriction and it is exercised regularly. Lessees have the option to buy the land outright using commercial finance or they can take a freehold lease on term purchase installment repayments. There are presently about 1,200 freehold leases.

Freehold leases issued before 1990 must be paid off over 60 years, interest free based on the purchase price of unimproved land value. Freehold leases issued after 1990 are paid off over 30 years at business banking variable interest rates based on the unimproved land value at time of application for conversion. Lessees can choose to pay off the entire grazing homestead freehold lease at any time without penalty. Native title issues do not generally apply as they will have been dealt with at the time of the lease tenure conversion.

Tourism Leases

It has been long term government policy in Queensland not to freehold tourism icons and to instead retain tourism leases over these areas, which are generally for terms of up to 30 years but can be for as long as 100 years. Tourism lessees also pay rent in accordance with the *Land Regulation 2009* which is presently set at 6% of the three year average unimproved land value or 10% more than rent payable for the lease for the immediately preceding period. These leases are currently capped at 10% until June 2015.

There are currently less than 120 tourism leases in Queensland. Examples of annual rent include: for an island off Central Queensland it is $12,000, a North Queensland property is $44,000 and a Gold Coast site is $2,000,000.

Tourism leases can generally be renewed but if the lease is converted then Native Title issues may arise. Existing tourism leases may be subject to Native Title rights and claims so conversions to freehold may require negotiations and the use of an Indigenous Land Use Agreement. Occasionally there are other conditions in the lease too which specify the minimum development levels and standards.

Other lease types

Other lease types include residential, charity, sporting and recreational, telecommunications and other commercial uses. Freehold is usually the preferred form of tenure for residential and commercial purposes but sometimes, where the State has future alternative plans for the use of land, it wishes to retain a leasehold arrangement. Rent on these types of leases is also specified in the *Land Regulation 2009* and is determined by the purpose of the lease. These rents tend to be variable with a residential property in Charters Towers paying $47 per week and a business on the Gold Coast $132 per week and telecommunications leases on average cost $298 per week whereas charities pay in the vicinity of $2 per week. Generally these leases can be renewed or converted to freehold unless there is a specific prohibition on this, however these leases are also subject to Native Title processes.

Occupation Rights to State Land

The State also has the ability to grant occupation rights or issue a permit to occupy land or temporarily close a road and issue a road licence to allow the occupation of a closed area.

Permit to Occupy

A permit to occupy is a permission to occupy or to use a specified parcel of unallocated state land, a reserve or road (including a stock route). It cannot be issued over freehold or leasehold land.

A permit to occupy does not have the same rights as leasehold land. It does not allow for exclusive possession of the land and cannot be transferred, sublet or mortgaged. If the permit is granted, the right to occupy applies only to the permit holder. Some permits can be for less than twelve months.

A permit to occupy is issued for a specific purpose for minor or temporary matters including:

- Grazing
- Pump sites
- Apiary sites
- An entrance ramp to a building site during construction
- Advertising signs on roads
- Investigation work on unallocated state land

Due to the temporary nature of permits to occupy, no major structural improvements are permitted other than boundary fencing. Furthermore the purpose of the occupancy permit must be compatible with the purpose for which the land has been set aside. If a permit is granted over a part of a road, the area must remain open for use as a road. If the permit is over a reserve, the land remains available for the particular community purpose for which it was reserved. A permit can also be issued below the high water mark subject to certain conditions. A permit holder may surrender a permit and if it is cancelled or surrendered then any improvements to the area become the property of the State and no compensation is payable. However the permit holder does have the option to remove any improvements.

There are general provisions which apply to permits which include:

- A tree clearing permit is required to destroy any trees on the land subject to the permit
- The annual rent is determined in the same manner as a lease
- The Minister can set the rent on a permit area that has not been valued
- The rent is due and payable on 1 September each year.

Road Licence

A road licence is a tenure granted for the use of a road that is temporarily closed. A road licence provides a right to exclusive occupation of the road within the conditions of the licence but only while the rent continues to be paid. However it is possible for the State to give the licencee notice and cancel the licence anytime without compensation.

The Minister may issue a road licence over a temporarily closed road to an adjoining owner but only if it is necessary to make structural improvements to irrigation pipes under the road or irrigation water channels that cross the road.

All road licences are subject to the following conditions:

- There is no covenant, agreement or condition to renew the licence, convert the tenure or sell the land.
- No more structural improvements other than fencing, pipes or channels are permitted.
- If adjoining land held by the licensee is sold, the licence must also be sold or surrendered.
- A road licence cannot be mortgaged, subleased or subdivided, but with the consent of the State it may be transferred.

Occupation Licence

An occupation licence is an approval to occupy unallocated State Land. Although the *Land Act 1994* makes no provision for the issue of the occupation licence, previously existing licences continue under this Act. No term applies to the licence, which the Minister may wholly or partly cancel with three months notice. No compensation is payable in these circumstances and Ministerial approval is required for all improvements or development works in such an area.

There are general conditions which apply to these licences including:

- The annual rent is due and payable on or before 1 September
- A licence may not be sold without the prior consent of the Minister
- A licence may not be sub-leased or sub-divided
- A licencee must comply with the conditions of a licence.
- A tree clearing permit is required to destroy trees in the licence area
- The annual rent is calculated by the same means as a lease but if the land has not been valued then the Minister may set the rent.

SCHEDULE OF LAND ACT TENURE TYPES

Tenure Type	Description	Term	Transfer	Sublet and Mortgage	Conversion to freehold	Renewable	Application approved by
Term leases DL - Development Lease PH - Pastoral Holding SL - Special Lease TL - Term Lease	Term leases are granted over State land for specific purposes, including grazing, agriculture, industry and tourism. They are subject to a range of conditions to ensure they are managed appropriately.	Maximum of 100 years for significant development, otherwise 30 years, with up to 50 years for renewal of Pastoral Holdings under the *Delbessie Agreement*	Yes	Yes	Yes on application by lessee, unless a condition of the lease or the Land Act precludes an application.	Yes on application by lessee, consultation undertaken with other government agencies. Applications can only be made after 80% of the term has expired unless special circumstances exist.	Chief Executive's delegate
Perpetual leases GHPL - Grazing Homestead Perpetual Lease NCL - Non-competitive Lease PPL - Perpetual Lease	Perpetual leases are granted over State land in areas where the State wishes to retain control over how the land is used. They are subject to a range of conditions to ensure they are managed appropriately.	In perpetuity	Yes	Yes	Yes on application by lessee, unless a condition of the lease or the Land Act precludes an application.	N/A	Chief Executive's delegate
Freeholding leases AF - Agricultural Farm APF - Auction Purchase Freehold APL - Auction Perpetual Lease APLC - Auction Perpetual Lease Converted FL - Freeholding Lease GHFL - Grazing Homestead Freeholding Lease NCLC - Non-competitive Lease Converted PLS - Perpetual SLPF - Special Lease Purchase Freehold	Freeholding leases may be issued where conversion of a term or perpetual lease to freehold has been approved, and the lessee is afforded the opportunity to pay the purchase price in a number of instalments. The freehold title will not issue until the purchase price is fully paid. The balance of the purchase price may be paid in full at any time during the term of the freeholding lease.	Until paid out	Yes	Yes	N/A	N/A	N/A
Permits and Licences PO - Permit to Occupy RL - Road Licence OL - Occupation Licence	Permits to occupy are issued for short-term occupation of State-controlled land for low impact activities such as grazing. A road licence issues over a road that has been temporarily closed. This allows the licensee to use the land until such time as it is required to be used as a road. The most common uses for road licences are grazing or cane growing. Occupation licences are no longer issued, but a number still exist that were issued under previous Land Acts.	On-going	 No Yes Yes	 No No No	 No No No	Automatic annual renewal on payment of rent	N/A

Table 1: Schedule *of Land Act 1994* Tenure Types.

Source: State Land Asset Management. Department of Environment and Resource Management, A Guide to Land Tenure under *the Land Act 1994*.

Department of **Natural Resources and Mines**

Land tenure statistical information

Tenure Type	Number	Total Area of Land in HA	% of the State	Value
				Rental Value
PH (Pastoral Holding)	1233	75,938,309.43	43.8%	$1,887,834,300
OL (Occupation Licence)	159	636,697.77	0.37%	$24,974,500
GHPL (Grazing Homestead Perpetual Lease)	2692	20,166,229.83	11.63%	$1,807,250,800
NCL (Non-Competitive Lease)	407	17,012.41	0.01%	$249,656,238
SL (Special Lease)	2666	1,612,576.06	0.93%	$468,746,099
DL (Development Lease)	2	921.21	0.00%	$6,100,000
PO (Permit to Occupy)	4472	588,326.83	0.34%	$150,800,510
RL (Road Licence)	4384	29,067.91	0.02%	$44,289,190
TL (Term Lease)	5525	11,692,798.98	6.74%	$1,101,746,588
PPL (Perpetual Lease)	204	160,599.51	0.09%	$229,585,550
Total Lease Tenures*	21,744	110,842,539.94	63.93%	$5,970,983,775
				Instalments Owed
AF (Agricultural Farm)	77	48,932.45	0.03%	$476,907
GHFL (Grazing Homestead Freeholding Lease)	551	3,252,440.88	1.88%	$21,498,582
PLS (Perpetual Lease Selection)	368	175,951.28	0.10%	$4,154,126
NCLC (Non-Competitive Lease converted)	7	1.57	0.00%	$143,133
SLPF (Special Lease Purchase Freehold)	15	5,642.42	0.00%	$406,276
FL (Freeholding Lease)	747	7,401.67	0.00%	$50,403,174
Total Freeholding Leases	1765	3,490,370.27	2.01%	$77,082,198
Total Leases including Freeholding Leases	**23509**	**114,332,910.24**	**65.94%**	**$6,048,065,973**
				Asset Value
Reserves (Community purpose - internal)	**27977**	**708,439**	**0.41**	**$14,251,069,584**
Unallocated State land	**20218**	**1,001,329**	**0.58**	**$1,638,119,768**
Dedicated roads**		**3,441,108**	**1.98%**	**$42,384,141,811**
Freehold land administered by DNRM	**179**	**1,491**	**0.00%**	**$38,873,670**
				Total Value
STATE LAND TENURES UNDER LAND ACT 1994 TOTAL***	**71,704**	**119,471,535**	**68.91%**	**$64,140,206,606**
				Asset Value
TOTAL AREA OF QUEENSLAND		**173,380,000**		

(Data as at 1 August 2012)
* Total tenures includes land tenures issued for land below high water mark comprising of about 600 hectares
** Of the total road network 2.1m hectares is declared stock route
*** The State Land Total value excludes Permits to Occupy, Occupation Licences and Road Licences as this data is accounted for in the Reserves, Unallocated State Land and dedicated roads data.

Queensland Government

Produced by: State Land Asset Management

Table 2: Land Tenure Statistical Information for Queensland as at August 2012

Source: Queensland Government State Land Asset Management, Department of Natural Resources and Mines.

3.3 Current Rental Categories under the Land Regulation 2009

Landholders are required to pay an annual rent to the department. Rent is calculated under the *Land Regulation 2009* in accordance with –

- section 37(1) being a prescribed fixed amount; and
- section 37(2) being the land value for rental purposes, multiplied by the rental category percentage rate assigned to the tenure.

Land-use categories

The categories are:

- Category 11—primary production
- Category 12—residential
- Category 13—business and government core business
- Category 14—charities and sporting and recreational clubs and is divided into two sub-categories:
    - sub-category 14.1—charities and small sporting or recreational clubs with no more than 2000 members
    - sub-category 14.2—large sporting or recreational clubs with more than 2000 members
- Category 15—communication sites which are divided into five sub-categories:
    - sub-category 15.1—communication sites (community service activities)
    - sub-category 15.2—communication sites (non-community service—rural)
    - sub-category 15.3—communication sites (non-community service—urban)
    - sub-category 15.4—communication sites (non-community service activities—rural)
    - sub-category 15.5—communication sites (non-community service activities—urban)
- Category 16—divestment.

From 1 July 2012, the minimum annual rent (indexed annually) payable for:

- Category 14.2 is $106
- Categories 11, 12, 13 and 16 is $214.[15]

Billing arrangements

Leases and licences are granted over State land for specific purposes including grazing, agriculture, industry and tourism. The landholder of a State lease, licence or permit to occupy is required to pay an annual rent to the Queensland Government.

Landholders of leases, licences and permits to occupy in categories 11, 12, 13 and sub-category 14.2, are eligible to make quarterly payments where their annual rent is greater than $2000. Quarterly payments do not apply to Category 15 (communication sites) and Category 16 (divestment) and are only available on individual tenures.

If a landholder does not pay the rent within the time prescribed on the invoice, they must pay, as well as the rent, penalty interest on the rent outstanding until the day the rent is paid. The penalty interest rate, accruing daily and compounding monthly, is two per cent above the Suncorp-Metway business banking variable lending base rate as at 1 July of the annual billing period. In 2012 the

[15] Rental Arrangements and Land Use Categories, DERM, http://www.derm.qld.gov.au/land/state/land_regulation_2009.html accessed on 15 November 2012.

variable lending base rate is 8.94 per cent. Current rental arrangements are summarised in Table 3 below.

Rental Categories under the Land Regulation 2009

Category	Description	Calculation rate	Minimum Rent 2011-2012 billing period	Quarterly Billing annual rent greater than $2,000
11	Primary production	1.5% of the 5 year average statutory lease value of the land. In addition, until 2017, the annual rent will be capped at no more than 20% above the previous year's annual rent.	$207	Yes
12	Residential	6% - 2011- 2012 of the 3 year average statutory lease value of the land. 50% Capping applied to previous years ARP	$207	Yes
13	Business and government core business	6% of the 3 year average statutory lease value of the land. 50% Capping applied to previous years ARP(excluding Schedule 6A tenures) 10% Capping on previous years ARP for tenures listed in Schedule 6A – Tourism Leases	$207	Yes
14.1	Charities and small sporting or recreational clubs with no more than 2000 members.	Set rent of $103 which has been indexed annually by CPI	Set rent of $103	No
14.2	Large sporting or recreational clubs with more than 2000 members.	5% of the 3 year average statutory lease value of the land on which the clubhouse and associated amenities are situated 1% of the 3 year average statutory lease value of the balance of the land.	$103	Yes
15.1	Communication sites (community service activities)	Set rent of $100 indexed annually by CPI	Set rent of $103	No
15.2	Communication sites (limited community service - Rural)	Set rent of $5180 for 2011-12 financial year only	Set rent of $5 180	No
15.3	Communication sites (limited community service - Urban)	Set rent of $7700 for 2011-12 financial year only	Set rent of $7 700	No
15.4	Communication sites (non-community service–rural)	Set rent of $10360 indexed annually by CPI	Set rent of $10,360	No
15.5	Communication sites (non-community service – urban)	Set rent of $15540 indexed annually by CPI	Set rent of $15,540	No
16	Divestment	7% of the statutory lease value of the land 50 % capping of previous years ARP	$207	No

Table 3: Rental Categories under the Land Regulation 2009

If a lease is held exclusively for residential use by the leaseholder, and the leaseholder is experiencing hardship, application can be made for a residential hardship concession. If the application is assessed as eligible, the rent on the lease may be reduced. For any other lease, an application for deferral of rent may be made if the lessee is suffering hardship due to the effects of drought, flood, fire or other disaster; or economic recession; or a severe downturn in the level of markets related to the purpose of the lease. If approved, deferral of the rent is for 12 months and the deferred rent is subject to a reduced interest rate of two per cent.[16]

Primary Production Leases

A Category 11 lease, licence or permit to occupy is one that, under its conditions, may be used primarily for grazing or primary production. Primary production includes:

- aquaculture;
- viticulture;
- agriculture, including the growing of:
  - cane,
  - coffee,
  - tea,
  - tobacco,

[16] Rental Arrangements and Land Use Categories, DERM, http://www.derm.qld.gov.au/land/state/land_regulation_2009.html accessed on 15 November 2012.

- fruit,
- vegetables,
- flowers and other horticultural products, and
- farming of cattle, pigs and poultry.

The annual rent for a Category 11 lease, licence or permit is calculated at 1.5 per cent of the five-year average of the land value for rental purposes. In addition, until 2017 the annual rent will be capped at no more than 20 per cent above the previous year's annual rent.[17] It is primarily Category 11 leases that are affected by the issues associated with Delbessie agreements, leaseholders' desire for enhanced tenure security and relaxations on lease conditions which currently act as a barrier to the diversification of how the land is used.

[17] http://www.derm.qld.gov.au/factsheets/pdf/land/l215.pdf Accessed on 15 November 2012

4 Inter-Jurisdictional comparison

This section summarises information received from Government agencies in Victoria, Western Australia, the Northern Territory and South Australia. The information obtained regarding Crown land tenure in New South Wales is very limited.

4.1 Victoria

The Victorian Department of Sustainability and Environment (DSE), Managing Crown Land Factsheet notes that Victoria has around 550,000 hectares of Crown land, with a further 7.4 million hectares of public land occupied by parks, forests and conservation reserves – about one-third of Victoria. The rest is 'freehold land' (ie. privately owned land, which has been sold under a separate title.).[18]
Most Crown land (7.4m hectares) comprises national parks and state forests managed under the *National Parks Act 1975* and the *Forests Act 1958*. The remainder is reserved and unreserved land. Unreserved Crown land can be leased subject to Ministerial approval.
The DSE's Leasing of Crown Land Factsheet states that, in terms of rental of Crown land leases, if land is to be used for a commercial or private purpose, '*the rent will be based on market rates determined by a valuation having regard to comparable commercial rentals in the private sector. Rent is reviewed and adjusted to market rates every three years*'. If the land is to be used for community purposes, a reduced rent will apply.[19]

The table below depicts Crown land tenure types and associated information.[20] The table sets out information from a tool called Portal which is used by the DSE to record licences, leases, permits and consents issued by DSE. These cover private occupation of Crown land for purpose and because "*Crown land can be occupied by other Victorian agencies, we don't become involved in the revenue collection for these. The tenures recorded in Portal provide information on the private use of Crown Land and facilitates the administration of these licences and leases (tenures) including an interface to Oracle Receivable for invoicing*".

Tenure Type	Number	Hectares	% of State	Annual Rental
Total Overall Financial Tenures	44,601	1,114,310	4.84%	$15,208,328.89

Table 4: Summary of all financial tenures recorded in the Victorian Information Portal[21]

The tenure codes assigned to the tenure records are set into groupings of like type and rental calculation but are also used to identify what the purpose is and what Act the tenure is issued under The Table below is an overview summary of the groupings of tenure types/codes with the area and annual current rental making up the above Total Overall Financial Tenures. The annual current rental figure is not representative of annual revenue raised due to the long term nature of some invoice options.

[18] Victorian Department of Sustainability and Environment (DSE), Managing Crown Land , Factsheet, last updated, 1 November 2012.
[19] DSE, Leasing of Crown Land, Factsheet, last updated 17 July 2012.
[20] DSE, Annual Report 2012, p 108.
[21] The full Portal document is set out in Appendix D.

Tenure Type	Number	Hectares	% of State	Annual Rental
Grazing licences	3,195	640,262	2.78%	$ 452,511.80
Unused road licences	23,914	83,342	0.36%	$2,207,627.84
Water frontage licences	9,981	57,430	0.25%	$754,707.75
Leases (including perpetual, radio/TV, agriculture, recreation, industrial, plantation, commercial etc.)	607	19,107	0.08%	$8,662,877.97
Bee farm and range licences	522	249,655	1.09%	$40,703.78
Temporary apiary rights	3,127	19,468	0.08%	$216,745.39
General licences and Jetty licences	3,158	36,791	0.16%	$2,856,376.61

Table 5: Overview summary of the groupings of tenure types in WA.

A detailed breakdown of the different categories of tenure types is included in Appendix D.

4.2 Western Australia

The Western Australian Department of Regional Development and Lands, State Land Services Unit notes that WA has 62% of Australia's public land (excluding land held for Aboriginal people) and over 90% of Australia's vacant Crown land.

Of the land in WA (comprising 2,527,620 km^2), 7% is freehold land; and around 93% is State/Crown land.[22]

The table on below is derived/adapted from information[23] provided by Landgate (a WA Government agency providing land information and geographic data). Landgate has also provided a map depicting the land tenure situation in WA.[24]

The WA Valuer-General's Office advise that the 2012 site values and unimproved values, are as follows:

Total of UV/RUV's with In Force as at 30/6/2012 (ie. 1/7/2011 revaluation):

Val Type	No.Values	$ Value
UV	884,600	351,023,263,090
RUV	56,467	22,668,726,012
	941,067	**$373,691,989,102**

[22] Western Australian Department of Regional Development and Lands, State Land Services Unit, State Land: Frequently Asked Questions.

[23] Spread sheet titled 'Whole of State Land Area Statistics' (18th October 2012) provided by Mr Lou Teeuwissen, Lead Consultant of Registrations Landgate.

[24] The Committee would like to acknowledge the assistance of Mr Lou Teeuwissen in making this information available.

Tenure Type	No. of Parcels	Total Area of Land	% of State	Rental Values
1. Pastoral leases	506	869,517 km^2	34.33%	3,933,819.02
2. Perpetual leases (war service leases)[25]	413	3,767 km^2	0.15%	
3. Conditional purchase lease	55	547 km^2	0.02%	66,168.34
4. General lease[26]	1,321	64,485 km^2	2.55%	10,481,595.20
Total Crown Leases	**2,295**	**938,316 km^2**	**37.04%**	
5. Crown Reserve A Class[27] (comprising Conservation Estate, Aboriginal, Non-Aboriginal)	1,675	291,271 km^2	11.50%	
6. Crown Reserve B Class (comprising Conservation Estate, Aboriginal, Non-Aboriginal)	38	7,921 km^2	0.31%	
7. Crown Reserve C Class (comprising Conservation Estate, Aboriginal, Non-Aboriginal)	29,220	129,895 km^2	5.13%	
8. State forest	60	13,080 km^2	0.52%	
9. Timber reserves	77	1,232 km^2	0.05%	
10. Marine parks	15	22,722 km^2	-	
11. UCL - surveyed	29,580	94,556 km^2	3.73%	
12. UCL – unsurveyed	13,304	840,187 km^2	33.17%	
13. Water	797	9,336 km^2	0.37%	
14. Closed road	3,187	77 km^2	0%	
15. Drain reserve	17	1 km^2	0%	
16. Railway	2,078	214 km^2	0.01%	
17. Tramway	19	0.4 km^2	0%	
18. Road	160,544	5,784 km^2	0.23%	
19. Stock route	23	1,013 km^2	0.04%	
Total		**1,324,296 km^2**		

Table 6: Summary of tenure types for Western Australia.

[25] Landgate correspondence indicates that War Service leases were the only leases WA refers to as 'perpetual' and are identified as such.

[26] The General Lease category includes 99 year leases and special leases.

[27] Crown Reserve classes A, B & C are 'reserve classifications that effectively have different levels of control. Class A is the highest order and is used to protect areas of high conservation or community value and require parliamentary approval to amend'. See also, the Department of Regional Development & Lands Crown Land Administration and Practice Manual, pp 4.12-4.14; and State leases.

