



The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
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Cc: Deputy Director General, DATSIMA

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

Please find following a submission by the Queensland Traditional Owners' Network (QTON) to this enquiry.

QTON notes the Committee's Terms of Reference for the current inquiry, and we make our comments in this submission accordingly:

1. Needs and aspirations of Traditional Owners
2. Sustainable resource development
3. Protecting ecological values
4. Viability of rural industries

QTON is an association of all Traditional Owner board or advisory committee members of Regional NRM Bodies and World Heritage Areas in the State of Queensland, and any other Queensland Traditional Owner representative structure which can satisfy QTON of their mandated culture and natural resource management role. QTON provides mandated Traditional Owner advice and input into state-wide Culture and NRM, related policy development and decision-making processes; advocates and informs regional and state-wide CNRM investment priorities and their coordinated delivery; and ensures that Traditional Owners are consulted and engaged in culturally appropriate ways.

We note that this Inquiry is being undertaken in the context of a majority of term leases (in particular those longer term leases previously known as pastoral holdings) coming up for renewal within the coming decade. We are cognisant of the various intents of past Queensland Governments with respect to the effective management of State lands (e.g.: DNRM:2001) and the historic conditionality of leases to clear land for its 'improvement'.

As Traditional Owners and as contemporary natural resource management (NRM) leaders we are cognisant of the serious damage and ongoing harm these past practices have done to Country, and which in many places continues to do so to the present day. The legacy of

past failings is evident in seriously flawed approaches to applied fire management of rural lands (in most places no effective ecologically positive or culturally assured fire management occurs), the severe degradation of native pastures, major erosion along watercourses and across catchments, the proliferation of declared pest animals and plants and the wholesale, unmitigated desecration of our cultural values.

In particular we note that the earlier 2001 review found:

- 1) Indigenous Queenslanders were still largely restricted from accessing their respective ancestral and custodial Country now held as leasehold land;
- 2) Very low median rents for longer term leases limited State revenue generated from the leasing of State land; and
- 3) Consistent evidence of widespread and continuing land degradation.

Aboriginal Traditional Owners across Queensland hold and maintain close links to Country, over 100 million hectares of which is blanketed with leasehold tenures. Some Traditional Owner groups hold leasehold lands as returned lands granted through State or Commonwealth processes, and many Aboriginal and Torres Strait Islander people reside on Deed of Grant in Trust (DOGIT) lands. Traditional Owners and other Indigenous community members continue to have ties to a range of reserve lands.

Across the State, the current and future condition of Country under rural or other economic production remains a major concern for Traditional Owners in terms of the cultural/spiritual, ecological and hydrological health of Country, and the ability of Traditional Owners to access places of significance on their respective ancestral and custodial traditional estates.

We call on the Queensland Government to make the most informed decisions to holistically manage the State land estate for both current and future generations of Queenslanders. This requires a policy and legislative framework based on the precautionary principle which fully integrates Aboriginal cultural significance ('cultural heritage', the Queensland *Aboriginal [and Torres Strait Islander] Cultural Heritage Act 2003*), ecological values and the real productive potential of land. Permissible land uses on State lands must not be permitted degrade any of these values any further.

The Committee for the Elimination of Racial Discrimination has found that the 'primary production' provisions of the Commonwealth *Native Title Act* as amended in 1998 are racially discriminatory and provide for de facto extinguishment of potential native title rights and interests.

In this context we call on the Queensland Government to ensure the provisions of the *Native Title Act 1993* (Commonwealth) and the *Native Title Act 1993* (Qld) are not adversely affected by any proposed changes to the management regimes applying to the ongoing and future management of State-held lands.

All of our below comments to the Committee Inquiry are made in respect of the State's inherent fiduciary responsibility to ensure that Indigenous title rights and interests (as determined through native title processes or otherwise) are fully protected.

Custodial traditional estates are blanketed by a range of tenures, including leasehold tenures. Adequately addressing Traditional Owner needs and aspirations with respect to the

future use of Government land tenure in Queensland must take into account the intent prescribed within, and limitations imposed by, the *Native Title Act 1993* (Commonwealth) and the *Native Title Act 1993* (Qld).

Delbessie Agreement

Traditional Owners are concerned at any move towards a lessening of lessee management obligations with respect to Indigenous cultural or important ecological values present on their respective Term Lease. Although the provisions of the Delbessie Agreement fail to make compulsory a requirement to negotiate with Traditional Owners around access, shared use of the land or in situ protection of cultural values, we are of the informed view that this policy does at least provide some incentive and opportunity to lessees to consult with Traditional Owners about protection of such values on Country.

