AUGUST 2012

AgForce Submission

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

AGFORCE

1 Executive Summary

Prior to Federation the vast rangelands of Queensland were referred to as 'waste lands.' While this view failed to acknowledge the presence of indigenous Australians it did reflect the seemingly remote and harsh environment facing prospective settlers. Today these wastelands are home to unique communities which support a variety of rural industries stretching across 66% of the state.

Early land policy, often developed in urban centres, was conceived to promote development, disperse settlement and generate revenue for the state. As time went on and these aims were met, a vast array of policies were enacted as administrators and lessee's alike either discovered flaws in the system and attempted to put in place short-term 'fixes' or adjust for the state's changing political whims.

In 2012, the recently announced tenure inquiry by posing a question lessees have long asked – what is the ongoing relevance of government in this land – has the potential to address this web of complex, overlapping and onerous policy developed since settlement.

AgForce believes there is substantial justification for comprehensive reform to the tenure system. Further, the state government could realise financial gain through the creation of a practical and affordable conversion program. Such a review must firmly dispel common myths surrounding state-owned tenure and investigate the implementation of a tenure conversion program aimed at improving tenure security. As a preference, this review should investigate the conversion of all leases to freehold.

Such a program is justified on the basis that as seen in other jurisdictions, the state holds a limited residual value in this tenure; lessees have been responsible for the real value of these leases; lessees have been scientifically proven to be good land managers; and there are adequate, if not onerous land management controls already in place across all tenures. A conversion program has the ability to realise productivity improvements and build industry and community resilience. This would represent an enormous boost for a significant portion of industry which has for decades seen a decline in productivity, under-investment by both government in some instances lessees and overzealous regulation.

As is discussed in the latter part of the document, there is no end to the anomalies and seemingly unjustified policies which lessees have withstood over the years because of a failure to undertake significant reform to a tenure system which is ill-suited to modern agriculture. While AgForce believes that there are more than sufficient grounds for a comprehensive overhaul of Queensland tenure it is acknowledged that there will be many who offer up these anomalies under the guise of 'tenure reform' on the flawed basis that the state must retain this land in order to obtain good outcomes.

Times have changed. AgForce presses the Committee to bring a fresh approach to what is an old issue. The current tenure system imposes serious limitations on the commercial viability of leasehold land and treats lessees simply as revenue sources. Responsible change will help to create a more resilient and viable agricultural sector with significant flow on benefits both for the environment and the prosperity of many rural and remote communities.

AgForce urges the Committee to take the road less travelled in and doing so take a long term view, and not become distracted by the appeal of seemingly easier, short term adjustments to the current system. AgForce believes this review provides a once in a generation opportunity to make meaningful change and thereby fix the many anomalies, disincentives and negative impacts imposed by our current tenure system.

The review on rural rents is a significant issue for AgForce. It is scheduled to commence in 2012 as a separate, but concurrent review to the tenure inquiry.[1] For this reason, AgForce has not included its substantial findings and conclusions on this issue which will be put forward to this separate review.

[1] Confirmed by Minister Cripps to AgForce.

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2 Background

2.1 Context of Review

The inquiry into the future and continued relevance of government land tenure across Queensland was referred to the State Development, Infrastructure and Industry Committee by the House on 7 June 2012. The terms of reference require the committee to report to the Legislative Assembly by 30 November 2012.

As lessees of 66 % of the land mass in Queensland, rural lessees will have a significant stake in this inquiry.

2.2 Dispersion of Rural Leasehold Land

Unlike some other Australian states, where leasehold land occurs as a contiguous land mass, the Queensland rural leasehold estate is dispersed widely throughout the state covering some 115,446,801 hectares or approximately 66 % of the state by land mass.

The current mosaic of tenure is largely a result of various freeholding and tenure upgrade opportunities over the last century. These opportunities were made available with the view that freehold title was the optimal tenure to encourage rural investment and prosperity. At the time personal circumstances such as the availability of funding, and ongoing drought conditions, meant many landholders were unable to convert to freehold or perpetual title.

The large size of Queensland and dispersion and variability of leasehold land throughout it means that it is difficult to ascribe a common description to the Queensland leasehold estate. However, the following general observations can be made:

- The majority of the rural leasehold estate is used for cattle grazing which is assessed as its best and highest use.
- Leasehold estate is the predominant tenure in western and north-western Queensland.
- There are a small number of rural leases that are used for intensive agriculture.
- The majority of the rural leasehold estate might be described as rangeland or semi-arid country.

2.3 Types of Rural Tenure

Following the Wolfe review of 1994, a consolidation of land tenure occurred under the *Land Act 1994* (Qld), and leases were assigned into one of the following five categories:

1. Term lease—granted for a set period of time.
2. Perpetual lease—held by the lessee in perpetuity.
3. Freeholding lease—where freehold title has been approved, but the lessee is paying off the purchase price by annual instalments. The freehold title will not be issued until this 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— allows short-term occupation of state-controlled land. This tenure cannot be sold, sublet or mortgaged.