4.3 Northern Territory

The following tabled information was tabulated from material provided by the Northern Territory (NT) Department of Lands, Planning and Environment:[28]

Tenure Type	Total Area of Land	% of Territory
1. Aboriginal Freehold	594 248 km^2	43.95%
2. Perpetual Pastoral Lease	567 219 km^2	41.95%
3. Pastoral Lease	39 006 km^2	2.9 %
4. Crown Lease Perpetual	42 698 km^2	3.16%
5. Crown Lease Term (9 471 km^2 Land and 164 km^2 Sea)	9 635 km^2	0.70% Land
6. Special Purpose Lease	627 km^2	0.05%
7. Freehold (Private/Govt)	22 826 km^2	1.69%
8. Government Usage land (1 154 km^2 Land and 2 435 km^2 Sea)	3 589 km^2	0.09% Land
9. Vacant Crown Land (Urban/Rural)	1 352 km^2	0.10%
10. Vacant Crown Land (Pastoral)	67 102 km^2	4.96%
11. Reserves	771 km^2	0.06%
12. Other Leases (BL, GL, MIN, ML, OL)	299 km^2	0.02%
13. Roads, River Esplanades etc.	5 227 km^2	0.39%
Total	1 352 000 km^2	100%
Miscellaneous Holdings under above Tenures		
14. Crown Stock Routes (Tenure 10 and 11)	4 203 km^2	0.31%
15. Fish Farming/Pearl Culture (Tenure 5)	164 km^2	Sea
16. Parks & Conservation Reserves Territory (27 842 km^2 Land and 2 435 km^2 Sea)	30 277 km^2	2.06% Land
17. Parks & Conservation Reserves Commonwealth	20 439 km^2	1.51%
18. Defence Land (Tenures 4, 5 & 7)	12 082 km^2	0.89%
19. Water Catchments (Tenures 4, 7 & 8)	299 km^2	0.02%
20. Titled to Commonwealth (Tenures 4, 5, 7, 8, 11, 12 & 17)	15 941 km^2	1.18%
Total Area of Northern Territory (including islands)	**1 352 000 km^2**	**(100%)**

Table 7: Summary of tenure types for NT.

[28] The original of this document is found in Appendix E.

Precise Rental Values for the above tenures were not available but the NT Valuation Office provided the following general information and estimates of rental received by the NT Government.

Urban Land:- Generally, land rental value would equate to approx. 5% of the Unimproved Land value in most instances. (also 5% is basis used for the land rentals in aboriginal communities as part of the Fed Govt intervention programme)

Pastoral land : At the moment the NT Government charges a land rental of 0.248% of the Unimproved Capital Value of each Pastoral Lease. Pastoral leases make up approximately 45% of the total land area of the NT. The UCVs are completed triennially (once every 3 years). The total estimate value of the Pastoral Land Unimproved Value is approx. $1,500,000,000 (i.e. $1.5B) which would result in a total annual rental to the NT Government of approximately $3,720,000.

It should be noted that the actual land rental rate was 1.22% but the NTG reduced it to 0.248% because of the poor industry conditions after the live export scenario last year.

4.4 New South Wales

The New South Wales Crown Lands Division (CLD) (forming part of the New South Wales Department of Primary Industries) advised that:

- Crown lands comprise nearly 50% of all land in NSW;
- Crown lands total an estimated $6.1 billion; and
- Include the tenure types set out in the table below.

Tenure Type	Number
1. Reserves	35,000
2. State Parks	17
3. Major Recreational Trails	8
4. Leases and licences	70,000
5. Caravan parks	270
6. Coastal harbours and the Tweed River Entrance Sand Bypassing Project	25

Table 8: Summary of tenure types in NSW.

4.5 South Australia

Government of South Australia
Department of Environment, Water and Natural Resources

South Australia Crown Leases – Statistical Information

Lease Type		Number of Leases	Total Area of Leases (Ha)	% of the State	Rental Value
Perpetual Leases					
CP	Closer Settlement Perpetual	11	1,149	0.00117%	$660.00
DP	Developed Lands Perpetual	1	801	0.00081%	$27.00
LP	Village Settlement Perpetual	7	818	0.00083%	$318.00
MP	Marginal Lands Perpetual	44	47,751	0.04855%	$3,365.00
NE	Education Lease	1	366	0.00037%	$95.00
NH	Homestead Perpetual - Subject to Revaluation	1	8	0.00001%	$1,600.00
NP	Perpetual - Subject to Revaluation	99	62,336	0.06338%	$18,334.00
OA	Ordinary Agreement to Purchase	12	543	0.00055%	$0.00
OH	Homestead Perpetual - Fixed Rent	11	69	0.00007%	$21.00
OP	Perpetual - Fixed Rent	1,301	1,461,608	1.48616%	$77,899.00
PH	Homestead Perpetual - Repurchased Lands	4	23	0.00002%	$18.00
PI	Irrigation Perpetual	164	1,062	0.00108%	$4,127.00
PP	Pipeline Lease	5	209	0.00021%	$0.00
SP	Surplus Perpetual	12	3,295	0.00335%	$656.00
TI	Irrigation Town Perpetual	43	5	0.00001%	$602.00
UP	Town Lands - Whyalla Perpetual	1	0	0.00000%	$2.00
WI	War Service Irrigation Perpetual	198	2,478	0.00252%	$12,096.00
WP	War Service Perpetual	508	210,356	0.21389%	$295,243.00
XI	Irrigation Soldiers Perpetual	57	327	0.00033%	$1,228.00
	Total	**2,480**	**1,793,204**	**1.82332%**	**$416,291.00**
Pastoral Leases					
PE	Pastoral	326	40,222,530	40.89808%	$1,472,215.00
	Total	**326**	**40,222,530**	**40.89808%**	**$1,472,215.00**
Miscellaneous (Term and Life Tenure) Leases					
IM	Miscellaneous Irrigation	10	27	0.00003%	$21,332.00
OM	Miscellaneous	465	148,734	0.15123%	$986,107.00
RR	Regional Reserve	2	13,644	0.01387%	$36,660.00
	Total	**477**	**162,405**	**0.16513%**	**$1,044,099.00**
	Total for State	**3,283**	**42,178,139**	**42.89%**	**$2,932,605.00**

Date of Issue 16/11/2012

Table 9: Summary of tenure types in SA.

5 Native Title

Indigenous people were once the backbone of the pastoral industry in Australia through their work with livestock and essential domestic support roles. This kept them in close contact with their traditional country even though their property rights were not recognised by government.

The process of industry restructuring, changing technologies and skill requirements that commenced in the post-World War II era resulted in greatly reduced opportunities for the employment of Indigenous people on commercial pastoral stations. There are now large parts of traditional country where Indigenous traditional owners have no relationship with contemporary pastoralists.[29]

In its 1992 *Mabo*, decision the High Court recognised that Indigenous people's right to native title had survived the development and adoption of property law in Australia and, in accordance with the *Racial Discrimination Act 1975,* native title must be treated equally with other titles.

In 1993 the Commonwealth enacted the Native Title Act to provide for the recognition and protection of native title to the extent recognised by the common law in Australia.[30] The *Native Title Act 1993* did not create native title rights. Unlike land rights, native title rights do not flow from the Crown, and therefore can never be granted through legislation. The Commonwealth's *Native Title Act 1993* makes provision for processes to facilitate native title recognition and ensure that it receives legal protection as do other titles.

In 1995 the right of the Commonwealth to enact the *Native Title Act 1993* was challenged by Western Australia but the High Court upheld the Commonwealth's constitutional competence to so do.[31]

The *Wik*[32] decision in 1996 confirmed that native title may exist over land which is subject to pastoral lease or some other forms of statutory estates. The Court decided that pastoral leases issued prior to 1 January 1994 were valid grants and that the rights of pastoralists would prevail over native title rights to the extent of any inconsistency.

As a result of the *Mabo* decision in 1992 and the *Wik* decision in 1996 and the passing of the *Native Title Act 1993*, governments now recognise the possible existence of native title issues when dealing with land.[33]

Native title is the interest that may be held by Indigenous people in land and water arising from the observance of traditionally based laws and customs.

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[29] Parry Agius, Jocelyn Davies and Don Blesing. *Innovative Ways to Resolution of Native Title in Australia: Promoting Secure Futures on Pastoral Country.* Paper presented at the International Farm Management Congress 2003. p3. http://www.ifmaonline.org/pdf/congress/Agius%20Davies%20Blesing.pdf

[30] S10 *Native Title Act 1993*

[31] *Western Australia v The Commonwealth* (1995) 183 CLR 373

[32] *Wik Peoples v State of Queensland and Others* (1996) HC Unreported 96/044

[33] Ed Wensing & John Sheehan. "Native Title: Implications for land management" The Australia Institute. *Discussion Paper.* Number 11, April 1997. pp2-3. https://docs.google.com/viewer?a=v&q=cache:gxpKspXYpskJ:https://www.tai.org.au/file.php?file%3Ddiscussion_papers/DP11.pdf+Native+Title+implications+for+land+management&hl=en&gl=au&pid=bl&srcid=ADGEEShPpwetROk9rlApbNWDCyGR9ucrDS2smDWJ-rJBSJ4KMb2jUbJcwbvOreexmft801GJDenMCkru_iUXaPdUTYEjpPv-Var7mqVUZtyE4NDckFmU52uqnBBxg0nSx6wVT0Nr9p_8&sig=AHIEtbQxflPrtkTHJnGXeMpTY1ST84y1bg

Native title rights and interests are reflective of the laws and customs[34] that have been traditionally observed and therefore they will vary between indigenous groups. Native title does not confer exclusive rights to the land, nor do they provide commercial rights to the land.

Land rights on the other hand exist in various forms in each State and mainland Territory of Australia, except Western Australia. Land rights grant traditional owners absolute ownership of the land. Through their land rights the traditional owners exercise control over their land through Land Councils.

Native title rights that are recognised and protected under s223(1) *Native Title Act 1993* (Cwlth) are the same rights as those recognised at common law and acknowledged in the *Mabo* case. The recognition of these prior existing rights at common law operated to prevent the Crown from obtaining an absolute beneficial ownership of land when it acquired sovereignty and continued as a 'caveat' on the Crown's radical title.

Native title became vulnerable to extinguishment on the acquisition of sovereignty by way of a valid exercise of sovereign power inconsistent with the continued right to enjoy the native title rights and interests. The grant of an inconsistent interest in the land as an executive act or a legislative Act or the statutory vesting of an estate in fee simple will provide extinguishment of native title.[35]

5.1 Native title and statute law

Native title was first acknowledged in Australia with the High Court's decision in *Mabo.*[36] In the wake of this decision the Commonwealth passed the *Native Title Act 1993.* The Act provided for the statutory recognition of a number of issues:

- Native title rights;
- A process for determining whether native title exists by means of applications to, and determinations by, and recordings of, native title by the National Native Title Tribunal and the Federal Court; and
- Validation of future acts on land where native title might still exist.

The Court's *Wik*[37] decision in 1996 resulted in the Act being amended to provide for a scheduled list of granted leases and other interests based on common law that conferred exclusive possession to the grantee and thereby extinguishing native title rights and interests.

Despite the authoritative nature of the Schedule in the *Native Title Act 1993*, the High Court's decisions on native title questions carry weight in interpreting the relevant legislation and filling in the gaps when the legislation is silent. As Gim Del Villa said with respect to the High Court's decision in 2002 in *Ward v Western Australia*:

> *… It threw light on the nature of native title rights, the operation of the Racial Discrimination Act 1975 (Cwlth), and the effect of native title on a multitude of tenures.*

[34] Stephanie Fryer-Smith. "Safe Backyards? Freehold Land and Native Title" *The Real Estate Industry.* Volume 2,2000. p36. http://www.austlii.edu.au/au/journals/LegIssBus/2000/5.pdf.

[35] Tina Jowett & Kevin Williams. Native Title Research Unit. "Jango: Payment of Compensation for the Extinguishment of Native Title" *Land, Rights, Laws: Issues of Native Title.* Volume 3. Issues Paper No.8, May 2007. p 4. http://www.aiatsis.gov.au/ntru/docs/publications/issues/ip07v3n8.pdf

[36] *Mabo v Queensland* (No 2) [1992] HCA 23.

[37] *Wik Peoples v Queensland* [1996} HCA 40.

> *Among these tenures are pastoral leases. By a majority of 5 judges to 2 the court found that such leases in Western Australia and the Northern Territory did not extinguish all native title rights. Only the native title rights to control the access to and use of the land…were clearly extinguished; other rights may be able to co-exist with those of the graziers. In making these findings the majority purported to follow the Court's earlier judgment in Wik Peoples V Queensland.*[38]

A further High Court decision in *Wilson*[39] determined that native title had been extinguished by perpetual grazing leases granted under the *NSW Western Lands Act 1901.*

In their submission to the Inquiry, AgForce cites evidence that currently 65.2% of Queensland is currently covered in native title claims and the majority of these are on rural leases. In March 2012 there were 317 registered ILUAs in Queensland and 46 of these involved rural lessees. An additional 151 ILUAs, all involving rural lessees are scheduled for consent determination in the next six months.

	1000s km^2	**Landmass of Queensland (1000s km^2)**	**Percentage**
Determinations	114.2	1,730.6	6.6
Claims	1,013.9	1,730.6	58.6
Total	1,128.1	1,730.6	65.2

Table 10: Native Title Claims and Determinations in Queensland
Source: Agforce Submission to Inquiry[40]

Approximately 50% of rural leases are term leases which do not extinguish native title. There are processes in place for Indigenous claimants and lessees to work together to provide access to leasehold land for traditional purposes. According to AgForce, this resolution of claims which facilitates Indigenous access to land has recently been spurred by the creation of a template Indigenous Land Use Agreement (ILUA) which reduces negotiation time between lessees and claimant groups.[41]

5.2 Extinguishment of native title rights by the granting of freehold or certain leases

Section 23B of the *Native Title Act 1993* (Cwlth) provides for extinguishment of native title by the granting of freehold or certain leases on or before 23rd December 1996. In Queensland s20 of the *Native Title Act 1993* (Qld) ratifies or confirms the extinguishment of native title on these grounds.

The terminology used in s23B of the *Native Title Act 1993* (Cwlth) to indicate an act which extinguishes native title is *previous exclusive possession act.* A previous exclusive possession act is the grant of a land tenure on or before 23rd December 1996 under any of the following Queensland

[38] Gim Del Villar. "Pastoral Leases and Native Title: A critique of *Ward* and *Wik", Bond Law Review.* Volume 16, Issue 1, January 2004. http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1278&context=blr
[39] *Wilson v Anderson* [2002] HCA 29.
[40] AgForce, Submission No 41, p 35.
[41] AgForce, Submission No 41, p 34.

legislation that are provided for in s249C of the *Native Title Act 1993* (Cwlth) and listed in the Schedule to the Act:

- A lease under s12 *Alienation of Crown Lands Act 1860*
- A lease under s51 *Crown Lands Alienation Act 1868*
- A special lease under s69 *Crown Lands Alienation Act 1868, s70 Crown Lands Alienation Act 1876* or s188 *Land Act 1897*
- A lease under *Gold Fields Town Lands Act 1869*
- A lease under s28 *Crown Lands Alienation Act 1876*
- A perpetual town allotment lease under the *Land Act 1897*
- A perpetual suburban allotment lease under the *Land Act 1897*
- A lease under s119A *Land Act 1910*
- A lease under s185(2) *Land Act 1910;* s343 *Land Act 1962;* subsection 57(1) *Land Act 1994;* a special lease under *Land Act 1910* or *Land Act 1962.*
- A term lease or a perpetual lease under s22B *State Housing Act 1945*
- A term lease or a perpetual lease that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the activities listed is s21(9) Schedule 1 *Native Title Act 1993* (Cwlth).
- A development lease under the *Crown Land Development Act 1959* or the *Land Act 1962* that permits the lessee to use the land or waters covered by the lease solely or primarily for manufacturing, business, industrial, residential or tourist and recreational purposes.
- A freeholding lease under the *State Housing Act 1945*
- A grazing homestead freeholding lease under the *Land Act 1962* or the *Land Act 1994.*
- A freeholding lease as defined in Schedule 6 *Land Act 1994* or, a grazing homestead freeholding lease.
- A homestead lease under the *Gold Fields Homestead Act 1870,* the *Gold Fields Homestead Leases Act 1886* or the *Mineral Homesteads Leases Act 1891.*
- A homestead selection under the *Homestead Areas Act 1872* or the *Crown Lands Alienation Act 1876.*
- An agricultural homestead under the *Land Act 1897,* the *Special Agricultural Homesteads Act 1901* or the *Land Act 1910*.
- A free homestead under the *Land Act 1897* or the *Land Act 1910.*
- A miner's homestead perpetual lease under the *Miners' Homestead Leases Act 1913*
- A miner's homestead lease under the *Miners' Homestead Leases Act 1913,* the *Mining Act 1898* or any Act repealed by this 1898 Act.
- A grazing homestead under the *Upper Burnett and Callide Land Settlement Act 1923.*
- A grazing homestead perpetual lease under the *Land Act 1962.*
- A settlement farm lease under the *Closer Settlement Act 1906,* the *Land Act 1910, the Brigalow and other Lands Development Act 1962,* the *land Act 1962* or the *Irrigation Areas Land Settlement) Act 1962.*
- A designed settlement farm lease under the *Land Act 1910*
- An agricultural farm under the *Crown Lands Act 1884*, the *Agricultural Lands Purchase Act 1894*, the *Agricultural Lands Purchase Act 1897*, the *Land Act 1897*, the *Special Agricultural Selections Act 1901*, the *Closer Settlement Act 1906,* the *Land Act 1910,* the *Brigalow and Other Lands Development Act 1962,* the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962.*
- A perpetual lease selection under the *Land Act 1897*, the *Closer Settlement Act 1906,* the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Upper Burnett and Callide Land Settlement Act 1923*, the *Sugar Workers' Perpetual Lease Selections Act 1923*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *Irrigation Acts Amendment Act*

1933, the *Brigalow and Other Lands Development Act 1962*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962.*

- A perpetual town lease, including an auction perpetual lease that is a perpetual town lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Workers' Homes Act 1919*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *Irrigation Acts Amendment Act 1933*, the *State Housing Act 1945*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962.* A perpetual town lease without competition under the *Land Act 1910*, the *Irrigation Areas (Land Settlement) Act 1962* or the *City of Brisbane (Flood Mitigation Works Approval) Act 1952*. A perpetual town lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.
- A perpetual suburban lease, including an auction perpetual lease that is a perpetual suburban lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Workers' Homes Act 1919*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *State Housing Act 1945*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.
- A perpetual suburban lease without competition under the *Land Act 1910*, the *Irrigation Areas (Land Settlement) Act 1962* or the *City of Brisbane (Flood Mitigation Works Approval) Act 1952*. A perpetual suburban lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.
- A perpetual country lease, including an auction perpetual lease that is a perpetual country lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*. A perpetual country lease without competition under the *Land Act 1910* or the *City of Brisbane (Flood Mitigation Works Approval) Act 1952*. A perpetual country lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962.*
- A prickly pear frontage selection under the *Land Act 1897*. A prickly pear infested selection under the *Land Act 1897*. A prickly-pear selection under the *Prickly Pear Selections Act 1901* or the *Land Act 1910*. A perpetual lease prickly-pear development selection under the *Land Act 1910* or the *Prickly-pear Land Acts Amendment Act 1930*. A prickly-pear development selection under the *Land Act 1910* or the *Prickly-pear Land Acts Amendment Act 1930*.
- Any special lease granted to Amoco Australia Pty Limited under clause 3 of the Agreement that is given the force of law by section 3 of the *Amoco Australia Pty Limited Agreement Act 1961*.
- The lease granted to Austral-Pacific Fertilizers Limited under clause 4(b) or 4(c) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilizers Limited Agreement Act 1967*.
- Any special lease granted to Austral-Pacific Fertilizers Limited under clause 4(d) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilizers Limited Agreement Act 1967*.
- The special lease granted to the Gateway Bridge Company Limited under clause 1(5) of Part III of the Agreement that is given the force of law by section 4 of the *Gateway Bridge Agreement Act 1980*.
- The special lease granted to the Sunshine Motorway Company Limited under clause 1(4) of Part III of the Agreement that is given the force of law by section 4 of the *Motorways Agreements Act 1987*.
- A lease under the *Leasing Act 1866*.
- A lease under the *Gold Fields Homestead Act Amendment Act 1880*. An unconditional selection under the *Crown Lands Act 1891*, the *Land Act 1897*, the *Closer Settlement Act 1906*

or the *Land Act 1910*. A designed agricultural selection under the *Land Acts Amendment Act 1952*.

- A perpetual lease under section 8 of the *Clermont Flood Relief Act 1917*.
- A sugar workers' agricultural farm under the *Tully Sugar Works Area Land Regulations Ratification Act 1924*.
- A lease under section 64A of the *Harbours Act 1955*.
- A purchase lease under the *Brigalow and Other Lands Development Act 1962*.
- An auction purchase freehold under the *Land Act 1962*, including a lease under section 176 of that Act.
- A special lease purchase freehold under the *Land Act 1962*, including a lease under subsection 207(7) of that Act.
- A sub-lease under subsection 6A(2) of the *Industrial Development Act 1963*.
- A lease under paragraph 24(b) of the *Industrial Development Act 1963*.
- A mining titles freeholding lease under the *Mining Titles Freeholding Act 1980*.

The above list highlights how extensive the statutory regime in Queensland is in relation to leasehold interests that can be granted by the Crown. Various tenures granted under the Land Act 1994 are said to account for 66% of the land still under the control of the State.[42]

5.3 Compensation process after extinguishment of native title

Division 5 of the *Native Title Act 1993* (Cwlth) regulates the determination of compensation for acts affecting native title. Compensation, under s51(1), *is an entitlement on just terms for the loss, diminution, impairment or other effect of an act on native title rights and interests*.

The following provides an example of the process involving compensation for the loss of native title enjoyment:

In 1986, the Queensland government negotiated with the Hopevale Aboriginal Council regarding the granting of land to the Council to be held in trust for the benefit of the Aboriginal inhabitants. In 1997, after lengthy negotiations with the State government the Gamaay Peoples applied to the Federal Court under s87 *Native Title Act 1993* (Cwth) for a determination of permanent native title in relation to the lands and waters at Hopevale, north of Cairns.

This 1997 application came after negotiations between the State government and the legal representatives of the Gamaay Peoples which involved mediation by the National Native Title Tribunal. The application was not opposed by the State government and the court made a determination in December 1997 that native title existed over the land in question.[43]

Subsequent to this native title recognition, the Walmbaar Aboriginal Corporation made application to the Federal Court in November 2006 for compensation payable under the *Native Title Act* 1993 for loss suffered due to acts which were said to have either extinguished or significantly impaired or otherwise affected the native title rights and interests of the Dingall People[44] that the Federal Court had determined and recognised in December 1997.

[42] Evidence given to the Parliamentary Committee's public briefing 11th July 2012. p 9.