State-held Land

The State, on behalf of all Queenslanders, has a clear obligation to ensure sustainable use of the State's land base into the future. In this respect, and with reference to the above, the implications of human induced climate change are becoming more evident (CSIRO:2007, CSIRO 2012) and are of primary concern to Traditional Owners (Green & others :2009). Climate change impacts have the potential to degrade both cultural and natural values. Native vegetation protection is critical to the future health of all Country. We are very concerned about any moves to return to broad-scale clearing of leases and the potential implications on surface water, groundwater, aquifers and artesian water sources of any move towards large scale irrigated agriculture in rural areas of the State.

The State must not reduce its control over the State land base to the detriment of future generations or its ability to rapidly respond to changing climatic circumstances impacting rural leasehold land or other State-held tenures. Other than a specific reference to s124 (*Leases of State forests and national parks*), this extends to retaining the provisions of Chapter 4 (*Landholdings*) as these stand, in particular those existing conditions applying to interests in land available both by competition or without competition.

Further, the State must ensure that the integrity of Aboriginal cultural values ('tangible' and 'intangible'), and the residual integrity and holistic function of ecological and hydrological values present in the existing leasehold estate are retained without further degradation in order for State lands to remain resilient into the future. In this respect, we make the following specific recommendations:

Rural land use diversification on Term Leases issued under the *Land Act 1994*:

1. Retain in full, but seek to improve on, the opportunities afforded lessees of rural lands under the Delbessie Agreement to 1) protect and conserve native vegetation on leasehold land, and to 2) protect in situ, prior to any damage being effected, the cultural values of Traditional Owners on all leasehold tenures.
2. Any policy or legislative changes to provide 'certainty' to lessees of State land (term of lease, diversified term lease use provisions) must fully consider all associated native title implications in the first instance, including the full right to negotiate open to Traditional Owners with respect to all potential future acts impacting on the leasehold estate.

3. Any intention change the existing provisions governing the sale of State leasehold land Chapter 4 Part 1) by competition (on the open market) or without competition must be carefully considered in terms of potential native title implications arising.
4. This applies to the potential conversion of tenures (Division 3), the subdivision of leases (Division 4) or the amalgamation of leases (Division 5).

The remainder of our response has been summarised under four (4) main tenure groupings: Term Leases, Deed of Grant in Trust (DOGIT), Unallocated State Land (USL) and Reserve Lands.

Term Leases

1. No provision be made for 'rolling leases' under the *Land Act 1994* or any future review of this Act. Rolling leases diminish the capacity for timely, pro-active State decision-making in response to critical emerging land management matters (declared pests and their required management, human generated climate change implications) and diminish public scrutiny of leasehold land uses and land management.
2. Ensure that Term Lease renewals or extensions remain subject to all existing regulatory provisions congruent with the Delbessie Policy, particularly with respect to the lessees' opportunity to develop ILUAs and the lessees' obligations to sustainably use native vegetation, their duty of care and their effective management, control or eradication of declared pest animals and plants.
3. Enabling facilitation of tenure resolution with Traditional Owners of unallocated State land across the whole of the State rather than restricting such opportunities solely to selected areas (e.g.: Cape York Peninsula).
4. Negotiation of Indigenous access and use agreements be made a requirement of any lease extension or renewal of a Term Lease granted for the minimum term under the Act (30 years).
5. Negotiation of Indigenous access and use agreements be actively promoted to lessees whose leases may be up for renewal and to lessees seeking an extension to an existing Term Lease.
6. Retaining s16 (deciding appropriate tenure, best use of the land) in full
7. No change to s20 (1) - Dealing with mining interests, geothermal tenures or GHG authorities
8. No change to s29 - Taking into consideration Aboriginal tradition and Islander custom
9. Deleting s124 (*Leases of State forests and national parks*)
10. No change to the provisions of Part 3 Division 2 restricting the availability of leasehold land to Corporations or aggregations of ownership interests.
11. Retaining Division 2A (*Leases for significant development*) in full – there should be no lessening of the existing conditions and requirements as these currently apply.
12. Retaining Division 3 (*Availability of additional areas*) in full without any dilution of existing provisions, in particular ensuring the retention of s132(2).
13. Retaining s159 and 159A (*provisions for considering lease applications*) in full