[43] *Erica Deeral (On behalf of herself & the Gamaay Peoples) & Ors. V Gordon Charlie & Ors* [1997] FCA 1408 (8 December 1997) http://www.austlii.edu.au/au/cases/cth/FCA/1997/1408.html

[44] In total the application was filed on behalf of 13 different clans of Aboriginal People including the Dingaal People.

The compensation application was made under ss 50(2) and 61(1) of the *Native Title Act 1993 (Cwlth).* The Queensland government opposed the application.[45]

The application for compensation was based on the loss of native title rights due to the following acts:

- The granting of leases by the State government to the Ports Corporation of Queensland; and
- The granting of mining leases by the State government to Cape Flattery Silica Mines Pty Ltd.

The application asserted a right of compensation against the State of Queensland and the Commonwealth on just terms or, by the similar compensable interest test. Additionally, the application also sought non-monetary compensation.

In accordance with s84 *Native Title Act 1993* (Cwlth) the Court dismissed the application. Firstly, because the claim as submitted went beyond the land and waters that were subject to the Hopevale determination of the Court in 1997 and secondly, an intra-indigenous dispute indicated that the applicant did not have the appropriate legal standing to file the application on behalf of the various Indigenous clans.

[45] Other respondents to the filed application were the Ports Corporation of Queensland, the Commonwealth of Australia, Hopevale Congress Aboriginal Corporation and Cape Flattery Silica Mines Pty Ltd.

6 Overview of issues outlined by AgForce on behalf of primary producers

The committee received an extensive submission from AgForce indicating that they would like to see comprehensive reform of the tenure system. AgForce is the peak body of Queensland's sheep, cattle and grain industries. These industries cover almost 80 per cent of Queensland and, by area, are the largest group of stakeholders affected by this review. AgForce members manage over 50 per cent of the state of Queensland.[46] AgForce expressed the view that the current tenure system is "*ill suited to modern agriculture*" and is based on an historic role that is not relevant today.[47]

AgForce challenges a number of misconceptions with respect to the leasehold system and maintains that:

- Rather than being poor land managers, lessees are generally good land managers with 85% of the land assessed under the Land Condition Assessment processes found to be in good condition. AgForce maintains that this highlights the improvements in sustainable grazing practices and they cite, as an example, the Waimbiana Grazing Trial at Charter's Towers.[48]
- Leasehold does not give the State greater control over lands management as most legislation is "tenure blind" .[49]
- The State does not derive a windfall return from leasehold rental.[50]
- Conversion of leases to freehold does not necessarily mean that more subdivision will occur. Other land controls and /or planning policy can be used to control subdivision.[51]
- Conversion of leases to freehold would not transfer significant wealth to lessees. Most lessees have not obtained their lease for free; leases have historically sold for the same amounts as freehold.[52]

AgForce notes that:

- Lessees already hold most of the equity in leasehold land due to significant capital investment.[53]
- There is generally a low return on land even under its highest value use (usually grazing).[54]
- Converting leasehold land to freehold would increase productivity and improve the long term resilience of rural communities.[55]
- Rural lessees deliver wider returns (environmental, cultural and economic) than simply rental returns. [56]

On this last point Ms Lauren Hewitt of AgForce stated:

> *"Graziers provide land management for over 80 per cent of the protected vegetation communities in Queensland at no cost. Some 35 per cent of Queensland is covered in wild rivers declarations because of a recognition that this land is in pristine condition. In*

[46] Mr Brent Finlay, General President, AgForce Queensland, Hansard Transcript Public Hearing in Roma – Inquiry into the Relevance of Government Land Tenure Across Queensland, 24 August 2012, p. 2

[47] AgForce, Submission No 41, p 37.

[48] Ibid. P. 21-22.

[49] Ibid p.23

[50] Ibid p.25

[51] Ibid p.26.

[52] Ibid p.26.

[53] Ibid p.27 – See Table 5.

[54] Ibid p.28

[55] Ibid p.31

[56] Ibid p.32

addition, in 8.16 per cent of the state graziers in those areas are required to put in environmental returns on an annual basis just so that they can preserve their right to graze in a reef catchment."[57].

Area of Queensland	Description
79 %	Percentage of Queensland's protected vegetation[24] which producers manage for the following outcomes: - Conserving endangered, of concern, and least concern regional bioregions as well as vegetation in declared areas. - Avoidance of land degradation. - Preventing loss of biodiversity. - Managing ecological processes. - Reducing greenhouse-gas emissions.
34.95 %	Extent of Queensland recognised as being 'relatively untouched by development and therefore in near natural condition, with all, or almost all, of their natural values intact'[25] and therefore protected by Wild River declarations.
9.58 %	Estimated extent of proposed World Heritage listing
8.16 %	Estimated extent of farmland area within reef catchments in which an additional two regulations are required. The first is record keeping for certain residual herbicides and fertilised pastures (from 1 January, 2010), for some graziers chemical accreditation (from 1 July, 2010), and the second requires landholders with grazing properties greater than 2,000 hectares in the Burdekin Dry Tropics Catchment to establish Environmental Risk Management Plans with annual reporting.
36.38 %	Current extent of leases requiring LCAs under Delbessie.
1.5 %	Area of Queensland covered by off-reserve private conservation areas (usually in the form of Nature Refuges).[26] This is around one quarter of Queensland's total protected area estate.[27]

Table 11: Environmental Contributions of Queensland Producers.
Source: AgForce, Submission No 41[58]

In its submission to the Inquiry, AgForce presents evidence drawn from the experience of the NSW and SA leasehold conversion processes to estimate possible revenue likely to flow to the State from tenure conversions. (See **Table 12** on page 34).

[57] Ms Lauren Hewitt, Policy Manager, Agforce Queensland, Hansard Transcript of Public Hearing in Roma – Inquiry into the Relevance of Government Land Tenure Across Queensland, 24 August p.2.
[58] AgForce, Submission No 41, p 33.

Scheme	Description	Queensland extrapolation
NSW continued leases program	The purchase price to freehold the land being the lesser of either 3 % of the value of the land (as the residual interest the Crown holds in the lease) or the notified value recorded in the department's records (generally the value of the land when it was opened up for settlement).	A flat 3 % of the 2011 UV of Queensland rural leases is: 3 % x $6,095,056,729 = **$182,851,701**
South Australian Perpetual Lease Accelerated Freeholding Program	Freeholding purchase price was a flat fee of $2,000 or 20 times the current annual rent, whichever is the greater amount	20 times the 2011 annual rural rent: 20 x $24,998,625 **= $499,972,500**

Table 12. Accelerated Conversion Opportunities
Source: Agforce Submission to Inquiry[59]

Agforce notes that it has not consulted with its members about their current capacity to finance conversion opportunities, but if the take up of tenure conversion opportunities proved to be similar to NSW and SA then a conversion program could be expected to deliver a significant injection of funds to the State.

During its hearings the committee heard evidence from many pastoralists linking various issues raised by Agforce together in a manner that highlights their relationship to the land they lease from the Crown and the challenges the current tenure system presents to landholders:

> *My name is Jim Struss. I represent my family today. Together with my wife, we own and manage Havelock, 50 kilometres north of Mitchell. I would like to paint you a picture. I stand before you as a basic farmer on a moderately sized cattle property. I am a fourth generation farmer. Our kids are the fifth and our grandsons are the sixth. I have immersed myself in the local community, representing the executive on a number of committees including the show committee. As chairman I proudly represent the AgForce Southern Inland Queensland division on the Cattle Board and the Cattle Council Australia. I also chair the leasehold and tenure review committees for AgForce. My wife and I are passionate about our land. We adopt husbandry practices with our breeders to ensure they have a calf every year. Our pasture management is controlled to deliver maximum kilograms of beef from each paddock. Any profits are poured back into the property renovating and developing watering points and building new fences. We respect and look after the development of the land with little impact to our ecosystems. We are devoted environmental managers. We see ourselves as custodians for our future generations. We have absolutely no intention to sell our property, a feeling shared by my kids and, with the upbringing, I suspect our grandsons will be the same. We would prefer to expand our enterprise and offer the same opportunity to our sixth generation. To expand we need certainty; we need security.*[60]

[59] Ibid p.32
[60] Mr Anthony Struss,, Chair, AgForce Leasehold Land Committee and Grazier,

The key issues which arose during the inquiry in submissions and from witnesses concerned with pastoral and primary production leases were:

- Tenure Security and Lease Renewals
- Lease Conversions
- Valuation, Viability and Banking Issues
- Relaxation of Current Tenure Restrictions
- Method of Rent Calculation
- Administrative Reform

Committee Comment

The committee wishes to commend AgForce for their leadership and outstanding contribution to the Land Tenure Inquiry and gratefully acknowledges the assistance provided to the committee in arranging extensive consultations with their members and other Queensland primary producers.

7 Tenure Security and Lease Renewal Processes

The importance of tenure security and the need for simpler processes for lease renewal are two central themes which resonate repeatedly in the evidence presented to the Inquiry.

7.1 The impact of tenure security on future investment and production

The views of Mr Colin Archer are representative of the evidence presented by many pastoralists who presented evidence to the Inquiry when he indicated in his submission that security of tenure was his principle concern:

The term lease tenure of 30 years, of which 23 remains, provides inadequate security (limited tenure and compensation at termination) to justify the expenditure of infrastructure required to develop the property to its full potential. To date as lessees we have contributed substantial resources to Land Management since acquiring the lease in 2007.

1. *Improving and constructing 30 km of fences creating a laneway system to central yards; improving yards and homestead infrastructure.*
2. *Clearing regrowth on all "white" areas and planting of improved pastures.*
3. *Co-operating in a joint programme with D.P.I. on lantana management.*
4. *Co-operation with Ms Doris Fred and the Warrungu People in Native Title Claim QC 04/8.*
5. *Fencing off Herbert River frontages conserving sensitive land and water areas.*

As the occupier we need sufficient security of tenure to justify the expenditure commitment necessary to provide the landcare improvements and infrastructure necessary to facilitate intensive grazing on improved and irrigated pastures which we believe would multiply production threefold. We suggest a perpetual lease subject to development conditions accompanied by a comprehensive Land Management Agreement would be a solution that allows us to develop the necessary infrastructure to markedly improve production.[61]

Mr Dale Perkes from Atherton is another pastoralist who provided a submission to the Inquiry on the need for tenure security, writing:

> *Our family consisting of myself Dale Perkes, my mother Jackie Perkes and my father Jeff Perkes hold several leases which include an SGP on state forest 194 and 2 occupational licenses 567 and 569. We have been trying to secure a better tenure over the ol's for some years with no success, the last offer from the previous labor government was a lease for 20 years then after that it would be put into national park estate. This land has been in our family for generations as it was taken up in 1874, so there has been continual use for the last 138 years. The two special grazing permits that we hold were 20 year special leases then turned into 7 year SGP without any consultation, so in turn we halted any future improvements due to the fact of no security. We would love to see more security over these leases.*[62]

Mr Robert Plant of Chinchilla also raised concerns about security of tenure in his submission to the Inquiry when he stated:

> *Our main concerns are the loss of rights on freehold land; the duration of basic terms of leases and the restriction of the right to maintain previously cleared land on leases. On*

[61] C. Archer, Submission No 60, p2.

[62] D. Perkes, Submission No 31, p1.

> *some of our special leases, the land was treated up to 3 times but under recent labour governments we have had to cease maintaining this land. This has contributed to cutting our stocking rates and viability, as well as providing a haven for wild pigs, dingoes, and other vermin causing concern on our freehold land as well. In addition, if we were able to have greater security over our tenure, it would encourage investment in these lands, which would in turn enhance agricultural production and economic productivity. Concerns about future tenure of leasehold lands have been of concern in recent years. Opportunities to increase the term of leases or to freehold further land would be welcome and would be considered so long as the cost wasn't too high. We realize that times and concerns have changed but safe and reliable guardianship of the land has been and will continue to be a priority for our family past, present and future.*[63]

Kim Landsdowne who holds a term pastoral lease in Willows Gemfields notes that the issues of tenure uncertainty arising with fixed term leases creates a risk of over or under utilization of land with consequent land degradation. Mr Landsdowne suggests that "[g]*raziers will be reluctant to commit such great investment knowing that it may be lost within the lifetime of that investment when the lease term expires (as the infrastructure needs to be renewed its life will always over run the term of the lease)*".[64]

Mr Gus McGown in his submission to the Inquiry also highlights the question of lease renewal when he notes that:

> *Increasingly the original purpose of issuing this lease has been lost over time. My family have owned the lease for over 90 years. In that time the conditions on this lease have changed from increasing production to being subsumed by other legislation that restricts production. This is a breach of the faith that existed between my family and the Crown.*

Mr McGown goes on to suggest that the current issues could be best addressed by reviewing tenure administration in Queensland and facilitating change to achieve the following:

- *homogenous title across rural landscapes to the greatest extent*
- *simplify survey standards*
- *create opportunity for tenure upgrade at reasonable conditions*
- *ensure indefeasibility for all tenure*
- *ensure that tenure arrangements do not interfere in the market*
- *allow for flexible reconfiguration of rural land where undesirable subdivision is managed by local planning laws*[65]

7.2 Indefeasibility of title

Mr McGown was one of a number of pastoralists who raised the issue of indefeasibility of title for pastoral leases.

AgForce also raised this as a major issue in their submission, highlighting that Australia's land system is known as the Torrens system which establishes title to land by registration and conveyance by instrument and in so doing confers upon a bona fide purchaser an indefeasible right to the land.

[63] R Plant, Submission No 32, p2.
[64] K Landsdowne, Submission No 57, p2.
[65] G. McGown, Submission No 50, p 2.

AgForce goes on to note that

> [w]*hile the Torrens title system is a national framework, due to the delegation of constitutional powers, each state has their own laws with respect to land interests and their protection of relevant rights. In Queensland, unlike the Land Title Act 1994 (Qld) which regulates freehold land, the Land Act 1994 (Qld) does not create an equitable interest or the success of a claim under all circumstances*". In other words Queensland lessees do not have indefeasible title or the subsequent access to compensation available in other Australian jurisdictions.[66]

Academics writing in this field have also raised concerns about the implications of this arrangement when considering the differences in what is permissible between freehold and Crown land.

> *Unlike the common law position, if the parties to a Crown lease do not comply with the requirement to obtain Ministerial consent to a proposed transfer, there is no passing at either law or equity of any estate in the leasehold interest. However, it is not unusual in a commercial context for a business to either lease or sub-lease part of its premises to another entity and to finalise their arrangements prior to the landlord's formal consent being sought. The authors' professional experience shows that, particularly in non-metropolitan areas, many tenants (and agents) are reluctant to spend money on either the cost of undertaking searches of the underlying tenure to establish ownership or to check for existing encumbrances; or to engage a lawyer to provide appropriate advice.*[67]

Mr Stuart Leahy, who owns freehold land in Mulgildie highlighted in his evidence to the Inquiry the vulnerability of Queensland leaseholders in circumstances where problems arise during conveyance:

> *When we bought one of our blocks at Mulgildie and paid our money for it and we went and started farming, about 18 months into it we got a letter from the bank saying, 'There has been an issue. Your legal firm shut down and the owner of your country is not you; it is the previous vendors. The whole conveyancing process did not occur. It is no problem-it is our fault –but we need to get the signatures from the vendors onto the conveyancing and get it put onto the register so that you have title.' I just went into panic mode wondering whether these people were going to sign the documents. So it does happen. It happened to us and it happens regularly but not often. Had I known that it was freehold land and it was indefeasible land, I would have been compensated, I would not have got the block but I would have been compensated through the fund. But if I had leasehold land, I would have got nothing. I would have had to walk away. That is why it is so important.*[68]

In the words of AgForce:

> *The absence of indefeasibility of title leaves lessees open to deprivation of their interests in land through fraud, mistake, and a range of other instances, leaving them without the ability to gain access to the assurance scheme afforded to other freehold titleholders. This*

[66] AgForce, Submission No 41, p.46

[67] Cradduck, L. M., & Blake, A. (2011). State of origin: Queensland Crown leasehold – lessons from New South Wales. *Journal of New Business Ideas and Trends*, *9*(2), p.6.

[68] Mr S Leahy, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Alpha on 30 August 2012, p.11.

> *inequity is one faced only by Queensland lessees as all other state lessees in other jurisdictions have been granted indefeasibility of title.*[69]

This view was also presented in the evidence given to the committee at its hearing in Alpha by Mr Stuart Leahy, a freehold grazier from the North Burnett district. Mr Leahy makes the observation that it would be tempting for many people reading the AgForce submission to flick through the section on indefeasibility of title, but he cautioned that it should not be underestimated how much this critical issue is presently misunderstood and the significance implications of this issue. He said at the committee's Alpha public hearing:

> *I guess my take-home message is that, for some reason over the years, every state in Australia has brought across all leasehold titles in the Torrens, have given them security of tenure and have given them access to that fund—except it has not happened in Queensland and I do not know why. If you were a leaseholder and you were looking to convert over to freehold, you would be asking yourself the old buyer beware question, 'What's in it for me, because I'm going to have to pay a lot of money for this?' Would indefeasibility of title be one of those things? Probably not. I can almost guarantee that everyone I run into does not know anything about it, and I doubt there would be many people in this room who are aware of it. One of the reasons that they would change and convert to freehold—from my experience and the people that I deal with—is the crippling rents.*[70]

Having extolled the virtues of freehold tenure under the Torrens system Mr Leahy then shared some of his cynicism about its current limitations with those attending the Alpha hearing:

> *What extra rights do we have as freeholders? Historically, and if you look at Central Queensland as an example, if the leaseholders and permit holders of land abided by their lease and they did the right things—they built their fences, they built their dams, they built their yards and they cleared the scrub, or the fragile ecosystem as it is now called—they were given the opportunity to then purchase the property, purchase the leasehold, and they could also purchase the trees of value on that property and convert over to freehold. The children and the grandchildren of those original leaseholders who converted to freehold have seen a gradual decline in the rights of freeholders. Way back then, if you had freehold land, you could do pretty much what you wanted. But with government planning and government development schemes, many of the rights have been taken away until you get to an eventual stage where all the statutory acts start coming in on top of freehold land—such as the conservation management act, the Integrated Planning Act, the Water Act, the state forestry planning act, the Wild Rivers Act and the Environmental Protection Act. Then eventually in 1999—and you might have been ear bashed by Property Rights Australia over this one yesterday if you were in Rockhampton—the Vegetation Management Act was introduced and it stripped away the rights to natural justice that all leaseholders and freeholders had, and it took away our trees that we bought. In 2009 the regrowth clearing moratorium act came into play very, very quickly and they invented a classification of vegetation that did not previously exist and they called it endangered regrowth—it did not exist. Without any compensation, without any consultation and without any notification, they took away the capacity of leaseholders and freeholders to increase the productivity of our land.*

[69] AgForce, Submission No 41, p.47

[70] Mr S Leahy, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Alpha on 30 August 2012, p.9

> *That last act, that regrowth clearing moratorium act, should be totally repealed—in total. Section 50 of the Vegetation Management Act that deals with compliance officers, or that section that deals with authorised officers, really does need to be changed. So I sit here before you as a freeholder wondering what it is that I own on my property. I think I own the soil, but the soil is made up of minerals and the minerals are vested in the state. On our particular property, Peabody, which is an American company, owns the soil. I think I own the water. Back in 2001 in our district, 30 farming families got together and applied to access water from the Mulgildie aquifer for livestock. We were told that the allocations for that water had been completely taken up by two mining companies that at that stage did not exist and that there were no more allocations for us. We have been fighting, but we have given up fighting, basically. We cannot get access to that aquifer. As I said, we thought we owned the trees but the big ones were taken away in 1999 and the little ones were taken away in 2009. Perhaps I own the buffel grass, but in 2009 I phoned a bloke from the WWF, because I was pretty hot under the collar about what he was doing, and in the process of telling him that if we did not control this regrowth there would be no grass there to hold the soil together and the soil would flow out to the Barrier Reef, he told me that buffel grass was one of the most noxious weeds there is in Queensland today and that it needed to be banned and eradicated. So I do not know if we are going to own the grass down the track.*[71]

Despite the limitations of freeholding (and the necessity to address any extant native title claims to the land), the Goondiwindi, Barcaldine, Cook and Fraser Coast Regional Councils all supported the option of converting long term grazing and pastoral leases to either perpetual leases or freehold title. The question of tenure certainty is seen to be essential to the promotion of improvement, maintenance and long term investment, particularly in a climate of increasing cost pressures and declining margins for agricultural production. [72] It was also raised by local government in the context of their own vulnerable position with respect to their substantial investment in infrastructure on land belonging to the State.[73]

Land tenure security was also raised as an issue by both environmental and pastoral stakeholders concerned about food security issues and the long term sustainable protection of food and fibre production.[74]

7.3 The Relationship between State Policy Instruments and Tenure Agreements

At the invitation of the committee, on 20 August 2012, the committee received a private briefing from recognised land tenure legal experts from the legal firm Clayton Utz, Brian Noble (Partner) and Chris Boge (Special Counsel).

Boge and Noble offered the opinion that any statutory framework should "add value", acting as a tool to facilitate a State policy which reflects the desired balance between the public interest and private interest. Boge and Noble make the point that freehold land and leasehold land are both subject to much the same overlays of statutory regulation, however they question whether overlaid statutory regulation is a solution to the problems/objectives associated with tenure restrictions.

[71] Mr S Leahy, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Alpha on 30 August 2012, pp.9-10.

[72] Goondiwindi Regional Council, Submission No 9, p.1; Cook Regional Council, Submission No 7, p. 2; Fraser Coast Regional Council, Submission No 18, p.1.

[73] Barcaldine Regional Council, Submission No 46, pp.1-2.

[74] Wildlife Preservation Society of Queensland, Submission No 39, p.2; Gold Coast and Hinterland Environmental Council, Submission No 51, p.2; Colin Jackson, Submission No 58, p.3.

Boge and Noble note that overlaid statutory regulation can, on occasions be less effective in protecting the public interest because it must 'cut down' or withdraw existing private rights. However private rights can be enforced at law and their relationship with statutory regulation is subject to interpretation by courts compared to breach of a tenure (eg. a lease which may lead to forfeiture whereas breach of a regulation usually will not). Ultimately they make the point that the effectiveness of any tenure depends on the State's willingness to 'enforce' limitations and stakeholders perspectives on the public interest and private rights.

Boge and Noble advocate the need for the intended balance between public and private interests to be clearly articulated through policy and supporting legislation and that the tenure structure that comes out of that explanation needs to be clear and certain and uses legislation as one (important) vehicle for instilling behaviours about land use and management. They also make the important point that the State should give consideration to the question of how any desired tenure structure sits as part of broader State natural resource management and raise they the spectre of an 'overarching' Act entrenching the State's policy. In the absence of such broadscale reform, Boge and Noble suggest that consideration should be given to:

- how tenure upgrades are dealt with
- what requirements would need to be met to enable a lease to be automatically "rolled over" via the inclusion of an "option" clause in the lease agreement
- whether conditions should be applied when converting leases to freehold
- how the public interest might be protected through 'non-tenure' mechanisms such as covenants.
- The ability of lessees to 'deal' with land
- Whether State administrative processes are appropriate and add value (eg. approvals for dealings for perpetual leases (if upgraded from term leases).
- The method for calculating rent
- The nature of the land registration system for non-freehold land.[75]

Boge and Noble suggest that native title rights currently co-exist with rights under pastoral leases and therefore an extension of the pastoral lease does not impact on any existing native title rights as these will continue to co-exist for the duration of the lease. In effect, arguing that non extinguishing lease rollovers, even those of an indefinite nature (such as perpetual leases) have no impact on native title rights because the rights which co-exist today will continue to exist in 100 years time. Boge and Noble acknowledge that native title rights may be affected if pastoral leases permitted greater diversification which may be contrary to a native title right to access the land for traditional hunting or ceremonial purposes.[76]

Other stakeholders offer a different perspective on this issue, sharing the concerns of pastoralists about questions of "certainty" over terms and conditions of non-exclusive lease tenures, and of Native Title rights and interests but raising issues about the impact of such arrangements for Indigenous Traditional Owners.[77]

The Department of Natural Resources and Mines suggests that its proposed 'rolling leases' will offer a level of security approaching that of perpetual leases - that it will create de facto perpetual leases. However, Esposito cautions that the manner in which the Government implements a rolling lease

[75] Private presentation to the Committee by B Noble and C Boge, Clayton Utz, 20 August 2012

[76] Private briefing by C Boge and B Noble to Committee Chair and Secretariat staff on 14 November 2012.

[77] A. Esposito, Rural Leasehold Land Strategy in Queensland, 2005, http://www.indig-enviro.asn.au/leaseland_review.htm accessed on 22/11/2012

system and grants lease extensions has significant implications regarding the rights of Native Title claimants and may affect progress towards resolution of Native Title across the leasehold estate.[78]

Under the proposed rolling lease scheme, if a lessee on a 'term lease' is content with a 30-year base term and complies with a Land Management Agreement they can expect their lease to roll on in perpetuity. They are under no onus to adopt enhanced conservation measures through a Conservation Agreement (CA), or to enter into an Indigenous Land Use Agreement (ILUA).

However currently under s.155A and s.155B of the *Land Act 1994* the Government offers 'lease extensions' as incentives for lessees to enter into a CA or an ILUA. If a lessee opts for one or two criteria under the categories for lease extensions, such as a Conservation Agreement, they can get extensions to the base term. However, under the terms of the strategy, this need not include an ILUA. Lessees therefore can feel they have no responsibility to enter into an ILUA or to deal with Native Title and Traditional Owners in a voluntary capacity. Nor are they under any obligation to adopt conservation measures, as distinct from sustainable production measures.

Esposito offers a reminder that irrespective of the base term of a rolling lease, a Native Title claim and a successful determination are possible - and indeed likely in a significant portion of the leasehold estate. This simply means that pursuit of Native Title rights and interests will be through the courts instead of through negotiation and voluntary agreements, thus undermining the very certainty the strategy is attempting to secure for all parties.[79]

Esposito goes on to argue that a conversion from a term to a perpetual lease would trigger Native Title procedures and would require that the Native Title rights and interests be resolved through either a Court determination or an ILUA under the *Native Title Act*. He maintains that 'rolling leases' - the lease extension process - give holders of term lessees an equivalent of perpetual leases and suggests that this diminishes Native Title when done without proper notification and negotiation.

Esposito is critical of the emphasis on lessees' interests and concerns and the lack of clarity of the Native Title holders' rights and interests, or to clarify how the creation of a de facto perpetual lease will facilitate the development of ILUAs or other binding arrangements. In this regard Esposito, Boge and Noble are in agreement, raising significant questions about what incentive the current and proposed arrangements provide to motivate Indigenous Traditional Owners to cooperate in the ILUA process.[80]

7.4 Delbessie Agreements and Lease Renewals

The State Rural Leasehold Land Strategy (previously known as a Delbessie Agreement) is a framework of legislation, policies and guidelines supporting the environmentally sustainable, productive use of rural leasehold land for agribusiness. The Delbessie agreement was signed in December 2007 by the Queensland Government, AgForce Queensland and the Australian Rainforest Conservation Society at Delbessie, a property near Hughenden. In collaboration with key stakeholders, the department developed a suite of practical measures to assist landholders to achieve sustainable land management, including guidelines for assessing rural leasehold land condition that built on the

[78] Ibid
[79] Ibid.
[80] Private briefing by C Boge and B Noble with the Committee Chair and Secretariat staff on 14 November 2012

principles of the *Land Act 1994*, including the statutory duty of care and provisions relating to land degradation.[81]

While there are many leaseholders who were sympathetic to the goals of the Delbessie Agreements, this support in principle appeared to be far outweighed by widespread frustration with the complex and time consuming nature of what are seen to be unduly onerous compliance requirements associated with the process. For example Mr Rick Whitton, a grazier who appeared at the committee's hearing in Roma said:

> *I have been through the Delbessie. I have had my new lease for 12 months now. I feel it was a waste of government money and a waste of my money for what it achieved. Sir Joh, by a sign of the pen, gave me 35 years extra on my lease back in the early eighties. I had two men from DERM come to home and stay three days. They had to do 30 sites to check on the condition of the land, which they found in excellent condition. Then I had two girls from some science people come in to check the riparian areas looking for frogs. They were there for three days. I had to employ Devine Agribusiness consultants to make sure that my property management plan did not have anything in it that should not have been there. That cost me $6,000. DERM made about four copies of this property management plan before it was acceptable. I feel that at the end of the day if they had written across the top of my old lease 'renewed for 40 years' we would have received the same result. That is what I think of Delbessie.* [82]

This view was echoed by, Mr Tim Ecroyd, another grazier who appeared at the Roma hearing:

> *My wife and I own a preferential pastoral holding near Thargomindah in South-West Queensland. Going through the Delbessie lease renewal thing, which you can only do in the last 20 per cent of your term—you can only upgrade a lease in the last 20 per cent of your term. Even after 10 years of one of the worst droughts ever, we have been assessed as in good condition, eligible for a longer lease to 40 years but not available due to native title. Apparently we can reapply, but why should we have to? Delbessie asks us to take yearly photos self-assessed and every five years department assessed, then 10 years. Why the red tape and constant surveillance on someone who, after 27 years and the drought, still has his country in good order? With 85 per cent of the leases assessed so far in good order...* [83]

Ms Lauren Hewitt, the Policy Manager at AgForce also raised this issue at the Roma hearing highlighting the unquantified but likely high cost of compliance with the Delbessie assessment process:

> *The average time taken to renew a lease is two years. The department recommends that you apply two years prior to the expiration of your lease. Many people receive multiple visits. You have heard people today say, 'We have had people who have stayed three, four, five, six, nights.' There have been multiple officers out on estates. Various teams are involved in Delbessie. It is not just DERM or the department of natural resources and water; it is actually DEHP, which has ecological assessments and they send officers on.*

[81] State Rural Leasehold Land Strategy http://www.derm.qld.gov.au/land/state/rural_leasehold/strategy.html, accessed on 22 November 2012.

[82] Mr R Whitton, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Roma on 24 August 2012, p.7.

[83] Mr T Ecroyd,, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Roma on 24 August 2012, pp2-3.

> *They have different teams. With the five-year assessment, we have not even got to that point yet, but there is also an ongoing cost there back to the department and on to the lessee in terms of time. It is a difficult one to quantify. We have not got the figures from the department.*[84]

Mr Guy Chester, a consultant engaged by Cape York Sustainable Futures raised a related concern of proportionality:

> *The ILUA and IDAS requirements need to be commensurate with the value of the land. That is where at present there is a major disjunct. To get through the IDAS and the ILUA process, to get to a lease on any of these tenures I have talked about, costs more than the land is ultimately valued. On Cape York, there are some leases due for renewal in the coming years. There needs to be specific recognition of these to ensure that they have security of tenure and access to any new tenure arrangements. This is a specific concern to specific lessees on Cape York.*[85]

Other leaseholders raised the point that the entire process of renewing leases was generally just unnecessarily complicated and expensive.[86]

In view of all of the evidence outlined to this point in the report it is therefore not unexpected that on 22 November 2012 the Hon Andrew Cripps, the Minister for Natural Resources and Mines announced that:

Under a scaled-back agreement process, graziers will be still be assessed for their property's stewardship and eligible for renewals of leases for up to 50 years, but applying for extensions of time will now not include incentives like creating nature refuges. Minister Cripps says it will save money and will not damage the environment and he makes the following points:

- The Delbessie process is very involved – lease agreements can run up to 100 pages. It's a drain of time on the lessee and my department. The new templates streamline questions and issues. It will involve fewer site assessments and make sure they are strategically identified to be broadly representative of the properties.
- We will be decoupling the future conservation process from the lease renewal process. If there is land that has been identified as high environmental values, the Environment department has every opportunity to approach lessees to negotiate and discuss that land becoming a national park.
- Staff assessing land management for leasehold land will now also assess vegetation management while they are there.
- He does not believe environmental safeguards will be lost. We have seen that leaseholders are excellent stewards of their land.
- Nature refuges will not necessarily be encouraged. They are a voluntary arrangement.
- 5 year self-assessments, mandatory under Delbessie, are now no longer necessary. [87]

[84] Ms L Hewitt, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Quensland, held in Roma on 24 August 2012, p.11

[85] Mr G. Chester, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Quensland, held in Cairns on 28 August 2012, p.11

[86] Ms J Carter, Submission No 44. P2

[87] A Phillips, Delbessie Agreements out the Door in Leasehold Review, http://www.abc.net.au/rural/qld/content/2012/11/s3638258.htm Accessed on 22 November 2012.

Committee comment

The committee is sympathetic to the issues raised by leaseholders who have participated in the inquiry and considers that many of the requirements in the Delbessie Agreement process have been unduly onerous. The committee is therefore supportive of the proposed simplification of the lease renewal process announced by the Minister for Natural Resources and Mines through the recent reforms to the State Rural Leasehold Land Strategy.

The committee is also concerned about the lack of tenure security faced by many leaseholders as it potentially limits investment and reduces productivity on much of the leasehold estate within Queensland. The committee is therefore supportive of the proposal that renewals should be for periods up to 50 years for leases that have been shown to be well managed.

The committee is deeply concerned about the particularly iniquitous and vulnerable status of Crown lessees in Queensland with respect to indefeasibility of title in comparison to all other Australian jurisdictions and considers the current situation to be unacceptable.

The committee is concerned that the State Rural Leasehold Land Strategy should offer adequate incentives to leaseholders to gain their cooperation in the development of agreements with Native Title holders. Along with lessee entitlements, these agreements should ensure and protect the rights and interests of Traditional Owners, including access to homelands, natural resource use (e.g. water holes), cultural activities and heritage protection.

The committee is concerned that without incentives for all parties to work co-operatively in achieving the development of ILUAS or other binding agreements then the resulting outcome may well be a widespread pursuit of Native Title rights and interests through the courts instead of through negotiation and voluntary agreements, undermining the very objective of the Strategy which is to increase certainty and security for all parties.

It is therefore essential that the Government provide strong leadership through the reform process to reassure both pastoralists and Native Title holders and explain how it will assist to facilitate the resolution of Native Title claims on leasehold lands in which co-existent rights and interests apply.

The committee recognises that a number of leaseholders have recently renewed their leases and signed agreements which may place them at a disadvantage to those leaseholders who are soon to renew their leases under the new Strategy. The committee considers it would be desirable for the Government to assist leaseholders in these circumstances to review their leases to incorporate any options or conditions that did not exist at the time the lease was renewed.

Similarly the committee is sympathetic to the circumstances of leaseholders whose leases are due for renewal within the next few years and would not like to see these lessees disadvantaged because the expiration of their lease occurs during any transitional phase of any tenure reforms adopted by the Government.

Recommendation 1

The committee recommends that State leasehold land should be bought under the Torrens system by being included in the *Land Title Act 1994* (Qld) so that leasehold interests are given the same rights as freehold land interests to both indefeasibility of title and compensation under the Government Assurance Scheme.

Recommendation 2

The committee recommends the immediate implementation of simplified lease renewals for periods of up to 50 years as proposed in the recent reforms to the State Rural Leasehold Land Strategy.

Recommendation 3

The committee recommends the State Rural Leasehold Land Strategy provides incentives to leaseholders and Native Title holders to negotiate the necessary agreements voluntarily in order to support the implementation of the Government's stated policy objective of promoting security and certainty for all parties.

Recommendation 4

The committee recommends that the Government establishes an advisory service to support proponents seeking to enter into lease agreements or undertake activities on Crown land affected by Native Title or in some instances in order to streamline development to facilitate the ILUA for proponents.

Recommendation 5

The committee recommends that the *Land Act 1994* (Qld) be amended, if required, to ensure that landholders with leases signed prior to the introduction of any reforms are given the opportunity to review their leases to incorporate any options or conditions that did not exist at the time the lease was renewed.

Recommendation 6

The committee recommends that the Minister ensures that leaseholders approaching the expiration of their current lease are granted short term extensions to their existing leases to ensure that they have the opportunity to renew their lease under the new terms and conditions proposed in the recent reforms to the State Rural Leasehold Land Strategy.

8 Conversion of Leases

Of all the issues the committee has considered, the desire of most leaseholders to convert their leases upon renewal to the most secure form of tenure available has been the most challenging issue to address. The prevailing view among the majority of stakeholders is that leases adjudged to be in good condition should be given the maximum tenure available without further requirements. A number of Regional Councils suggested in their submissions to the Inquiry that there was an urgent need to create certainty of tenure and Goondiwindi Regional Council argued that long-term grazing and pastoral leases should be converted to freehold to reward the efforts of those investing in the improvement and maintenance of the land and overcome a lack of certainty. [88]

Many graziers who made submissions and gave evidence at the Inquiry (such as Gus McGown, Kim Lansdowne, Jane Carter, Graham Elmes, Tim and Meredith Eckroyd and Col Jackson) all argued for the establishment of a new process which would enable pastoral leases to be converted to free holding and grazing homestead leases to provide certainty and justify expenditure for the infrastructure required to develop the property to its full potential. As was discussed at length in the previous chapter of this report, these graziers believe that it is essential to create greater opportunities for tenure upgrades to increase certainty and increase productivity.

AgForce in its submission to the Inquiry supports this view when it states:

> *In many rural communities in Queensland, the predominant tenure type is leasehold land. In such areas, the health of the rural industry has ramifications for the health of the local communities including local government. Agforce submits given the multiplier effect that additional monies in these rural communities would bring they may also benefit from the increase in resilience that a conversion opportunity would bring. Through the conversion of leasehold land into freehold, the long term savings of lessees in rent could be invested on farm to provide productivity gains and improve long-term resilience. The latter is of particular importance by an industry that regularly withstands significant climatic events.*

For these reasons AgForce support the Inquiry investigating the conversion of all leases to freehold tenure.[89]

AgForce suggestion that broad-scale tenure conversion could be a windfall for the government, but this would depend on valuation processes and the terms and conditions of repayments as many landholders with existing term leases favoured the repayment over long periods and at modest purchase prices.

For example, Mrs Eunice Turner of Chinchilla in her submission to the Inquiry asserts that there should be no transfer of tenure without a valuation and that leaseholders properties should be valued by a registered and independent valuer of the lessee's choice and that the Land Court should be the last resort. Mrs Turner also submitted that the transfer of leasehold tenure to freehold should be paid for over 50 years and without interest.[90]

[88] Goondiwindi Regional Council, Submission No 9, p 1.
[89] Agforce Submission No 41, p.2.
[90] E Turner. Submission No 2, p. 1.

Another pastoralist from Ilfracombe, Mr John Hain, highlighted in his submission what he described as a "catch 22" in the tenure conversion process for his property:

> *When my wife and I purchased my parents share of the property a valuer from the DNR advised me that the formula for calculating lease rentals has changed from being an Unimproved Capital Value to a Potential Value. The only reason that these leases have a potential value is because we have developed them at our own cost which is not cheap. In some of our paddocks we could not run any stock at all prior to developing. All that existed was scrub and no feed, now we pay a higher rental for our own efforts....We would love to be able to pay out our leases and have Freehold Title, but being a small to average family operation and the high valuations this is not possible.*[91]

Aspirations for improved tenure security are in part addressed by the proposals in the recently announced State Rural Leasehold Land Strategy. However, there were a considerable number of witnesses who wanted leases of more than 50 years as proposed in the Strategy and instead favoured the conversion of long-term grazing and pastoral leases to perpetual leases and/or freehold title.

Committee comment

As indicated in the previous chapter, the committee is sympathetic to the desire of pastoralists and primary producers to attain the maximum degree of tenure security possible in order to create certainty and promote the productive development of the rural sector in Queensland. The committee encourages the Government to explore all possibilities to achieve this end.

Notwithstanding this strong commitment to enhancing tenure security and promoting the conversion and upgrade of existing term leases for primary producers, the committee also recognises and respects the importance of accommodating and supporting Native Title rights for Indigenous Queenslanders. The committee has therefore given considerable thought to ways that this balance might be best achieved.

A term lease for pastoral or agricultural purposes may be converted to a perpetual lease for the same purposes where the term lease co-exists with the Native Title rights and interests. On conversion the lessee would then be able to exercise the same lease rights in perpetuity, rather than for a term of years. This will have no effect on the exercise of the existing native title rights and interests. The perpetual lease should be called a 'non extinguishing perpetual lease', a conditional perpetual lease or a qualified perpetual lease so that it is known and understood to be a lease that has no effect on existing Native Title rights and interests.

Generally speaking, a term lease for agricultural or pastoral purposes may *not* be converted to freehold land (a fee simple estate). This is because, unlike the (non-exclusive) lease, the fee simple estate allows the registered owner to exclude the Native Title holders and to use the land for any purpose (subject to any planning restrictions). However, following discussions with Boge and Noble, the committee has identified the possibility of creating a new statutory form of 'non–extinguishing fee simple' or 'conditional fee simple' or 'qualified fee simple' which grants to the registered owner all the rights of a fee simple estate *subject* to the exercise of the existing Native Title rights. The Native Title rights and interests operate like a (statutory) reservation to the registered owner's estate.[92]

[91] J & J Hain, Submission No 29, p 2.

[92] Private email to the Committee Chair from Mr Brian Noble of Clayton Utz, 1 November 2012.

The committee also supports the view that any tenure conversion process should establish a repayment regime for lessees converting to freehold title covering the maximum period available from commercial lenders. The committee is mindful of the economic hardships faced by many lessees, particularly during long periods of drought and other extreme weather incidents, as well as the impacts associated with events such as those which have affected the live export trade in recent times. The committee would therefore encourage the Government to consider the possibility of introducing a program of interest rates subsidies to facilitate the tenure conversion process and accept responsibility for negotiating with agribusiness lenders extended terms for loan repayments for lessees wishing to convert to freehold title.

Recommendation 7

The committee recommends that the Minister explores the options outlined above in respect to establishing a new statutory regime of non-extinguishing title to enable leaseholders to:

- **Convert existing term leases to non-extinguishing perpetual leases**
- **Convert term leases to non-extinguishing fee simple**

Recommendation 8

The committee recommends that the Minister ensures that when converting leasehold land to freehold title the vendor should have the option of engaging a valuation professional of their choice.

Recommendation 9

The committee recommends that the Minister introduces a program of interest rate subsidies to support lessees commercially financing the conversion of term leases to fee simple.

Recommendation 10

The committee recommends that the Minister engage with agribusiness lenders to secure confirmation of their support for these reforms and in particular to make representations for a change in current lending policies to extend the terms of repayment.

8.1 Living areas policy

There was division among stakeholders on the present living areas policy and this is explained in some detail in the AgForce submission which canvassed the issue with its membership in 2011 and found it to be particularly contentious. Given the divisiveness of this issue, AgForce State Council reconsidered the restrictions and held it was were in favour of the retention of provisions limiting corporations to hold restricted tenures. Notwithstanding this resolution, AgForce stated that it supports an approach which sees increased security of tenure through greater conversion opportunities and any freeholding program should not exclude corporations. Therefore, AgForce continues to support restrictions of corporations and trusteeships holding and managing tenure but they should not be excluded from any tenure conversion [93]

[93] AgForce, Submission No 41, p 43.

A number of individual pastoralists supported tenure conversions seeing them as an important way to enable their children to inherit the property and continue to live on and farm the land with certainty into the future.

> *The living areas policy has put a stop on more than one of my sons wanting to reside here to help build our grazing enterprise into a bigger family business.*[94]

Similar issues concerning the current barriers to inheritance, security of tenure and continuity of family involvement in leasehold lands was raised in a submission by Mr K Dwyer of Chinchilla who wrote to the committee about his experiences of attempting to convert the tenure of his property to freehold tenure:

> *For many years my wife's uncle, Mr Sydney Gordon Russell had held this land under special lease 16/6074. When Mr Russell died in 1983 the lease was included in property bequeathed to my wife and me. Subsequently we renewed the lease when its term expired and paid the annual rent each year.*
>
> *The Department decided to change our lease from Special Lease to Permit to Occupy. From our perspective the major difference in the two situations is that we could not pass on our lease to our beneficiaries which we would like to do because of the length of time the Russell family had been involved with it. My wife and I are both over 80 years of age and we wish to settle matters relating to estate planning which would include the Leasehold Lands we hold as well as the land held under freehold title.*
>
> *We wrote to the Lands Department (as it was then) many years ago seeking to convert the leasehold land to freehold. The then Minister Mr Bill Glasson replied that conversion of the lease to freehold tenure would not be allowed as the land had potential for subdivision into rural residential sites. The land is situation on the banks of Charley's Creek and was severely affected by the 1211 (sic) New Year floods and the land would be of little interest to anyone other than us*[95]*.*

AgForce in its submission to the Inquiry was particularly critical of ss. 147 and 148 of *the Land Act 1994* (Qld) which limits an individual's holding of leasehold land to two living areas and which authorises forfeiture of holdings in excess of the prescribed limits. Under the legislation a living area is defined as the area of grazing and arable land required for a person to ensure an adequate standard of living for a family.

The policy was originally introduced to "prevent undue concentration of ownership of large aggregations in one locality, but to allow additional ownership across the state and throughout a number of districts."[96] In the same report Wolfe goes on to state that:

> *Some provision is required to control unseemly aggregations of grazing and pastoral land regardless of tenure. The restrictions on dealings with grazing land as now applies to land formerly held under a grazing homestead perpetual lease is required so that land used in the grazing industry is available for small business and to provide a further mechanism for ensuring these lands are properly employed in the industry or for the use*

[94] C Doblo, Submission No 68, p 2.

[95] K Dwyer Submission No 4, p 1.

[96] P M Wolfe, D G Murphy, and R G Wright, (1990) Report of a review of land policy and administration in Queensland (p.90) Brisbane: Land Policy and Administration Review Committee, cited in the AgForce submission to the Inquiry into the Future and Continued Relevance of Government Land Tenure across Queensland, August 2012, p 38.