14. Retaining the requirement for a land management agreement for all term leases (Part 3 Division 6)

Deed of Grant in Trust (DOGIT)

15. Trustees of DOGIT land must be solely comprised of the Traditional Owners of the land concerned. The nomination of all DOGIT Trustees must arise in the first instance directly from the respective Traditional Owner groups whose traditional and custodial homeland estates fall within the respective DOGIT tenure footprint.
16. The inclusion of non-Traditional Owner or non-Indigenous trustees undermines the cultural and social integrity of Aboriginal or Torres Strait Islander community-held lands in terms of Aboriginal tradition and Island custom. External experts may form an advisory capacity at the express request of the Trustees, but local decision-making can only proceed on a culturally assured basis through 'those people most concerned with the land', i.e.: the land's Traditional Owners.
17. Any proposed changes to tenures impacting on, or amending existing arrangements within, Aboriginal and Torres Strait Islander DOGIT community-held lands must ensure comprehensive, open and transparent consultations with all local stakeholders: all Traditional Owners concerned with the land, local stakeholders including the Aboriginal Shire or Islander Council concerned, and Trustees (some of whom may not be Traditional Owners of the land).
18. Making any land available for private ownership on community lands must appropriately and fully deal with all native title matters arising, all outstanding ownership matters (e.g.: matters arising pursuant to the former *Aboriginal and Torres Strait Islander (Land Holding) Act* (Qld)) and ensure a balance of development, which is culturally assured (i.e.: fully endorsed by the Traditional Owners of the land concerned through a process of free, prior and informed consent according to the priorities of the Traditional Owners of the land) and ecologically sustainable on an inter-generational basis.
19. The opportunity for long-term sustainable local gains from any economic development proposed which will impact on the local community is critically important. Too often major or large-scale economic development comes at the expense of local environments and long-term detriment of local community.

Unallocated State Land (USL)

20. It is clear in our considered view that making State lands or USL available for competitive sale on the open market will have major native title implications. Any move by the Queensland Government to do so will most likely be interpreted by Traditional Owners as a clear move to deny them land justice either by application, through negotiation (e.g.: tenure resolution) or through legal proceedings (native title, mediation or litigation).
21. Retaining s16 (*determining 'best use of the land' when deciding appropriate tenure*)
22. Enabling facilitation of tenure resolution with Traditional Owners of unallocated State land across the whole of the State rather than restricting such opportunities solely to selected areas (e.g.: Cape York Peninsula).
23. Amending s31 (*Dedication of a reserve*) to enable the dedication of USL without requiring the land to first be made transferable under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

24. Retaining s132(2) – whereby USL must not be made available as an additional area if the land is more than a living area.

State Land held by third parties as Reserves

25. Land surrendered to the State and held as reserve pending transfer into State forest or National Park tenures should not be able to be leased back, but should be converted to the intended tenure as a matter of priority.
26. Amending s31 (*Dedication of a reserve*) to enable the dedication of USL without requiring the land to first be made transferable under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.
27. Retaining the current provisions of the *Land Act 1994* (Qld) regarding the issuing of all Permits to Occupy.
28. No change to the current 30 year maximum permitted lease term for a reserve (s32), other than reserves held in trust by the Aboriginal or Torres Strait Islander Traditional Owners of the land concerned.

Roads

29. Any devolution of powers of the opening and closing of roads as presently permitted under the *Land Act 1994* to local councils must retain a right of appeal to the Minister. The unconsulted closure of local roads is a critical issue for Traditional Owner access to all tenures, in particular State held lands.
30. The ability of Traditional Owners to obtain a fair hearing in circumstances where local government is controlled by local landed interests is highly limited. This extends to the ability of Traditional Owners to ensure retention of already highly restricted access to their traditional Country or to seek the re-opening of closed roads restricting access to significant areas on Country.

References

CSIRO & BOM: 2012 *State of the Climate* report

CSIRO:2007 *Climate Change in Australia*: technical report 2007, CSIRO Sydney

Green D, S Jackson and J Morrison, 2009, *Risks from Climate Change to Indigenous Communities in the Tropical North of Australia*. Department of Climate Change and Energy Efficiency: Canberra

We sincerely request the State Development, Infrastructure and Industry Committee to seriously consider our submission to such a delicate matter that affects all Traditional Owners of the State of Queensland. If you required further explanations on our submission, please do not hesitate to contact us.

Sincerely,



Phil Rist and Joann Schmider
QTON Co-chairs