> *for which they are most suited... As the aim of the policy is to support the family unit operations on the grazing and pastoral lands, the object is not achieved by placing a restriction on ownership in terms of total area measured by hectares, as was the case between 1968 and 1981.*

AgForce notes that, whilst the Wolfe report recognised there are benefits to aggregation, it also identified the following problems:

- Concentration of control in industry – leading to monopolisation of industry and market domination.
- Increased barriers to entry of newcomers into an industry. It noted a very strong level of demand for leasehold land exists in the community, mostly from eligible family units wishing to acquire more land rather than increase productivity on the existing holding.
- Inefficiency results if holdings are not used to their full capacity. Reportedly, not only paddocks but large holdings have been left idle or for years are not used to their proper capacity. It would appear that it is sometimes less costly and more profitable to acquire more land rather than increase productivity on the existing holdings. This is an indication that rents are not a constraining factor.
- There is a commonly held apprehension that the numbers of cattle submitted to auction and the abattoirs by the 'large companies' are affecting prices paid in the market, and these cattle seemingly receive priority to the detriment of smaller businesses.
- There is a perception that in some closely settled sheep areas some holdings are below living area or are of insufficient size to support a family unit, and some aggregation is desirable, but land is not available for this purpose.
- Social effects – as family-operated businesses are absorbed by aggregation into the operations of one or other of the large entities, the immediate population declines as does that of the supporting town as a result of reduced local demands.

Restrictions on Corporations and Trusteeships to Hold and Manage Tenure

Land Act section	Nature	Summary of legislative control
144	Identifies the tenures to which the restrictions apply	The restricted tenures are: - Perpetual leases issued for grazing or agriculture purposes; - Grazing homestead perpetual leases; - Grazing homestead freeholding leases; and - Subleases of the former leases.
145	Restricts corporations	Excludes corporate entities from holding leases of the tenures described in s 144 and specifies that only individuals (singly or collectively) may hold leases.
146	Restricts aggregation (discussed above)	Limits an individual's holding of leasehold land to two living areas. A 'living area' is defined as the area of grazing and arable land required for a person to ensure an adequate standard of living for a family. Section 147 provides details on the calculation of holdings while s 148 provides that holdings in excess of what an individual may hold may be forfeited.
149	Refers to trusteeships	Prevents an individual from holding the restricted tenures in trust for another person, except for 'family arrangements' in line with what is considered to be a traditional family.
174	Restricts corporations	Prevents the transfer, to a corporation, of freehold land that was previously a restricted tenure (s 144) without Governor-In-Council approval. This applies to titles over 2,500 hectares in area.

Table 13: Restrictions on Corporations and Trusteeships to Hold and Manage Tenure

Source: AgForce, Submission No 41, p 42.

AgForce goes on to note that the living areas calculations have not been reviewed in over 15 years, and have therefore failed to take into account a range of recent factors such as the increase in productivity and profitability on some individual tenures, terms of trade and the need to spread fixed costs. A more scientific approach to carrying capacity has proven that the living area standards are inaccurate. It should also be noted that living areas change with industry profitability and margins which are all market-driven and government policy has continually proven its inability to adapt to such factors.[97]

Committee comment

The committee is conscious of the divisions present in the rural sector on the question of the living areas policy and the conflicting views driving the positions held by stakeholders in regard to this question. However, in the context of the committee's other recommendations concerning tenure upgrades and conversions to freehold, the committee considers it necessary to strike a balance between modernisation of the outdated policy and the need to provide ongoing security of tenure and opportunities for Queensland pastoral families. The committee is therefore supportive of the position adopted by AgForce on this question.

Recommendation 11

The committee recommends that increased security of tenure through greater conversion opportunities and any freeholding program should not exclude corporations and that the current restrictions remain with respect to corporations and trusteeships holding and managing tenure

Some lessees supported tenure conversion reforms to permit subdivision of large land parcels but this was matched by the counterveiling view of Mr Hugh McGown, a grazier from Roma who said:[98]

> *We had huge difficulties in the south-west strategy, and we made a number of submissions saying to the state, 'If you address some of these issues, we can make better progress in addressing these unviable areas, small blocks, people trying to get out of them. We need to amalgamate these areas.' We had impediments like stamp duty, survey standards, dissimilar title—absolute impediments to really good resource management outcomes. You have to remember: some of these areas where they had these structural adjustment programs were in our poorer land types. The state, in its wisdom, said, 'We do not want the big companies to own these as drought reserves. We will subdivide them and make them into smaller areas.' And that is where the problem started.*

AgForce notes that the department has admitted that the living area standard has not been enforced for many years, and in view of this and the varied ways in which agricultural businesses are operated today and the decline in total numbers of Queensland producers, AgForce recommends the removal of this provision. Furthermore, the policy has been criticised as anti-competitive and arguably may pass the requisite tests of market, agreement and substantial lessening of competition detail under the *Competition and Consumer Act 2010* (Cth). AgForce maintains that the majority of negative impacts considered and discussed in the Wolfe Report are clearly no longer applicable, in particular the inefficiency argument, the statement that rents are not a constraining factor and the statement

[97] AgForce, Submission No 41, p 39.

[98] H McGown, Public hearing transcript, Roma, 24 August 2012, p 4.

that demands for new land comes mainly from family units are clearly incorrect. [99] AgForce, therefore, concludes that the most appropriate mechanism to deal with any unintended consequences of moving toward greater freeholding of existing leasehold land (such as undesirable subdivisions) is via other regulatory mechanisms such as statutory planning regimes.

Committee comment

The committee agrees that the tenure regime is not the appropriate mechanism for dealing with inappropriate subdivisions and that there are other regulatory mechanisms available to government to deal with this issue.

Recommendation 12

The committee recommends that the issue of subdivisions which may arise as a result of increased Freeholding is best dealt with via statutory planning regimes.

8.2 Unallocated state lands

A landholder, Larry Daniels, outlined his frustrations with tenure conversions involving a disused road and a small area of unallocated state land:

> *In 1971 my father purchased a cattle and grain property in the Capella district of Central Queensland. In 1974 he purchased the neighbouring property. As we were now cultivating both sides of the fence we pulled the fence down and joined the cultivations together. This fence line was only breeding weeds and allowing them to spread onto the cultivation.*
>
> *About the late 70's or early 80's we had the local Queensland Government soil conservation officer come out and design soil erosion saving contours which we built into broad based farm over banks. Of course, with the natural slope of the land and to protect the soil, these banks were surveyed and constructed across the old fence line. In 1990 my father retired and I took over the farm and introduced zero till, controlled traffic farming and eventually precision agriculture. These are all state of the art, best management practice techniques designed for best environmental and economic outcomes.*
>
> *Sometime in the early 2000's it was brought to my attention that this old fence line had an old but never used, gazetted road along it. This road led nowhere and further along it passed through swampy flooded country. It now seemed to pose no modern purpose, so I applied to have it permanently closed. I was granted temporary road closure status with the condition that the land was to be kept in a good agricultural state. That was a workable outcome although the rent is high because of the minimum rent charge. It was also brought to my attention that there was a small area of land [about 10 acres], in the corner adjoining this old road. I offered to purchase this land. At the Queensland Department of Natural Resources request I had it valued by a licenced valuer and the department accepted my cheque of $3,168.60, subject to Native Title.*
>
> *At that stage I put it in the hands of my solicitor. They eventually tracked down the relevant native title spokesperson with the final outcome being that Native Title would*

[99] Ibid, p 41.

require no less than $60,000 to register an ILUA. That was prohibitive to me; I do not have that kind of finances for a $3,168 block of land. The Department paid back my purchase price and I was offered a "Permit to Occupy" instead. This I disappointedly accepted because the "permit to occupy" carried the condition of grazing only. I had been taken back 50 years.

There is no water near this block. For practical management purposes I fenced this block to a nearby grassy knob and ran the fence about a kilometre back to water, fencing off about 90 acres of prime cultivation in the process. This whole fenced off area will now become cattle fattening and ley pasture, with an extra fence now to patrol with the inevitable weed spread. The alternative was to fence the little block off by itself and let it stand idle with me having to control its weeds. Also the long narrow shape of this block made it obtrusive and disruptive to other farm operations.

I am a 5th generation farmer in this state, the next generation is ready to take over from me and I hope many more generations follow. If this Government is serious about increasing farm output, I can suggest where to start. Grant permanent road closure to my never, ever, used road going nowhere; sell me the little block of land for the agreed value, and pay the native title ILUA themselves. [Or at least see that the charges are kept realistic and affordable]; and keep R and D up to date. Keep me viable and efficient and I guarantee we will introduce every new invention and idea that advances farming environmentally, economically and productively. [100]

Goondiwindi Regional Council addressed this issue and suggested that Unallocated State Land should be sold to current or adjoining owners as the land is best utilised in conjunction with adjoining lands. The council suggests that the State convert land to freehold where there is not likely to be any future public use. Goondiwindi Regional Council maintains it is best to combine these parcels of Unallocated State Land to create a viable and productive parcel so adjoining owners should be given first option to purchase. The council argues for the State to review the methodology of establishing the offer price for lands offered to adjoining owners to ensure that appropriate discounting of the market rental occurs to reflect the lack of improvements to these lands and their limited appeal or viability as parcels in their own right. The council also highlights the need for the State to review the methodology of establishing the offer price for lands to be offered for freeholding to ensure that appropriate discounting of the market value occurs to reflect the lack of improvements to these lands and their limited appeal or viability as going concerns in their own right.[101]

Goondiwindi Regional Council is concerned that simply handing these parcels back to the state as Unallocated State Land will likely lead to other greater pest and other problems. It is suggested that if cost modelling was undertaken it may well reveal that the state would benefit from offering the land for sale and then assisting vendors with the costs of dealing with Native title issues and that this may well be more cost effective than meeting the ongoing management costs in the future.[102]

Other stakeholders, such as the Girringun Aboriginal Corporation, see a different potential for tenure conversion for the future use and management of Unallocated State Land, in particular those with intact native ecosystems or sites of Aboriginal cultural significance. [103]

[100] L Daniels, Submission No 3, p 2.
[101] Goondiwindi Regional Council Submission, No 9 pp 2-4.
[102] Goondiwindi Regional Council Submission No 9, p 4.
[103] Girringun Aboriginal Corporation, Submission No 93, p 4.

Committee comment

The committee is sympathetic to the views expressed by landholders and local government with respect to the treatment of unallocated state land, particularly of small remnant blocks adjoining other leasehold properties. The committee considers that there is considerable merit in offering adjoining landholders first option to purchase this land in order to ensure that the land is managed well and in a consistent manner to the adjacent holdings in order to create a viable and productive parcel. However, the committee acknowledges the issues raised in respect to ensuring that those with intact native ecosystems and which might form a useful addition to a wildlife corridor should be considered for management as part of a larger wildlife reserve. The committee is also in agreement with the suggestion of the Goondiwindi Regional Council who has highlighted the merit of the State assisting vendors to negotiate with Indigenous Queenslanders with interests in the cultural significance of a particular site.

Recommendations 13

The committee recommends that small remnant blocks are assessed to determine whether they have potential value to form part of a wildlife corridor. Otherwise these remnant blocks should be offered to adjacent landholders before being either handed back to the State as unallocated land or made available for general sale.

Recommendation 14

The committee recommends that, where Indigenous Queenslanders indicate that they have an interest in the cultural significance of a particular site on the unallocated state land in question, then the State should assist potential vendors to negotiate an ILUA covering this land.

8.3 Land tenure issues on Cape York

The submission from the Cape York Regional Organisations (CYRO), which includes Cape York Institute for Policy and Leadership, Cape York Partnerships, Balkanu Cape York Development Corporation, and Cape York Land Council Aboriginal Corporation, strongly supports increased sustainable economic activity on Cape York that enables participation and benefits for Aboriginal people through job creation, infrastructure improvements and opportunities for private enterprise. CYRO's submission indicates it is prepared to consider and propose new and innovative approaches to reforming land tenure arrangements so that economic and social development is enabled for Aboriginal people and wider Australian society. Aboriginal people want to be actively involved in growing the economic cake on Cape York, not just receiving crumbs from the table in the form of welfare handouts. There are many ways that land business could be done differently to create benefits for all interested parties.[104]

CYRO propose the following model with respect to land transfer arrangements:

Primary land transfer

- *Freehold land lots (after the completion of land administration actions to create appropriate lots) should be transferred to appropriate parties. This will include:*
    - *the transfer of land used for municipal service delivery (Council buildings, workshops, storage areas, sewerage treatment plants, water supply dams and infrastructure,*

[104] Cape York Regional Organisations, Submission No 94, p 3.

etc) and public purposes (parks, sports fields, cemeteries, showgrounds, community halls, public toilets, etc) to the relevant Local Government Authority,
- *the transfer of land used for housing, commercial, government service delivery and other purposes to a Traditional Owner corporation.*

- *Road reserve land, and land where a road has been constructed but is not on a road reserve, would also be transferred to the relevant Local Government Authority (and road reserves created where necessary).*

Secondary land transfer

- *The Traditional Owner corporation would then sell or lease land to appropriate parties. For example:*
  - *land used for housing would be sold for private residential purposes or*
  - *leased to the State for social housing purposes;*
  - *government service delivery land would be sold or leased to government agencies for the delivery of health, education, police and other services;*
  - *land used for commercial purposes would be sold or leased to commercial operators;*
  - *land used for religious purposes would be sold or leased to church organisations;*
  - *remaining land would be sold or leased to other parties for other purposes as appropriate.*[105]

It is important to note that the CYRO submission is very clear that:

> *The upgrading of existing leasehold interests to tenures in the nature of freehold or perpetual lease could only occur with the consent of the relevant native title holders to surrender their native title rights and interests via an Indigenous Land Use Agreement (ILUA). Many pastoral and other leases cover very significant land areas. The surrender of native title could prevent current and future generations of native title holders from accessing the land in order to exercise their rights - such as:*
>
> - *hunting, fishing, camping, burial, ceremonial activities, and use of natural resources; and*
> - *negotiation and participation with mining companies and other land developers, which could result in considerable loss of employment and economic development opportunities.*
>
> *Any agreement to surrender native title rights and interests would require significant negotiation with native title parties to identify the conditions under which they would agree to surrender their native title rights. Given that significant benefit will accrue to the holder of an upgraded land tenure, such as a perpetual lease or freehold title, significant benefit must also accrue to native title parties who surrender their native title rights and interests to enable the upgraded land tenure.*[106]

CYRO go on to address the question of Indigenous involvement in economic development opportunities which exist in the context of lands where Native Title no longer exists:

> *Government land tenures exist over some land where native title has been extinguished. CYRO submit that the upgrade of government land tenures in these areas will present an opportunity to address previous injustice and provide benefit to the Traditional Owners of these lands. This benefit should be provided in a way that supports their engagement*

[105] Ibid, pp 5-6.
[106] Ibid pp 6-7.

> *in the economy rather than in a form of welfare. Given that significant benefit will accrue to the holder of an upgraded land tenure, benefit should also accrue to the Traditional Owners of that land. Traditional Owners were dispossessed of this land without agreement or recompense in historical times, and they have not been able to enjoy native title rights in more recent times. None the less, they are still the Traditional Owners of the land. The Queensland Government should take the opportunity provided by this Inquiry to identify that Traditional Owners, as well as land tenure holders, could be provided with benefit to improve their social and economic circumstances as a result of land tenure upgrades.*[107]

CYRO also raise concerns in respect to Aboriginal Cultural Heritage noting:

> *Intensification and diversification of land use could have serious negative impacts on Aboriginal cultural heritage in Cape York. Most current land uses on government land tenure, such as pastoralism, tend to have lower impacts on cultural heritage since they do not involve significant alteration of the landscape and ground disturbance. If land uses were intensified or diversified into activities that required land clearing, cultivation, access into areas that are not currently accessed, higher population densities, etc then there could be significant impacts to Aboriginal cultural heritage.*

Therefore CYRO submit that:

> *Comprehensive planning should be undertaken to identify areas of high cultural heritage significance and these areas should not be considered for land use intensification. Previous cultural heritage studies, such as under the Cape York Peninsula Land Use Strategy (CYPLUS), could be used to partly inform planning processes. Despite planning to identify areas of high cultural significance, cultural heritage may still exist in areas identified for land use intensification regardless of land tenure. All practical and reasonable actions must be taken to protect cultural heritage, consistent with the duty of care obligations of the Aboriginal Cultural Heritage Act 2003 (Qld). Traditional Owners must be involved and resourced to participate in the preparation and implementation of cultural heritage management plans.*[108]

Committee comment

The committee is mindful of the need to give further detailed consideration to the particular issues which apply to the complex tenure issues which are specific to Cape York and intends to deal with these issues in the final report of the Inquiry and will therefore not be making any recommendations specific to Cape York at this stage.

The Torres Strait

The committee also heard evidence from Mr Fred Gela, the Mayor of the Torres Strait Regional Council at the Brisbane hearing. At the hearing Mr Gela indicated to the committee that 100 per cent of the land mass in the Torres Strait is covered by Deed of Grant in Trust (DOGIT) tenure. [109]

[107] Ibid p 7.
[108] Ibid pp 7-8.
[109] F Gela, Public hearing transcript, Brisbane, 22 August 2012, p 12.

Committee comment

DOGIT tenure matters are currently the subject of the Aboriginal and Torres Strait Island Land Holding Bill 2012 which is currently before the Parliament and for this reason the committee will not be making any recommendations on this issue.

State forest and national parks

Mr Roly Hughes, a pastoralist from Thargomindah in his submission favoured the promotion of freehold titles for leases with environmental values as a means of cost shifting the responsibility for management of national parks to the private sector, arguing that the private sector could perform this function more effectively and at less cost.[110]

At the committee's Cairns hearing, it heard evidence from Mr Graham Elmes, a pastoralist with forestry areas on his property. Mr Elmes also strongly advocated freeholding as the preferred form of tenure for his estate, however, in his commentary he identified several issues requiring resolution before Freeholding properties with significant forested areas:

> *As far as clearing is concerned, we have mechanisms in place even if it is freehold. We still have a process to go through. We cannot sell the timber off the land unless we get a permit and we pay royalties on it. Thats part of the process. All of the other legislation we have covers a lot of our issues so we should not be double dipping or doubling up with that at the moment. As far as our industry is concerned now it is worse than it was in the 1970s beef slump. The pastoral industry in Cape York is right on the precipice of complete collapse. We have to give some better incentive to our industry wholeheartedly to get it back up on its feet. I believe there are a couple of ways we could go. To give the panel a bit of my past knowledge as far as Freeholding is concerned, 30 years ago we could freehold our land in Cape York providing we paid for the price of the timber. What happened with that process was the forestry department would come and value your timber, and then if you wanted to freehold it you paid the value that they described the timber was worth. There was a process in place. Actually I think I might have been the last one to go through that process as far as Lakeland Downs is concerned. It cost us $70,000 to get our block freeholded. We paid for the value of the timber. That is what they put on the value of the timber. That was one process we had in place. The reason there was not a lot of freehold done in Cape York at that time was the economics of getting it done. Not too many of the properties could afford to pay for the cost of their timber. So I believe there are a couple of options. There is the New South Wales option of a flat rate. There is the Victorian option with a PBC of three per cent. That would make it a hell of a lot more viable for a lot of our pastoralists up there, rather than having to value the timber. Because on a lot of the properties up there the timber on the properties is worth more than the property is worth. When I say 'timber' I am talking about hardwood. A lot of the timber on those properties is worth twice as much as the property is worth. For the property owner to be able to afford to pay for that is going to be quite onerous. I believe the technology that we have now—such as our property-mapping process that we do through AgForce, where our soil types and everything are mapped out—provides a controlling mechanism for how development can happen.*[111]

[110] R Hughes, Submission No 64, p 2.

[111] G Elmes, Public hearing transcript, Cairns, 28 August 2012, p 27.

The Tableland Forest Users Group in its submission to the Inquiry opposed any further tenure changes of State Forest to National Parks without thorough scientific basis and compliance with national park criteria and informed and meaningful consultation with affected users and communities.[112]

Mr Bruce Lord, a grazier from Linville, called for a review of previous tenure conversions and management changes under the SEQ Forest Agreement. He submitted that:

> *In the last 20 years the change from multiple use State Forests managed for native forest production and grazing under former Governments to conservation purposes has seen a reduction in grazing potential and a general decline in environmental values. The lock-up mentality and tenure conservation for political purposes of recent years has done nothing to improve the condition of affected woodland and forest communities because of a lack of active management of weeds, pests and appropriate fire management, which all impact on neighbouring landholders....It is interesting that some of the initial assessments conducted in the RFA process recognised the considerable ecological values of State Forests across SEQ many of which had a long history of sustainable grazing and native timber management under former the DPI working with local landholders.*[113]

The Goondiwindi Regional Council made a similar point when it suggested that the Stock Route Management Network Bill presented to the previous Parliament should be enacted to increase flexibility for councils to better manage access to reserves and areas of State land. The council questions whether a change of tenure form for over 3,000 hectares of land in its regional boundaries would lead to better outcomes because there are many areas that possess environmental values that could be better supported with additional revenue generated from more regular grazing of some areas. They go on to suggest that additional revenue from longer-term leases would permit the development of some key strategic reserves for tourism and other uses through the construction and maintenance of some amenities and protection works for environmentally sensitive areas.[114]

Michelle Finger, a land holder who runs what she describes as a modest cattle grazing operation over two small freehold blocks and a 56,000 acre forestry lease, said in her evidence to the committee:

> *The current conditions imposed on the forestry leases are both unfair and unworkable. The extreme lack of security and the conditions which specifically inhibit structural improvements to the lease prevent the land from being managed in either a profitable or environmentally sustainable manner. The banks have absolutely no regard for forestry leases as they currently stand and will not lend a single cent against them, which makes it very hard to fund management projects and impossible to expand our business to maintain viability or to facilitate succession planning. In 2007 the harvesting of timber was closed down on our lease which directly goes against the core purpose of our lease and gives the land no continued relevance as a forestry lease. In November last year we were informed through AgForce that our lease was designated by the government at the time for conversion into national park.*

Ms Finger went on to inform the committee that ultimately the lease was not withdrawn. While expressing relief about this outcome Ms Finger also sought to highlight the importance of adopting an incentive based approach:

[112] Tableland Forest Users Group, Submission No 91, p 1.
[113] B Lord, Submission No 54, p 2.
[114] Goondiwindi Regional Council, Submission No 9, p 3.

> *Possible solutions I propose include the creation of a new tenure that can maintain the forest as a state asset while providing the lessee with more incentives to manage the land in an environmentally responsible manner and providing more security—enough security such that the lease can be used as equity for finance, as this has been a major issue for our family. I implore the government to recognise that there is a limit to the extent that landholders can bear the public cost of conservation. I encourage you to move away from the big-stick style legislation that we have seen in the past which is clearly ineffective and look towards an incentive based approach that rewards landholders who are making an effort to be environmentally responsible and sustainable on behalf of all Australians. This family has worked hard and made many sacrifices to make a living off this land and also ensure its protection.*[115]

In her submission to the Inquiry, Ms Finger made a number of positive suggestions on how landholders might be rewarded for good land care management practices. Her suggestions included:

> *Tax breaks for keeping low stocking rates. Rewards for not 'improving' their pastures with foreign species, rewards for every year that an important patch of timber is left standing etc.*[116]

In her evidence given at the hearing in Alpha, Ms Finger raised concerns about the merit of coupling the lease renewal process to future conservation strategies observing:

> *Unfortunately the environment is not pristine. This area has been grazed by cattle for 150+ years? It has already changed dramatically since white settlement. New and foreign species have been introduced. National Parks sound romantic to the city 'green' voter, but land cannot simply be locked away and the environment expected to be preserved. It has already been altered and now needs careful , often costly management. I am not saying that we should have no National Parks. It is important to set aside areas of natural wonder, beauty and heritage to preserve them for future generations. These areas are also vital sources of tourism. And I have no doubt that there are certain areas / ecosystems that are particularly sensitive or that harbor vary rare species, and these areas are of course worthy of protection. HOWEVER, these areas need to be selected very carefully to ensure maximum benefit to the environment. You cannot just preserve land willy-nilly and expect conservation success. Land should be chosen that is adjoining to existing national parks, or to create wildlife corridors between important land for animals etc., lands of conservation value. Decisions need to be made based on real scientific research. It is pointless to just protect segmented random blocks of land - like simply converting anything that is a State Forest Leases. This is not a valid way to select land to preserve. The next key is to ensure that that these precious areas are very well managed - meaning that: only as much land should be made into National Parks as the State can afford to manage properly.*

Dr Martin Taylor of the Australian Rainforest Conservation Society presented a contrary view to the committee at its Brisbane hearing stating:

[115] M Finger, Public hearing transcript, Alpha, 30 August 2012, p 20.
[116] M Finger, Submission No 43, p 10.

> *On behalf of the Australian Rainforest Conservation Society, I would like to talk briefly about the Delbessie Agreement on leasehold land and the state forest process. Both agreements were signed between industry representatives—Timber Queensland, AgForce, the Australian Rainforest Conservation Society and the Queensland government. These were historic agreements. They are critical not just to the conservation of Queensland's unique biodiversity but also to the future of those industries themselves. Peter Kenny, the then president of AgForce who signed that agreement with the Australian Rainforest Conservation Society, realised that green credentials for industry were very important and the Delbessie Agreement provided a mechanism to prove our green credentials in how we manage the land and raise livestock. This is very important to ensure good land management across the grazing industry. It is important to retain leasehold tenure under a regulatory framework that mandates an appropriately defined duty of care. Freehold could put that future at risk.*[117]

He then goes on to argue that:

> *The areas that are being considered to bring across have been chosen by a very rigorous scientific process. There have been very large and extensive reports, expert fauna panels and biodiversity assessments to choose the forests that would be protected for their conservation values. It is in stark contrast to other states. Compared to other states, Queensland has had peace in the forest industry because of this agreement. The needs of the timber industry and the conservation needs have both been considered together and the problem has been solved with the state forest process. Tinkering with that would really unsettle things considerably, not the least for the timber industry itself which is now planning to have a future of plantation based timber production.*[118]

Committee comment

The committee is heartened by the progress made in achieving a degree of consensus with the South East Queensland Forest Agreement and its potential benefits in assisting primary producers and the forestry industry to achieve sustainable land management practices. However, the committee is also conscious that many primary producers are deeply aggrieved by its impacts, terminating their leases (often at comparatively short notice) creating significant financial and operational implications for many leaseholders. The committee was impressed by the suggestions put forward by Ms Finger which essentially emphasised the need for a greater use of incentives rather than adopting a heavy handed approach to achieving the desired outcomes.

Recommendation 15

The committee recommends that the Minister develops a program that actively rewards leaseholders for responsible land management practices that improve their pastures and conserve important native timber resources.

[117] M Taylor, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Brisbane on 22 August 2012, p.5

[118] Ibid, p.6

8.4 Food security issues

A further issue raised about any widespread move to freeholding existing State Leasehold Land was outlined by the Gold Coast and Hinterland Environmental Council Association Inc. (Gecko) who expressed anxiety about the issue of food security in their submission to the Inquiry when they stated:

> *Uncertainty also remains over whether foreign investors will be allowed purchase of leasehold land, at what proportion, or cost. At present, across Australia, foreign ownership of valuable food production land is a matter of considerable concern; the proportion and location of foreign land ownership lacks transparency since only large land area parcels are registered. With global food shortages already arising, and the very low proportion of suitable agricultural quality Australian land, Gecko emphasizes the need to limit foreign purchase of Queensland pastoral land. Land use of on-sold leasehold land needs to be articulated. As already pointed out, Australian agricultural quality land is extremely limited, requiring that all effort be made by authorities to ensure that existing and potential farming land be preserved as such. In recognition of dire predictions for global food security attributable to multiple factors such as over-population and climate change, priority should be given by authorities to protecting Queensland's agricultural capacity over other development interests such as mining which appears so lucrative in the short term.*[119]

Gecko then goes on to suggest that carbon sequestration as income potential of present leasehold arrangements should be acknowledged and prioritised in recognition of its potential as a valuable source of immediate and ongoing income for leaseholders as well as the State Government.[120]

Other stakeholders were less concerned about such issues, for instance Mr Colin Jackson a pastoralist from Injune, suggested there should be more advantages associated with freeholding such as increasing rights to mining and gas.[121] A similar view was expressed by Mr Charlton Doblo who wants to see a cheaper, more simplified method of tenure change and a percentage of ownership of all resources on the land for the landholder (including forestry, mining and quarries) because it would bring with it a far more sustainable future for all parties involved.[122]

Longreach Regional Council indicated it was concerned about the conflicts arising from competing tenures from mineral exploration and extraction and agriculture.[123]

Earlier in 2012 the Government introduced the *Strategic Cropping Act 2011* to address these conflicts.

The purposes of this Act are to—

(a) protect land that is highly suitable for cropping; and
(b) manage the impacts of development on that land; and
(c) preserve the productive capacity of that land for future generations.

[119] Gecko, Submission No 51, p 3.
[120] Ibid, p 3.
[121] C Jackson, Submission No 58, p 3.
[122] C Doblo, Submission No 68, p 2.
[123] Longreach Regional Council, Submission No 1, p 1.

To achieve its purposes, this Act—

(a) identifies areas in which land that is likely to be highly suitable for cropping may exist (called 'potential SCL'); and
(b) has provisions for deciding whether or not land is highly suitable for cropping (called 'strategic cropping land' or 'SCL'); and
(c) establishes—
(i) protection areas and the management area for SCL and potential SCL; and
(ii) principles to protect land that is SCL or potential SCL and to manage the impacts of development on it.

The Management of the impacts on land that is SCL or potential SCL is achieved by—

(a) an assessment under this Act for development under particular other Acts; and
(b) imposing conditions on the development.

To the extent the land is in a protection area and the impacts are permanent, this Act—

(a) prevents the development, unless it is in exceptional circumstances; or
(b) if the development is in exceptional circumstances, requires mitigation for the land.

(4) To the extent the land is in the management area and the impacts are permanent, this Act requires mitigation for the land.

Committee comment

The committee is conscious that this is a contentious issue in the rural sector and the broader community. However, this issue was recently addressed in the *Strategic Cropping Act 2011* and is beyond the scope of this Inquiry.

Local government also raised a number of tenure conversion issues specific to their areas of responsibilities. Cook Regional Council and Barcaldine Regional Council expressed concerns about the treatment of local government infrastructure located on State Reserve Leasehold Land. Both councils expressed concerned about security of tenure noting that councils have a lot of infrastructure on land not owned by the council. Barcaldine Regional Council expressed the view that this could be resolved if the land was converted to freehold and ownership transferred as freehold to local government.[124]

The Cook Regional Council suggested an alternative approach of amending the definition of Community Purpose Reserve in Schedule 1 of the *Land Act 1994* which requires councils to purchase in fee simple land on which operational works are to be conducted (eg. schools, fire brigades, ambulance, works depots, landfill sites, water supply and sewerage) and revert to the position in the 1991 Act. [125]

Barcaldine Regional Council (along with several other Councils) also made representations for more streamlined processes for a change of purpose of Reserve Leasehold land and the release of vacant Crown land for the purpose of community development.[126]

[124] Barcaldine Regional Council, Submission No 46, p 1.
[125] Cook Regional Council, Submission No 7, p 3.
[126] Barcaldine Regional Council, Submission No 46, pp 1-2.

Committee comment

The committee is sympathetic to the situation of local governments currently faced with serious anomalies where they have significant and long-term capital investment located on state reserve leasehold land without security of tenure. The committee is conscious that this leads to administrative complexities and leaves the Local Government entities in a vulnerable position with respect to forward financial planning in the management of their assets.

Recommendation 16

The committee recommends that the Minister for Natural Resources and Mines supports the transfer of state reserve leasehold land to the relevant local government as freehold tenure.

9 Simplification of Tenure Types and Relaxation of Tenure Conditions

9.1 Relaxation of current tenure restrictions and simplification of tenure types

A number of stakeholders provided evidence that current tenure conditions were too restrictive, impacting on the viability of their enterprises and resulting in a lack of certainty.[127] This impacts on the incentive for leaseholders to invest in long-term improvements on the land.[128] Suggested solutions would see a relaxation of current tenure restrictions and a simplification of tenure types that would allow diversification and multiple uses of the land to increase economic opportunities in a range of areas, while also maintaining the land in an environmentally sustainable way.

9.2 Grazing rights on forestry land

Many lessees lost their right to graze on forestry areas under the South-East Queensland Regional Forests Agreement (SEQRFA), which oversaw the transition of forestry and other protected areas into national forest. Some leases were 'wound back or allowed to expire and not be renewed.'[129]

Other lessees had their leases converted into a 'Permit to Occupy' through this process. These permits offer little security of tenure to landholders, which impacts on their incentive to invest in infrastructural improvements and meet more than the minimum of their responsibilities in land care management under the terms of their lease.[130]

The Western Hardwoods Plan of 2004 removed grazing from 1.2 million hectares of designated forestry lands and converted them to National Park. This has resulted in 280 graziers standing to lose their grazing permits upon expiration. At this point in time, the graziers affected by the plan have not received any notification about whether their leases will be extended or not.[131]

Leaseholders whose leases cover areas of state forest and leasehold land in the one parcel have been advised that their leases will not be renewed once they come up for renewal in the next few years.[132] AgForce argues that the termination of forestry leases 'contradict explicit charters that include covenants which entitle lessees to receive an offer of a new lease at the expiration of the term of their existing lease.'[133]

AgForce and leaseholders believe that producers and farmers are the best managers of forestry land as they have a vested interest in ensuring management of feral pests and weeds, fire and other land conservation practices, in a way that ensures the land remains productive and fertile.[134] Under the terms of their leases, leaseholders are responsible for maintaining their land, including in forestry areas, which means keeping the land free from noxious plants, maintaining firebreaks that help to prevent bushfires from destroying timber reserves and using cattle to reduce the fuel load.[135]

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[127] A Struss, AgForce Leasehold Land Committee and Grazier, Public hearing transcript, Roma, 24 August 2012, p 5; M Finger, Submission No 43, p 1; R Whitton, Grazier, Public hearing transcript, Roma, 24 August 2012, p 6; E Robinson, leaseholder, Public hearing transcript, Alpha, p 15; Plant family, Submission No 27, p 1.

[128] E Robinson, leaseholder, Public hearing transcript, Alpha, p 15

[129] AgForce Queensland, Submission No 41, p 51.

[130] AgForce Queensland, Submission No 41, p 51, L Hewitt, Policy Manager, AgForce Queensland, Public Hearing Transcript, Alpha, 30 August 2012, p 6.

[131] AgForce Queensland, Submission No 41, p 52.

[132] AgForce Queensland, Submission No 41, p 52.

[133] AgForce Queensland, Submission No 41, p 52.

[134] AgForce Queensland, Submission No 41, p 52; A Struss, AgForce Leasehold Land Committee and Grazier, Public hearing transcript, Roma, 24 August 2012, p 5; C Jackson, Grazier and Chair of the Injune/Arcadia Valley AgForce Branch, Public hearing transcript, Roma, 24 August 2012, p 5, J Baker, leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; T Day, Submission No 96, p 1.

[135] J Baker, Leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; Plant family, Submission No. 27, p 1.

However according to one stakeholder, operating under the current conditions imposed by grazing permits 'inhibits structural improvements to the lease' and prevents the land being 'managed in either a profitable or environmentally sustainable manner'.[136]

The emphasis should be on management of land through co-operation rather than regulation[137] because it provides 'flexibility to deal with local considerations, cost effectiveness, enduring outcomes, positive stakeholder involvement and ownership.'[138]

AgForce proposes that the government investigate the 'potential for the re-introduction of grazing in areas, such as the SEQRFA tenure areas, where it can be shown to not impact on any real and identified conservation values.'[139] In particular, AgForce would like to see the reintroduction of grazing rights on forestry land where it can be shown to not impact on conservation values, for those lessees that hold a range of grazing leases and permits (often issued pursuant to the *Forestry Act 1959 (Qld)*).[140]

However, some caution was expressed in relation to expanding grazing rights on forestry areas. The main concerns related to:

- ensuring the conservation values of the land were protected;
- preventing damage to biodiversity; and
- encouraging sustainability practices.

The Wildlife Preservation Society of Queensland stated that while grazing is permitted to occur on conservation land under an approved management plan, 'a lot of the forestry practices in the past have been and would remain unsustainable because of the rate of growth of eucalypts. The harvesting rate is such that the trees do not get to the status they should be for a sustainable industry.'[141]

The Mackay Conservation Group (MCG) stated that cattle should not be grazed on a conservation area 'without good reason' and that there should be 'independent scientific advice before grazing' occurred on forestry areas.[142]

The Capricorn Conservation Council (CCC) was opposed to creating tenure that would allow 'less control over appropriate environmental ecologically sustainable practice'. Instead, CCC supported the strengthening of the 'current environmental management provisions on leasehold land—for example, grazing lease and forest reserves'.[143]

However, Goondiwindi Regional Council was supportive of allowing grazing in state forests to "*ensure that these large parcels of land are able to provide some revenue to offset the substantial management costs that they generate. The sustainable logging of all relevant timber varieties and*

[136] M Finger, Submission No. 43, pp. 1-2; M Finger, Public hearing transcript, Alpha, 30 August 2012, p. 21.

[137] M Finger, Public hearing transcript, Alpha, 30 August 2012, pp. 21-22.

[138] D Kempton,'How Secure is Leasehold Tenure', HTW Rural Lease Tenure Renewal Seminar, 22 May 2008, downloaded on 7 November 2012 from http://www.htw.com.au/Industry_Presentations/townsville%20rural%20lease%20tenure%20renewal%20seminar%20-%20may%202008%20-%20david%20kempton%20presentation.pdf, p. 2.

[139] AgForce Queensland, Submission no. 41, p. 53.

[140] AgForce Queensland, Submission no. 41, pp. 51-52.

[141] D Boyland, Policies and Campaigns Manager, Wildlife Preservation Society of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 7.

[142] P Julien, Coordinator, Mackay Conservation Group, Public hearing transcript, Mackay, 27 August 2012, p. 4.

[143] M McCabe, Coordinator, Capricorn Conservation Council, Public hearing transcript, 29 August 2012, p. 5.

controlled grazing of some of these areas will also provide economic stimulus for the region and provide better environmental outcomes in many cases."[144]

AgForce notes the reintroduction of grazing rights on forest land would also increase rent revenue to state and local governments.

The issue for leaseholders – lack of secure tenure

Because grazing permits cannot be transferred, mortgaged or sublet, and may not be renewed with as little notice of the non-renewal as 6 months, lessees lack certainty, which impacts on the ability of lessees to use their leases as equity to secure financing from banks to purchase freehold property or expand their rural enterprises. This has often resulted in unviable businesses and individual lessees exiting from their leases.[145]

The issue for government – balance between competing priorities for land use

Current policies suggest the objectives of current tenure arrangements are to ensure an appropriate balance between what are seen as competing land uses – agriculture, grazing, forestry, tourism, mining, conservation. This issue has been on the agenda of the previous as well as the current government, with a series of pieces of legislation passed in 2011 relating to land use.[146] The relationship between land tenure and other government objectives as expressed through policy and legislation will be considered in the committee's final recommendations.

Possible solutions

To address the problems posed by a lack of secure tenure, a number of stakeholders suggested that a new tenure be created, by either freehold title or a perpetual lease, that would provide grazing rights and also enable the forest to be maintained as a state asset with the state retaining ownership of any timber on the land. This would provide a greater security of title that would enable graziers to borrow against the lease to expand their business and also provide more incentives to invest in their land and manage the land in an environmentally sustainable manner.[147] As one leaseholder stated, converting to freehold or special leases 'would provide more certainty for our businesses, encourage investment and greater guardianship over these lands, and increase production and therefore economic productivity and viability.'[148]

The overwhelming suggestion from stakeholders was to convert to freehold in order to access the capital required to make the investments needed to be efficient and viable in the long term.[149]
Any new tenure that converts leases to freehold should include options that are 'affordable and long term'[150] with a suggestion that the tenure should be a minimum of 50 years and up to a 99-year lease. [151]

[144] Goondiwindi Regional Council, Submission No 9, p 2.

[145] AgForce Queensland, Submission no. 41, p 52; Plant family, Submission no. 27, p. 2; M Finger, Submission No 43, pp 1-2; M Finger, Public hearing transcript, Alpha, 30 August 2012, p 21.

[146] Eg. Strategic Cropping Land Act 2011.

[147] J Baker, leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; E Robinson, Public hearing transcript, 30 August 2012, p 15; M Finger, Public hearing transcript, Alpha, 30 August 2012, p 21; B Hoare, Submission No 97, pp 2-3.

[148] J Grant, leaseholder, Public hearing transcript, Roma, 24 August 2012, p 4.

[149] AgForce Queensland, Submission No. 41, p 37; E Robinson, leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; C G Gavill, Submission No 19, p 2 ; B Hoare, Submission No 97, pp 2-3 ; J Baker, leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; M Finger, Public hearing transcript, Alpha, 30 August 2012, p 21.

[150] E Robinson, Public hearing transcript, Alpha, 30 August 2012, p 15; C G Gavill, Submission No 19, p 2.

[151] E Turner, private capacity, Public hearing transcript, Roma, 24 August 2012, p 2; C Jackson, Submission No 58, p 3.

The key concerns about any move towards freehold title relate to implications for native title and for the environment. Some graziers specifically stated that they are open to a 'commonsense' approach to native title agreements that 'promote cultural rather than simply economic gains. Interim environmental agreements can be developed to ensure leases are in good condition before they are freeholded, and the science and the systems are already in place to achieve this.'[152]

AgForce also indicated that it would be interested in investigating a new model of tenure that was a move towards freehold title so that a leaseholder would not have to pay any rent but that the payments that were made were going toward paying the 'freehold' title. The granting of this tenure would not extinguish native title.[153]

In supporting the argument that forestry reserves and grazing leases can co-exist and be beneficial to each, one stakeholder suggested that thinning was the best way to increase productivity of commercial timber on grazing land. The ability to undertake this activity could be provided to leaseholders with a special lease over forestry land. Restricting the ability to do this under current lease conditions is detrimental to forestry reserves.[154] Another stakeholder wanted to see a return to the ability of leaseholders to maintain 'previously cleared or treated land'. Under current lease conditions, they are unable to maintain these areas, which has contributed to 'cutting our stocking rate for cattle and viability, as well as providing a haven for wild pigs, dingoes and weeds, causing concern on our freehold land and our neighbours' land as well.'[155]

Committee comments

The committee is concerned that land tenure has been under constant review in Queensland, which has resulted in the potential non-renewal of many pastoral leases; the downgrading of leases to grazing permits, which lack security because they cannot be transferred, mortgaged or sublet; and the lack of acknowledgement that farmers and producers can be the best managers of their land. The committee believes that grazing leases can co-exist within forestry areas and in fact be beneficial to the care of timber reserves by reducing fire risk and controlling weed and pest outbreaks.

The committee notes that the government has announced reforms to regulation relating to simplifying the process of renewing grazing leases and providing greater certainty to leaseholders through a streamlined State Rural Leasehold Land Strategy.[156] The committee encourages the government to proceed with these announced reforms.

Recommendation 17

The committee refers to recommendations one to four and recommendation six in Chapter seven.

[152] E Robinson, Public hearing transcript, Alpha, 30 August 2012, . 15:

[153] B Finlay, General President, AgForce Queensland, Public hearing transcript, Roma, 24 August 2012, p 14.

[154] C Jackson, Grazier and Chair of the Injune/Arcadia Valley AgForce Branch, Public hearing transcript, Roma, 24 August 2012, p 14.

[155] J Grant, Grazier, Public hearing transcript, Roma, 24 August 2012, p 4.

[156] Hon A Cripps, Minister for Natural Resources and Mines, 'Newman cuts red tape for graziers on Leasehold Land,' Media release, 22 November 2012, downloaded from http://statements.qld.gov.au/Statement/2012/11/22/newman-cuts-red-tape-for-graziers-on-leasehold-land.

9.3 Diversification of enterprise

The committee heard from many stakeholders that land tenure needs to be simplified and allow for the diversification of land uses if leaseholders are to maintain viable enterprises.[157]

Agricultural leases

Under the *Land Act 1994* lessees of agricultural leases are able to undertake all forms of primary production.[158] However, AgForce advised the committee that it had received a number of complaints from its members regarding the current diversification policy as it stands under the *Land Act 1994* (Qld). The policy restricts holders of agricultural leases from undertaking any additional activity that does not complement or fit the purpose for which the lease was originally issued.
The complaints have mainly been from leaseholders who have applied for activities of a non-primary production nature or 'sought to jointly conduct grazing and aquaculture on their lease.'[159] The government's current policy is that:

> *When considering applications by lessees to use agricultural leases for additional purposes a proposed activity may be considered to be complementary even if it is not related to agriculture, if the activity contributes to the viability and ecological sustainability of the enterprise, and allows the activity of agriculture to flourish where otherwise it may not have. For this to occur, the activity must be of sufficiently small scale to ensure that it does not become the dominant or principal activity.*[160]

According to the policy, aquaculture would not fit this definition. AgForce sees little argument for not allowing agriculture and aquaculture under a diversification policy.[161] The current policy also states that if the new activity becomes the dominant activity on the land, 'options such as freeholding of the lease or excision of an area for the new activity should be considered.' However, the department's decision is guided by its consideration of the most appropriate tenure and use of the land. Often this has resulted in the department putting lease conditions on the land under section 210 of the *Land Act 1994* (Qld) 'to preclude future subleasing of parts of leases to avoid additional uses becoming entities in their own right.'[162]

AgForce argues that diversification is essential for rural enterprises because it creates a more viable and resilient environment. Longreach Regional Council supports this by stating that 'occupation and use rights are integral to economic activity originating from the land.'[163] AgForce proposes that the simplest way to remove restrictions that prevent diversification of activities is to move to less-restrictive tenure type, including freehold.[164] The tenure type should support managed multiple uses,

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157 AgForce Queensland, Submission No 41, pp 44-45; Cook Shire Council, Submission No 7, pp 1-2; Alliance for Sustainable Tourism, Submission No. 13, p 4; Sunshine Coast Regional Council, Submission No 14, p 2; Queensland Traditional Owners Network, Submission No 22, pp 3-4; M Finger, Submission No 43, p 1; J Carter, Submission No 44, p 1; G McGown, Submission No 50, p 1; R Pedracini, Submission No 56, p 1; C Campbell, Submission No 62, p 2; A and V Bambling, Submission No 65, p 2; Queensland Tourism Industry Council, Submission No 86, p 4; B and J Angus, submission No 90, p 3.

158 Qld Department of Environment and Resource Management. (2007). Diversification of leases for agricultural purposes PUX/901/337 Version 2 (SLM/205/1926 – Version 2). Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3337/slm_2005_1926.pdf, p 3.

159 AgForce Queensland, Submission No 41, pp 44-45.

160 Queensland Department of Environment and Resource Management. (2007). Diversification of leases for agricultural purposes PUX/901/337 Version 2 (SLM/205/1926 – Version 2). Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3337/slm_2005_1926.pdf.

161 AgForce Queensland, Submission No. 41, p 45.

162 AgForce Queensland, Submission No 41, p 45.

163 Longreach Regional Council, Submission No 1, p 1.

164 AgForce Queensland, Submission No 41, p 45.

including grazing, selective native harvesting, beekeeping, recreation and ecotourism, as legitimate and sustainable uses of the land that co-exist with conservation values. This would bring environmental, economic and social benefits to all Queenslanders. QTIC in particular states that tourism and agriculture are perfectly suited to co-exist on the same parcel of land.[165]

Pastoral leases

Holders of pastoral leases can use a range of mechanisms to undertake additional economic activity. These include the diversification policy, 'add purpose', excise area (a small lease excised for a purpose) and sub-leases.[166]

A number of stakeholders indicated that there needs to be less onerous and restrictive conditions attached to leases so that land managers can have access to a full range of options of uses to remain viable.[167] Cook Shire Council also argued that current pastoral leasehold tenure needs to allow for business diversification to create 'opportunities for leaseholders to implement the types of business strategies normally available to other businesses, including other primary industry entities.'[168] This is particularly important, according to Cook Shire Council, because pastoral leaseholding businesses are subject to seasonal land and market forces.[169]

Goondiwindi Regional Council is in favour of converting long-term grazing and pastoral leases to freehold to not only reward the efforts of those investing the time and money in the improvements and maintenance of the land, but also to allow diversification of land uses to improve the productivity of these areas.[170] Most submitters concerned with the lack of diversification allowable on their leases have indicated they would like to move towards either freehold title or tenure that allows for multiple uses of land.

In support of either freeholding tenure and/or improving lease tenures for pastoral leasehold land that allows for non-impacting diversification of land uses, Cook Shire Council advocated for enabling pastoral diversification through a simple permit and application process. Options which could be offered to pastoral leaseholders include:[171]

- Opportunistic cropping and/or orcharding of existing cleared land for fodder/hay production
- Farm stay (and other minimal impact short-stay camping type options)
- Low impact eco, cultural, environmental tourism options including hunting
- Ability of landholders to graze a range of stock on agricultural leases
- Secondary industry options / value adding
- Low impact aquaculture based on native / endemic species
- Horticulture based on an agreed parcel of land and assessed under normal EIQ.

Cook Shire Council believes that allowing for diversification of land uses would have an economic flow-on for regions and suggested the committee consider the Western Australia (WA) model for

[165] D Gschwind, Queensland Tourism Industry Council, Public hearing transcript, Brisbane, 22 August 2012, p 21.

[166] Qld Department of Environment and Resource Management. (2007). Diversification of leases for agricultural purposes PUX/901/337 Version 2 (SLM/205/1926 – Version 2). Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3337/slm_2005_1926.pdf; Cape York Sustainable Futures, Submission No 40, p 25.

[167] Longreach Regional Council, Submission No 1, p. 1; Goondiwindi Regional Council, Submission No 9, p 1; C G Gavill, Submission No 19, p 2; Plant family, Submission no .27, p 1; T & E Ecroyd, Submission No 10; G Elmes, Submission no. 25; C Jackson, Submission No 58.

[168] Cook Shire Council, Submission No 7, p 1.

[169] Cook Shire Council, Submission No 7, p 1.

[170] Goondiwindi Regional Council, Submission No 9, p 1.

[171] Cook Shire Council, Submission No 7, pp 1-2.

adoption.[172] The Council's views are echoed by Cape York Sustainable Futures, which states that 'diversity policy for pastoral leases needs to be relaxed and more economic opportunities (tourism, conservation and others) permitted for existing lessees.'

The Queensland Traditional Owners Network (QTON) supports rural land use diversification on term releases but clearly expressed that any policy or legislative changes that improve certainty for lessees 'must fully consider all associated native title implications in the first instance.' Further, QTON stated that any change to existing provisions that would allow the sale of State leasehold land must also 'be carefully considered in terms of potential native title implications arising.'[173]

This view was supported by advice from Mr Brian Noble who indicated to the committee:

> *Where the lessee of a lease that is subject to Native Title rights and interests wishes to diversify use of the lease land (eg. to carry on a tourism purpose in addition to a pastoral purpose) the new use (if approved) may affect existing Native Title rights and interests. However that will depend on the nature of those Native Title Rights and interests. If it does affect the Native Title rights and interests, the new use, as a future act regime under the Native Title Act 1993 (Cth), will not be allowed unless it complies with the future act regime under that Act. Generally the new use will need to be authorised under an Indigenous Land Use Agreement (or the Native Title will need to be extinguished).*

However Mr Noble goes on to suggest that:

> *A statutory regime could be introduced under which existing Native Title interests (having regard to their content) are exercisable (only) on a stated area of the lease land and lease activities (including any new use) are exercisable on the balance of the area only. Any disputes may be resolved by a statutory dispute resolution process supervised by the Land Court.*[174]

The WA reforms to pastoral leases would, if proposed legislative amendments pass, introduce new types of leases, allowing multiple and varied use of the WA rangelands (which cover 87 per cent of the state), and giving pastoralists greater security with perpetual leases over the land.[175] The WA reforms has also carefully considered native title and the concern that granting new tenure options, such as a perpetual pastoral lease, 'will extinguish native title and force pastoralists and Traditional Owners into conflict leading to protracted litigation.'[176] However, the WA government has proposed developing a template ILUA to satisfy the future act obligations under the proposed new tenure options, which has been supported by legal advice. Further, the WA government will consider negotiating with leaseholders and Native Title bodies in the development of those template ILUAs that are acceptable for use with different types of leases.[177]

[172] Cook Shire Council, Submission No. 7, p 2.

[173] Queensland Traditional Owners Network, Submission No 22, pp 3-4.

[174] B. Noble, Private email to the Chair of the committee, 1 November 2012.

[175] http://www.rdl.wa.gov.au/programsandprojects/pastoral/rangelandreform/Pages/Default.aspx

[176] Western Australian Department of Regional Development and Lands, 'Summary of Response to the Rangelands Tenure Options – Response Paper, September 2011', p 12.

[177] Western Australian Department of Regional Development and Lands, 'Summary of Response to the Rangelands Tenure Options – Response Paper, September 2011', p 12.

Committee comment

The committee considers the issue of diversification of activity on leasehold lands to be one of the most important issues in the Land Tenure Inquiry as it is central to the Inquiry's goals of identifying means of promoting productivity and viability for primary producers in Queensland and is keen to see the Government consider all options which will achieve greater diversification of activity on rural leasehold lands.

The committee is also conscious of the importance of concerns raised about the different regulations applicable to different lease types, in particular about the perceived favouritism shown to mining lease holders against farmers and graziers (ie holders of agricultural and pastoral leases respectively). Specifically, miners are seen to be given virtual carte blanche over land, while farmers and graziers are not.[178]

Recommendation 18

The committee recommends that the Minister for Natural Resources and Mines undertakes a thorough investigation of the Western Australian proposals under its 'Rangelands Tenure Options' and consider possible options that will provide land use diversification, a simplification of tenure types and security to a lessee under a range of permits and leases

Recommendation 19

The committee recommends that the Minister for Natural Resources and Mines undertakes further investigation of the option proposed by Mr Brian Noble to ascertain the feasibility of implementing an arrangement whereby existing Native Title interests are exercised on a stated area of the leasehold and diversified lease activities are exercised by the landholder only on the remaining balance area

Recommendation 20

The committee recommends that the Minister for Natural Resources and Mines note the committee's concerns about the inequity between the conditions imposed on pastoral leases contrasted with pastoral leases and examine ways to reduce these inequities.

Enactment of the Stock Route Management Network Bill

Goondiwindi Regional Council indicated that it would like to see the Stock Route Management Network Bill 2011 enacted as soon as possible to ensure greater flexibility exists for councils to more easily manage access to reserves and areas of state land through a lease or authority. This would assist councils in determining whether the defined use of the land was still relevant and clarify any environmental and cultural values in order to make best use of the land in the future.[179] Other councils supported the need for flexibility regarding reserves and areas of state land so that councils can manage these areas more efficiently.[180]

[178] See Plant, Roma public hearing transcript, pp 16-17; C Campbell, Submission No 62, p 2; M Jubow, Submission No 100, pp 2-3.

[179] Goondiwindi Regional Council, Submission No 9, p 3.

[180] Barcaldine Regional Council, Submission No 46, p 1; Longreach Regional Council, Submission No 1, p 1.

The Wildlife Preservation Society of Queensland also supports the view that the Stock Route Management Bill 2011 should be enacted as a tool to protect and manage biodiversity.[181]

Recommendation 21

The committee recommends the Stock Route Management Network Bill 2011 be enacted in a timely manner.

[181] Wildlife Preservation Society of Queensland, Submission No 39, p 6.

10 Methods of Rent Calculation

In their submissions and at the public hearings, many pastoral leaseholders expressed their dissatisfaction to the committee about the current method of calculating the rent for pastoral leases in Queensland.

As discussed above, the annual rent for a 'primary production' lease "*is calculated at 1.5 per cent of the five-year average of the land value for rental purposes*".[182] Until 2017, the annual rent is capped at no more than 20 per cent more than the previous year's rent.[183]

Three main areas of concern relating to the method of rent calculation were identified by the submitters and witnesses:

- the level of rent;
- basing rent on unimproved capital value (UCV); and
- increases in the amount of rent payable, particularly after the 20 per cent per annum cap is removed in 2017.

Rent levels

Don Hick was typical of many pastoral leaseholders who made submissions to the committee, in stating that high leasehold rents were rendering his business unprofitable.[184] At the public hearing at Alpha, Emma Robinson stated:[185]

> *[We have to make] choices about what we will not do so land rent can be paid. This includes employing fewer staff or no staff. It means postponing necessary capital improvements such as fences and water which are critical to grazing sustainability. For a local community it means $60,000 that is not being spent in local businesses. In the longer term … the magnitude of land rent payments will impact on our long-term viability and will no doubt reduce options for us relating to children's education, capacity for superannuation not to mention our future succession plan.*

Lauren Hewitt, the AgForce Queensland Policy Manager said at the Roma public hearing that, in comparison to New South Wales, Queensland rentals are very high. By way of example, she referred to the property owned by Bim Struss, a grazier who also gave evidence at the Roma public hearing:[186]

> *I think Bim paid $13,000 a year or something like that. We ran the calculations on what he would pay in New South Wales, 150 kilometres south, and it is equivalent to about $600 a year.*

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[182] Queensland Government, Department of Natural Resources and Mines, 'Rental arrangements: Category 11 – Primary production', Fact sheet, July 2012, http://www.derm.qld.gov.au/factsheets/pdf/land/l215.pdf, accessed 23 November 2012. See also, Land Act 1994, Chapter 5, Part 1; Land Regulation 2009, Part 4, Schedules 6, 12; Land Valuation Act 2010, Chapter 2, Part 2.

[183] Queensland Government, Department of Natural Resources and Mines, 'Rental arrangements: Category 11 – Primary production', Fact sheet, July 2012, http://www.derm.qld.gov.au/factsheets/pdf/land/l215.pdf, accessed 23 November 2012.

[184] Submission No 48, p 2. See also, for example: Jane Carter, Submission No 44, p 2; Megan Atkinson, Submission No 47. p 1; Gus McGown, Submission No 50, p 2; Anthony Struss, Submission No 52, p 1; Emma Robinson, Submission No 53, p 2; Kim Lansdowne, Submission No 57, p 2; Colin Jackson, Submission No 58, p 2; Richard Hawkins, Submission No 59, p 2; Roly Hughes, Submission No 64, p 2; Charlton Doblo, Submission No 68, p 2; Raymond Stacey, Submission No 69, p 1; Harry Shann, Submission No 70, p 2.

[185] Alpha public hearing, 30 August 2012, transcript, p 14. See also, Kim Lansdowne, Submission No 57, p 2; Richard Hawkins, Submission No 59, p 2.

[186] Mr Struss is also the Chair, AgForce Leasehold Land Committee.

Ms Hewitt explained that rent calculations in the western areas of NSW were adjusted as a result of a tenure review about ten years ago, with the objective of keeping rents at a low level.[187]
Roly Hughes advocated a similar policy to that currently in place in western NSW, suggesting that leasehold rents should be kept low. He also suggested that there should be assistance to help look after the land.[188]

The WWF, however, is of the view that the Queensland Government is charging below market rents for pastoral leases. In its submission, it suggested that the Government should "*consider charging true market value for pastoral leases on public land*".

This was in stark contrast to the view presented by the Cook Regional Council who

> *see the need for some recognition that remote pastoral leases are generally operated as rate and lease paying businesses which are often severely impacted by seasonal and market forces.*[189]

Similarly Ms Jane Carter noted that:

> *In 1984 a Toyota work vehicle could be purchased with the sale of 20 head today 85 head have to be sold to buy the same type of vehicle. Yearly Rent paid in 2007 was $5856 in 2012 it is $14,000. The rent must be paid in a year of severe drought when a property has to be totally destocked, that property has no income .The rent must still be paid in a year of severe drought when a property has to be totally destocked, and that property has no income .*[190]

As discussed above, the Northern Territory Government currently charges rent at 0.248 per cent of the unimproved capital value of each pastoral lease. The actual rate was 1.22 per cent, but the Northern Territory Government reduced it because of "*poor industry conditions after the live export scenario*" in 2011.[191]

Committee comment

The committee acknowledges the concerns of leaseholders with respect to rent, particularly in years of harsh conditions.

Recommendation 22

The committee recommends that the Land Regulation (2009) be amended to incorporate additional capacity to respond more flexibly in its methods of rental calculation employed during periods of hardship.

[187] L Hewitt, Policy Manager, AgForce Queensland, Roma public hearing, 24 August 2012, transcript, p 13.

[188] Submission No 64.

[189] Cook Regional Council Submission No 7.

[190] J Carter, Submission No. 44 p. 2.

[191] Information provided to the Queensland Parliamentary Library and Research Service from the Northern Territory Valuation Office: Queensland Parliamentary Library and Research Service, Client Information Brief, 'Leasehold land tenure', 22 November 2012.

UCV as a basis for calculating rent

Central to many of the leaseholders' concerns about the calculation of rent was that it is based on the unimproved capital value (UCV) of the property. The complaints about UCV ranged from its lack of connection with income, to the actual UCVs being used in the calculations. For example, in his submission to the committee, Mr Struss commented: [192]

> *… unprecedented property sales in the district have sent our UCV through the roof. The increased UCV has no relevance of what we can earn from our land. Setting rent at 1.5% of UCV will see our well managed efficient property operation slowly crawl to an unviable business*.

At the Roma public hearing, Colin Savill said: [193]

> *… land valuations are, as far as I am concerned, quite ridiculous where I am. … We have one piece of land that would not have a chance of achieving a sale for what it is valued at, that is, the unimproved capital value. That has to be absurd*.

Mr Savill identified the lack of connection between using the UCV for determining annual rent, and income.[194] At the Alpha public hearing, John Hain pointed out that increases in land value are "*of no value to the ongoing landholder*".[195]

With respect to using UCV as a basis for calculating rent, Ms Hewitt stated:[196]

> *In every jurisdiction that has done a comprehensive review on how rentals should be calculated on grazing leases, they have confirmed that UCV is not the correct way to do it. … the UCV fluctuations, the way it is calculated – there are so many areas that can go wrong.*

Ms Hewitt went on to say that New Zealand has "*a very good* [model] *that is linked to productivity*".[197]

Committee Comment

The committee notes that a new system of rent assessment has recently been introduced in New Zealand whereby rent is calculated by a formula that assesses the productive capacity of each pastoral lease as a pastoral farming operation and uses statistical data about farm revenues to estimate the value of the assessed productive capacity, to determine whether it is a system that should be implemented in Queensland. [198]

[192] Submission No 52, p 2.

[193] Mr Savill, Roma public hearing, 24 August 2012, transcript, p 3.

[194] Submission No 19, p 1

[195] Mr John Hain, Alpha public hearing, 30 August 2012, transcript, p 5. A similar comment was made by Harry Shan, Submission No 70, p 2.

[196] Roma public hearing, 24 August 2012, transcript, p 13.

[197] Roma public hearing, 24 August 2012, transcript, p 13.

[198] Crown Pastoral Land (Rent for Pastoral Leases) Amendment Bill, Explanatory Note, , pp 1-2.

Another submitter to the inquiry, Peter Tannock, stated:[199]

> *The UCV system has problems associated with relativity of values between leases plus the disconnect between land values and farm income particularly during upturns in the property market. Ideally there is need for a productivity based system (e.g. based on carrying capacity and linked to commodity indicators or farm income)…*

Mr Tannock suggested that rentals should "*remain moderate (e.g. 1.0% of UCV) and be linked to productivity*".[200]

Mr Hick and Harry Shan made similar suggestions in their submissions with respect to calculating rent. Mr Hick suggested that "*leasehold rents should be tied to profitability, not land values*" because "*land values can increase because of lack of availability and other reasons*",[201] and Mr Shan said that "*rental levels should be more related to the earning capacity of the land rather than market value*".[202]

Mr Kim Lansdowne and Richard Hawkins simply submitted that rents "*should not be based on UCV*".[203]

Committee comment

The committee notes that, of the submissions referring to the method of calculating rent, there was almost universal agreement that UCV should not be used as the basis on which rent should be calculated.

Particularly in those areas of the State where property values have been greatly increased because of the impact of mining-related purchases, it is clear to the committee that UCV is not a suitable basis on which rent should be calculated.

The committee considers that it would be worthwhile examining the alternative model of rent calculation currently employed in NZ and elsewhere.

Recommendation 23

The committee recommends that the Minister for Natural Resources and Mines consider alternatives to the current method of rent calculation based on unimproved capital value.

Increases in rent

At the public hearing in Roma, Ms Hewitt explained why rural leaseholders have experienced such increases in rent over the past few years:[204]

> *In the mid 2000s, rural property had a bit of a bonanza. [Unimproved values (UVs)] in property rose significantly. Many properties experienced anything from 500 per cent to 2,000 per cent increases in unimproved values, and that is the value upon which rent is*

[199] Submission No 45, p 8.
[200] Submission No 45, p 8.
[201] Submission No 48, p 2.
[202] Harry Shann, Submission No 70, p 2. See also, Emma Robinson, Submission No 53, p 2 and John Hain, Alpha public hearing, 30 August 2012, transcript, p 5.
[203] Kim Lansdowne, Submission No 57, p 2; Richard Hawkins, Submission No 59, p 2.
[204] Roma public hearing, 24 August 2012, transcript, p 9.

> *determined. At that stage, lessees were paying 0.8 per cent as an annual rental figure. A review in 2007 determined that that was not high enough and so the figures were moved from 0.8 per cent of UV to 1.5 per cent, but they recognised that that could not be done overnight because of the substantial gap that would be in there. The government, at that time, decided to bring in a 10-year capping mechanism, so for the next 10 years until 2017, lessees are paying a compounding rate of 20 per cent increases per annum off the 2004 rental that they owned, bearing in mind that at that time the government decided to increase it from 0.8 per cent of UV to 1.5 per cent and also bearing in mind that lessee's UV, the actual per cent, increased up to 2,000 per cent or 3,000 per cent in some instances. It was a substantial gap*.

At the Alpha public hearing, Ms Hewitt identified some of the problems arising from increasing rents:[205]

> *Increasing rents are significantly impacting on lessee's ability to hold and maintain these rural communities and placing them under stress. We are seeing the economics of farming favouring larger enterprises meaning that people are managing them remotely and this is impacting on local communities as well.*

Mr Hain also made the point in his submission to the Inquiry that:

> *As the cost of our rental increases the value of leases becomes less, as people factor these costs when looking to purchase land. This will also eventually result in a catch 22 situation for the Government as declining values will mean less revenue.*[206]

In her submission to the committee, Ms Robinson said that "*the impact of rising leasehold rents is crippling our profitability. Leasehold rents will soon become our biggest cost – rent is based on unrealistic UCVs and producers have no way of reducing or managing this rising fixed cost*".[207]
At the Alpha public hearing, Mr Hain said:[208]

> *Leaseholders need certainty about increases in rentals. Rents need to be set at an affordable level, with increase no more than the CPI and land values playing no part in the process.*

A number of submitters and witnesses provided the committee with examples of the increased rents they are facing.

Jane Carter, for example, stated in her submission that:

> *while living costs have risen dramatically, the selling price of commodity cattle has not.*[209]

[205] Alpha public hearing, 30 August 2012, transcript, p 8.

[206] John and Jane Hain, Submission No 29, p 1.

[207] Submission No 53, p 2.

[208] Alpha public hearing, 30 August 2012, transcript, p 5. See also Alpha public hearing, 30 August 2012, transcript, p 14 for comments by Ms Robinson and p 6 for further comments by Mr Hain.

[209] Submission No 44, p 2.

Her point is echoed in Ms Megan Atkinson's submission:

> *costs are continually going up (including rents) but the return on our production remains the same or less*".[210]

Similarly, Mr Shan stated: "*over the past ten years our rental has more than trebled … whilst the earning capacity of our enterprise has not increased at all*".[211]

At the Roma public hearing, Mr Savill said, "*My rental at the moment is just short of $4,000 a year. Based on the Delbessie formula it will end up at $18,000. It is just not affordable*". He said that the only reason that he can afford to run it at the moment is because it is combined with two freehold blocks.[212]

Also at the Roma public hearing, Mr Struss informed the committee that:

> [t]*he economic viability of moderate rural properties is uncertain. The annual compounding increase in leasehold rent … is a most debilitating cost*". He described the rise in rent he has faced: "*When my wife and I first moved to Havelock in 2003 and bought out the family partners, the UCV of Havelock was $450,000 and we paid an annual rent of $3,640. By 2008 it had increased to $2.4 million and we were paying $9,000 odd. … by year 2017 Havelock will be paying $32,000. We cannot afford that and we run a pretty tight show*".

Leaseholders who addressed the committee, in person and in submissions, were particularly concerned about the amount of rent they will have to pay after the cap is removed in 2017.
Mr Hain, for example, told the committee at the public hearing at Alpha:[213]

> *In 2004, we paid $4,400 in rent for our leases per year. We now pay $13,952 – an increase of 217 per cent. In 2017, when the 20 per cent cap is removed, we will be paying $28,125, and that is providing land values do not increase. In comparison, our commodity prices are: in 2004, we received $1,020 per bale of wool; in 2012, $1,395 per bale – an increase of 37 per cent. In 2004, we received $45.50 per head for cull sheep; in 2012, $57.50 per head an increase of 27 per cent. In December 2004, the Queensland cattle market index was 212 points. Last week, it was 188 – a decrease of 11 per cent.*

In his submission, Raymond Stacey made a similar point:[214]

> *Current leasing costs are too high and the current methodology means that we are only paying about 1/3 of what they will be by 2017. This makes the whole operation on our small block uneconomic. Pressure is placed upon business to continually increase production to meet these fixed overheads which has serious negative ecological implications.*

[210] Submission No 47, p 2.
[211] H Shann, Submission No 70, p 2.
[212] Roma public hearing, 24 August 2012, transcript, p 3.
[213] Alpha public hearing, 30 August 2012, transcript, p 5.
[214] Submission No 69, p 2.

So too Ms Robinson:[215]

> *In 2017 when the land cap is removed on current UCVs we will be looking at paying about $60,000 in land rent. That is about $1,100 a week and we will be essentially paying the Crown more than we are paying ourselves. While this is down from $80,000 due to a lowering of UCVs in the last couple of years, land rent will be the biggest cost* to our business *after interest on debt. Coupled with the cost of rates, it means we will be up for about $85,000 before we sell a beast. …*
>
> *In 2000 our land rent was approximately $8,000. So over the period, land rent will have increased 7 ½ times. Our fixed costs have pretty much doubled, but the average price paid for cattle remains roughly the same. I think the use of UCVs to calculate land rent is a fairly blunt too. … We are currently paying rent on UCVs that have been strongly influenced by the mining boom. In our area the properties that have sold in the last five to six years have all sold to people who have been bought out by mining companies. They are cashed up and willing to pay beyond the potential value …*
> *… we are really motivated by the long-term prospect of running a viable grazing enterprise rather than chasing potential short-term capital gains.*

Committee comment

The committee acknowledges the difficulties faced by leaseholders who face increasing rents, particularly those who face considerable increases when the 20 per cent cap is removed in 2017.

Recommendation 24

The committee recommends that the relevant legislation be amended to ensure that leaseholders are not faced with substantial increases in rent when the current capping of annual rent arrangements end in 2017.

[215] Alpha public hearing, 30 August 2012, transcript, p 14.

11 Administrative Reform

11.1 Vegetation Management Act 1999

A number of stakeholders have expressed concern with the conflict that exists between policies guided by the *Vegetation Management Act 1999* (VMA) and the prescribed primary purpose of a lease.[216] For example, grazing might be determined as the primary purpose of a particular lease with the lessee required to comply with their lease conditions under the *Land Act 1994*; however, the provisions under the VMA may often restrict lessees from grazing on particular sections of the land and/or impose compliance with a number of conditions that is time-consuming for leaseholders. Stakeholders have stated that this often leads to adverse outcomes, such as loss of biodiversity and weeds, which is detrimental to their grazing business.

Under the *Land Act*, the lessee is required to 'maintain native grassland free of encroachment from wood vegetation'.[217] However, the Delbessie agreement states that the land should be free of 'encroachment', which has led to 'multiple interpretations by inspectors and department.'[218] Leaseholders would like to see other legislation that impacts on their leases, such as the *Vegetation Management Act 1999*, reviewed to ensure an alignment between the primary purpose of the leases and conditions required under other legislation. Further, they propose a more streamlined and efficient process in relation to their responsibilities to undertake vegetation management activities. Others went further suggesting that where leases are terminated or where forestry is now limited or prohibited under the Vegetation Management Act for Land Mmanaged under the Land Act 1994, the State should provide the landholder with compensation.[219]

11.2 Wild Rivers Act 2005

The *Wild Rivers Act 2005* has also impacted on some leaseholders, as parts of leases were included in a declaration under the Act, which initially permitted only simple grazing and did not 'recognise the need for infrastructure such as roads, fences, dams, yards and so on.'[220] Later, lessees were provided the opportunity to enter into a voluntary property management plan that replaced the compulsory codes of conduct.[221]

Some stakeholders were concerned with weed and landscape management in riparian areas defined as 'High Protection Areas' under the *Wild Rivers Act 2005*. One proposal suggested to overcome this was to write bio-plans that are specific to an area, rather than continue with current regulations that apply across the board to all areas.[222]

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[216] A and V Bambling, Submission No 65, p 2; Property Rights Australia, Submission No 30, p 3; C Campbell, Submission No 62, . 2; B and J Angus, Submission No 90, p 4; B Hoare, Submission No 97, pp 2-3; M Jubow, Submission No 100, p 2; R Whitton, Grazier, Public hearing transcript, Roma, 24 August 2012, p 6.

[217] Land Act 1994, section 199(2)(f).

[218] Property Rights Australia, Submission No 30, p 3.

[219] B Lord, Submission No 54, p 2

[220] D Kempton,'How Secure is Leasehold Tenure', HTW Rural Lease Tenure Renewal Seminar, 22 May 2008, downloaded on 7 November 2012 from http://www.htw.com.au/Industry_Presentations/townsville%20rural%20lease%20tenure%20renewal%20seminar%20-%20may%202008%20-%20david%20kempton%20presentation.pdf, p 4.

[221] D Kempton,'How Secure is Leasehold Tenure', HTW Rural Lease Tenure Renewal Seminar, 22 May 2008, downloaded on 7 November 2012 from http://www.htw.com.au/Industry_Presentations/townsville%20rural%20lease%20tenure%20renewal%20seminar%20-%20may%202008%20-%20david%20kempton%20presentation.pdf, p 4.

[222] C Campbell, Submission No 62, p 2.

11.3 Good neighbour policy

Leaseholders have indicated that they would like the State to practice a 'good neighbour' policy for sharing boundary infrastructure, such as fencing and firebreaks, and managing pests and weeds in State lands and national parks.[223] Some leaseholders have stated that the policy of increasing national parks should not be continued until all land management issues, including who bears the cost of conservation and management, research into how to balance production with conservation, and the need for educational and financial support to farmers, have been adequately addressed.[224]

11.4 Joint management of parks

A number of stakeholders indicated to the committee that any changes to land tenure should also ensure joint park management arrangements continue with adequate resourcing and continuation of the oversight role played by the Cape York Tenure Resolution Implementation Group, as well as in collaboration with traditional owners and conservation groups.[225]

11.5 Other Issues

One pastoralist, Mr Reginald Pedracini, of Georgetown outlined a specific administrative difficulty he is facing as a consequence of his property being split across two shires, being divided by a large river. Each shire has valued his land on a different basis creating problems for his succession planning.[226]

The Cook Regional Council, has raised issues about the need for fewer road closures. It notes that it manages a network of gravel roads across a remote and massive area that is seasonally impacted by adverse weather events. As a result of the tenure arrangements and the operations of the Department of Natural Resources and Mines (often on the advice of the Queensland Parks and Wildlife Service) or land trust interests, roads can be closed for three or four months at a time often in opposition to the local government position, which is the Road Authority for the area. The council is seeking the support of the Inquiry to confirm that the local government must be the determining authority for road openings and closures in the area.

Committee comments

The committee is concerned that different interpretations of land care management in the *Land Act 1994* and other overlaying legislation, such as the *Vegetation Management Act 1999*, has led to confusion and restricts leaseholders from managing the land efficiently for pest, weeds and fire. The committee believes that further investigation is required to ensure an alignment between all legislation and the *Land Act 1994* relating to land care management.

The committee also believes that better collaboration between all stakeholders will result in more efficient land care management.

The committee is supportive of existing and proposed initiatives involving the joint management of National Parks with traditional owners and encourages the State to investigate best practice examples of similar arrangements in other jurisdictions where such arrangements deliver positive outcomes for Indigenous people and the management of parks.

[223] B Lord, Submission No 54, p 2; M Finger, Submission No 43, p 2; Plant family, submission No 27, p 2.

[224] M Finger, Submission No 43, p 2.

[225] Sunshine Coast Regional Council Submission No 14, p 2; J Cooper, Submission No 14, p 1; Australian Conservation Foundation, Submission No 49, p 3; Cape York Sustainable Futures, Submission No 40, p 2.

[226] Mr R Pedracini, Submission No 56, p 1.

The committee notes that the government has announced reforms to regulation relating to 'vegetation management activities that will remove the requirement for lessees to undertake a separate and time-consuming approval process.'[227] The committee is supportive of these proposed reforms.

Recommendation 25

The committee recommends that the Minister for Natural Resources and Mines undertakes a review to resolve current inconsistencies between the *Vegetation Management Act 1999* , the Wild *Rivers Act 1995* and the *Land Act 1994* to create greater alignment and clarity for landholders on land care management matters such as pests, weeds and fire.

Recommendation 26

The committee recommends that the relevant Queensland and Local Government Agencies establish protocols for collaboration on the joint management of State managed lands which share boundary infrastructure, such as fencing and firebreaks, and for managing pests and weeds in State lands, National Parks and Local Government Reserves.

Recommendation 27

The committee recommends that the Minister for Natural Resources and Mines works collaboratively with the Minister for National Parks and the Minister for Aboriginal and Torres Strait Island Affairs to investigate successful examples of the development and implementation of joint management arrangements of National Parks with traditional owners.

Recommendation 28

The committee recommends that the Minister for Natural Resources and Mines liaises with the Minister for Local Government to consider options for addressing the anomalous position of Mr Reginald Pedracini's current leasehold valuation arrangements.

Recommendation 29

The committee recommends that the Minister for Natural Resources and Mines liaises with the Minister for National Parks in consultation with the Cook Regional Council to establish an agreement on procedures for road closures in Cape York.

[227] Hon A Cripps, Minister for Natural Resources and Mines, 'Newman cuts red tape for graziers on Leasehold Land,' Media release, 22 November 2012, downloaded from http://statements.qld.gov.au/Statement/2012/11/22/newman-cuts-red-tape-for-graziers-on-leasehold-land.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Longreach Regional Council
2	Eunice A. Turner
3	Larry Daniels
4	K. J. & N. Dwyer
5	Sharon Harwood
6	Anonymous
7	Cook Shire Council
8	Spicers Group
9	Goondiwindi Regional Council
10	Tim and Meredith Ecroyd
11	Association of Marine Parks Tourism Operators
12	Agreedto Pty. Ltd. *per* Holman Webb Lawyers
13	Alliance for Sustainable Tourism
14	Sunshine Coast Regional Council
15	Watpac Developments Pty. Ltd.
16	Kingfisher Bay Resort Group
17	National Parks Association of Queensland Inc.
18	Fraser Coast Regional Council
19	Colin G. Savill
20	Protect the Bush Alliance
21	Spatial Industries Business Association Ltd.
22	Queensland Traditional Owners' Network
23	Noosaville Marina Pty. Ltd.
24	Chuulangun Aboriginal Corporation
25	Graham Elmes
26	Queensland Trust for Nature
27	S., M. & T. Plant

Sub #	Submitter
28	Jackie Cooper
29	John Hain
30	Property Rights Australia Inc.
31	Dale Perkes
32	R L Plant & Co.
33	Torres Strait Island Regional Council
34	Queensland Conservation Council
35	Etheridge Shire Council
36	Geoff Edwards
37	The Great Sandy Straits Marina Resort Tenants Association Inc.
38	Jan Aldenhoven
39	Wildlife Preservation Society of Queensland
40	Cape York Sustainable Futures
41	AgForce Queensland Industrial Union of Employers
42	Belgamba
43	Michelle Finger
44	Jane Carter
45	Peter Tannock
46	Barcaldine Regional Council
47	Megan Atkinson
48	Don Hick
49	Australian Conservation Foundation
50	Gus McGown
51	Gecko - Gold Coast and Hinterland Environment Council Association Inc.
52	Anthony Struss
53	Emma Robinson
54	Bruce Lord
55	Birdlife Southern Queensland
56	Reginald Pedracini

Sub #	Submitter
57	Kim Lansdowne
58	Colin Jackson
59	Richard Hawkins
60	Colin Archer
61	World Wildlife Fund Australia
62	Christine Campbell
63	Australian Rainforest Conservation Society Inc.
64	Roly Hughes
65	Arthur and Vanessa Bambling
66	Queensland Greens
67	Surveying and Spatial Science Institute
68	Charlton Doblo
69	Raymond Stacey
70	Harry Shann
71	John Baker
72	Juliane Cowan
73	Liberal National Party Queensland
74	Ted Sorensen MP, Member for Hervey Bay
75	ATEC Rail Group Limited
76	Ecofund Queensland
77	QGC Pty. Ltd.
78	Bimblebox Nature Refuge
79	Capricorn Conservation Council
80	Xstrata Coal Queensland Pty. Ltd. *per* Gerard Batt Lawyers
81	Peter and Gail Grayson
82	Stock Routes Coalition
83	Mackay Conservation Group
84	Dianne Wilson-Struber and Stephen Struber *per* Bottoms English Lawyers
85	Queensland Resources Council

Sub #	Submitter
86	Queensland Tourism Industry Council
87	The Wilderness Society
88	Stanbroke
89	Redland City Council
90	Blair and Josie Angus
91	Tableland Forest Users Group *per* Bottoms English Lawyers
92	Queensland South Native Title Services
93	Girringun Aboriginal Corporation
94	Cape York Land Council Aboriginal Corporation
95	Department of Agriculture, Fisheries and Forestry
96	B.J. & T.K.M. Day
97	Barry Hoare
98	Bana Yarralji Bubu Inc.
99	Central Queensland University
100	Michael Jubow
101	Canegrowers
102	Marine Queensland
103	Don Williams

Appendix B – Witnesses at the public briefings and hearings

Wednesday, 11 July 2012 , Queensland Parliament House

Witnesses from the Department of Natural Resources and Mines
Mr Michael Birchley, Assistant Director-General, Natural Resource Operations
Mr Jim McNamara, Acting Assistant Director-General, Land and Indigenous Services
Mr Dan Hunt, Associate Director-General
Mr Greg Coonan, Director, State Land Asset Management
Ms Liz Dann, General Manager, Land and Indigenous Services
Ms Shannon Jimmieson, Principal Adviser, Land Management and Use
Mr Andrew Luttrell, Acting Executive Director, Aboriginal and Torres Strait Islander Land Services
Ms Meg Smith-Roberts, Principal Adviser, Land and Indigenous Services
Mr Jim Grundy, General Manager, Mining and Petroleum Operations

Witnesses from the Department of National Parks, Recreation, Sport and Racing
Dr John Glaister, Acting Director-General
Mr Clive Cook, Senior Director, Conservation Strategy and Planning

Witnesses from the Department of Tourism, Major Events, Small Business and the Commonwealth Games
Mr Paul Martyn, Deputy Director-General
Mr Mark Jones, Director, Policy and Ministerial Support
Mr Matthew Coe, Project Manager

Witnesses from the Department of Environment and Heritage Protection
Mr Tony Roberts, Deputy Director-General, Policy and Planning

Witnesses from the Department of Agriculture, Fisheries and Forestry
Mr Charles Burke, Director, Sustainable Agriculture

Appendix C – Witnesses at the public hearing

Wednesday, 22 August 2012, Queensland Parliament House, Brisbane

Witnesses
Dr Jan Aldenhoven
Mr Paul Donatiu, Executive Coordinator, National Parks Association of Queensland
Mr Toby Hutcheon, Executive Director, Queensland Conservation Council
Mr Benjamin O'Hara, Chief Executive Officer, Queensland Trust for Nature
Mr Desmond Boyland, Policies and Campaigns Manager, Wildlife Preservation Society of Queensland
Mr Anthony Esposito, Manager, National Indigenous Conservation Program, The Wilderness Society
Mr Peter Stark, Chief Executive Officer, Ecofund Queensland
Dr Martin Taylor, Protected Areas Policy Manager, World Wildlife Fund Australia
Mr Fred Gela, Mayor, Torres Strait Islands Regional Council
Mr Gary Photinos, Manager, City Planning and Environment, Redland City Council
Mr John Scarce, Chief Executive Officer, Torres Strait Island Regional Council
Mr Andrew Barger, Director, Resources Policy, Queensland Resources Council
Mr Gerard Batt, Solicitor for Xstrata Coal, Gerard Batt Lawyers
Ms Katie-Anne Mulder, Adviser of Resources Policy, Queensland Resources Council
Ms Danielle Duell, Chief Executive Officer, Spicers Group
Mr Daniel Gschwind, Queensland Tourism Industry Council
Mr Ray Maxwell, Secretary, The Great Sandy Straits Marina Resort Tenants Association
Mr David Pyne, Solicitor, Holman Webb Lawyers, on behalf of Agreedto Pty Ltd
Ms Amanda Rohan, Queensland Tourism Industry Council
Mr Gary Smith, Managing Director, Kingfisher Bay Resort
Mr Ted Sorensen, Member for Hervey Bay, Queensland Parliament
Mr Paul Thynne, Director, Noosaville Marina Pty Ltd
Mr Peter Thynne, Director, Noosaville Marina Pty Ltd
Dr John Cook
Mr Jack de Lange, Chief Operations Officer, Spatial Industries Business Association
Dr Geoff Edwards
Mr Phillip Pozzi, Partner, Bennett and Francis

Friday, 24 August 2012, Roma

Witnesses
Mrs Meredith Ecroyd
Mr Timothy Ecroyd
Mr Brent Finlay, General President, AgForce Queensland
Ms Lauren Hewitt, Policy Manager, AgForce Queensland
Mr Colin Jackson, Chair, Injune/Arcadia Valley AgForce Branch
Mr Hugh McGown
Mr John Plant
Mrs Judy Plant
Mr Colin Savill
Mr Anthony Struss, Chair, AgForce Leasehold Land Committee
Mrs Eunice Turner
Mr Rick Whitton

Monday, 27 August 2012, Mackay

Witnesses
Mrs Patricia Julien, Coordinator, Mackay Conservation Group
Mr Bob Bidwell, ATEC Rail Group

Tuesday, 28 August 2012, Cairns

Witnesses
Mr Stephen Wilton, Chief Executive Officer, Cook Shire Council
Ms Penny Laws, Solicitor, Preston Law
Mr Colin McKenzie, Executive Director, Association of Marine Park Tourism Operators *and on behalf of* Alliance for Sustainable Tourism
Mrs Anne English, Spokesperson, Tablelands Forest Users Group
Mr Shannon Burns, Cape York Regional Organisations, Cape York Institute
Mr Mick Schuele, Regional Manager, Cape York Institute
Dr Sharon Harwood, Lecturer, James Cook University

Witnesses
Mr David Claudie, Traditional Owner, Chairman of the Chuulangun Aboriginal Corporation
Mr Kim Elston, Director, North Queensland Land Council
Mr Dale Mundraby, North Queensland Land Council
Mr Vincent Mundraby, North Queensland Land Council
Ms Trish Butler, CEO, Cape York Sustainable Futures
Mr Guy Chester, Consultant, Cape York Sustainable Futures
Mr Andrew Picone, Acting Northern Australia Program Manager, Australian Conservation Foundation
Ms Leah Talbot, Cape York Program Officer, Australian Conservation Foundation
Mr Graham Elmes
Mrs Anne English, Solicitor for Dianne Wilson-Struber and Stephen Struber

Wednesday, 29 August 2012, Rockhampton

Witnesses
Mrs Catherine Herbert
Mr Ian Herbert
Mr Michael McCabe, Coordinator, Capricorn Conservation Council
Ms Joanne Rea, Chair, Property Rights Australia
Mr Daniel Bartlett, Representative, Central Queensland University
Mr Martin Elms, Representative, Central Queensland University

Thursday, 30 August 2012, Alpha

Witnesses
Mr Desmond Howard, Chief Executive Officer, Barcaldine Regional Council
Mr John Hain
Ms Lauren Hewitt, Policy Manager, AgForce Queensland
Mr Stuart Leahy, Member, Tenure Committee, AgForce Queensland
Mr John Baker
Ms Emma Robinson
Mr Frederick Daniels
Mr Richard Hawkins
Ms Michelle Finger
Mr Steven Finger
Ms Paola Cassoni

Monday, 3 September 2012, Gold Coast

Witnesses
Mr Colin Archer, Managing Director, Archer Rural
Mrs Rose Adams, Secretary, Gecko Gold Coast and Hinterland Environment Council Association Inc.
Ms Petrina Van Reyk, Campaigns Representative, Gecko Gold Coast and Hinterland Environment Council Association Inc.

Appendix D – Whole of State Land Area Statistics

Whole of State Land Area Statistics
18th October 2012

		Parcels	Polygons	Area (km2)	% of State
CT			946,440	200,077	7.90%
CT on Strata			85,731	114	0.00%
Deeds (EC,ET,MB)			283	54	0.00%
Total Freehold			1,032,454	200,245	7.91%
Crown Reserves	A Class	1,675	6,066	291,271	11.50%
	B Class	38	102	7,921	0.31%
	C Class	29,220	48,890	129,895	5.13%
State Forest		60	4,469	13,080	0.52%
Timber Reserves		77	423	1,232	0.05%
Marine Parks		15	56	22,722	
Leases		2,295	7,564	938,316	37.04%
	UCL - Surveyed	29,580	30,202	94,556	3.73%
	UCL - Un-surveyed	13,304	13,304	840,187	33.17%
	Water	797	797	9,336	0.37%
	Closed Road	3,187	3,196	77	0.00%
	Drain Reserve	17	20	1	0.00%
	Railway	2,078	2,127	214	0.01%
	Tramway	19	19	0.4	0.00%
	Road	160,544	174,640	5,784	0.23%
	Stock Route	23	23	1,013	0.04%
	Total Crown		291,842	2,332,883	92.09%
			1,324,296	**2,533,128**	

		Parcels	Polygons	Area (km2)	% of State
Crown Reserves	Conservation Estate	1,091	4,557	147,353	5.82%
	Aboriginal	28	56	143,096	5.65%
	Non-Aboriginal	556	1,453	822	0.03%
	Conservation Estate	3	30	7,887	0.31%
	Aboriginal	-	-	-	0.00%
	Non-Aboriginal	35	72	34	0.00%
	Conservation Estate	1,068	2,836	20,948	0.83%
	Aboriginal	395	1,220	65,040	2.57%
	Non-Aboriginal	27,757	44,834	43,907	1.73%
Leases	Pastoral	506	3,949	869,517	34.33%
	Perpetual	413	712	3,767	0.15%
	Conditional Purchase	55	58	547	0.02%
	General	1,321	2,845	64,485	2.55%

		Parcels	Polygons	Area (km2)	% of State
Crown Reserves - Conservation Estate - Aboriginal	Managed (LGA)	416	1,100	171	0.01%
	Managed (Other)	45	154	292	0.01%
	Unmanaged	95	199	359	0.01%
Crown Reserves - Conservation Estate - Non-Aboriginal	Managed (LGA)	20	33	4	0.00%
	Managed (Other)	7	12	16	0.00%
	Unmanaged	8	27	14	0.00%
Crown Reserves - Aboriginal - Non-Aboriginal	Managed (LGA)	14,794	23,268	4,486	0.18%
	Managed (Other)	4,918	7,751	19,647	0.78%
	Unmanaged	8,045	13,815	19,774	0.78%
Leases - Pastoral	Aboriginal	56	455	103,195	4.07%
	Non-Aboriginal	450	3,494	766,322	30.25%
Leases - General	Aboriginal	23	132	60,200	2.38%
	Non-Aboriginal	1,298	2,713	4,285	0.17%

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