Under each of the above five categories there are a large number of tenure subtypes.

Term leases are the primary form of land tenure in Queensland and involve the leasing of land for a specific purpose by the state for a set period of time. Other forms of rural lease include perpetual leases and freeholding (refer to Table 1 below). After accounting for protected areas, licences, and permits, this leaves only approximately 25 % of the state under freehold title.

Table 1.

Lease Types by Number [2]

Tenure Type	Number	Total Area of Land in HA	% of the State	Value
				Rental Value
PH (Pastoral Holding)	1,283	77,014,236	44.5%	$1,997,763,800
OL (Occupation Licence)	161	684,166	0.39%	$26,025,400
GHPL (Grazing Homestead Perpetual Lease)	2,694	20,175,970	11.66%	$1,952,859,900
NCL (Non-Competitive Lease)	415	17,022	0.01%	$275,303,510
SL (Special Lease)	3,198	1,688,550	0.97%	$537,352,369
DL (Development Lease)	2	927	0.00%	$6,100,000
PO (Permit to Occupy)	4,549	583,699	0.34%	$154,466,797
RL (Road Licence)	4,446	29,466	0.02%	$46,362,390
TL (Term Lease)	5,115	10,799,252	6.24%	$1,019,979,126
PPL (Perpetual Lease)	203	136,231	0.08%	$127,416,234
Total Lease Tenures*	22,066	111,129,519	64.21%	$6,143,629,526
				Instalments Owed
AF (Agricultural Farm)	105	63,248	0.04%	$679,197
GHFL (Grazing Homestead Freeholding Lease)	664	3,846,973	2.22%	$23,286,200
PLS (Perpetual Lease Selection)	405	193,009	0.11%	$4,757,898
NCLC (Non-Competitive Lease converted)	12	6	0.00%	$221,787
APL (Auction Perpetual Lease)	26	78	0.00%	$14,375
APF (Auction Purchase Freehold)	1	101	0.00%	$327,571
SLPF (Special Lease Purchase Freehold)	26	6,449	0.00%	$524,146
FL (Freeholding Lease)	1,256	8,391	0.01%	$59,504,236
Total Freeholding Leases	2,495	4,118,255	2.38%	$89,315,410
Total Leases including Freeholding Leases	**24,561**	**115,247,774**	**66.59%**	**$6,232,944,936**
				Asset Value
Reserves (Community purpose - internal)	**27,488**	**710,646**	**0.41%**	**$14,911,268,844**
Unallocated State land	**20,947**	**1,156,518**	**0.66%**	**$1,714,797,742**
Dedicated roads**		**3,440,798**	**1.99%**	**$43,569,685,857**
				Total Value
STATE LAND TENURES UNDER LAND ACT 1994 TOTAL***	**64,001**	**118,420,876**	**68.43%**	**$66,227,868,192**
				Asset Value
Protected Area Estate and State Forest	**1,099**	**11,843,193**	**6.84%**	**$1,867,023,492**
				UV/Site Value
Freehold land	**2,063,447**	**42,541,313**	**24.58%**	**$453,329,078,752**
Other Transport (Rail) Corridors Land, Operational Reserves		**259,418**	**0.15%**	
TOTAL AREA OF QUEENSLAND		**173,064,800**		

2.4 Historical Settlement

It is difficult to know precisely when the Indigenous people first arrived in Queensland. However oral tradition of Indigenous people indicates that they lived in what we now know as Queensland for many thousands of years prior to European settlement. Archaeological sites in southern Australia

[22] State Land Asset Management. (2011). *Land tenure statistical information.* Brisbane: Retrieved from DERM website: http://www.derm.qld.gov.au/land/state/pdf/tenure_stats_01082011.pdf

have been firmly dated to around 40,000 years. In Queensland, many sites 15,000- to 30,000-years old have been excavated.[3]

The history of leasehold land in Queensland dates back to the issue of Letter Patent of 6 June 1859 which allowed the first Governor to make grants of wasteland vested in the Crown. Following that, in the first session of the Queensland Parliament the *Crown Lands Alienation Act 1860* (Qld) allowed prospective settlers to apply for lots which they wished to select and pay in advance twenty shillings for every acre. If the conditions were not carried out, the purchase money less 10 % was returned and the land again opened for selection. Section 12 of that Act allowed the occupant of a farm to lease any vacant portion adjoining the farm for five years at a yearly rent of six pence per acre and under certain conditions to purchase it.[4]

The following excerpts, from the book *Struggle Country: The Rural Ideal in Twentieth Century Australia*[5], provide some insight into the early land allocation and policy ideals.

Selected Excerpts from Chapter 6: *The Rise and Decline of the Agrarian Dream, 1860s-1960s* [6]

Beginning in the 1860s, successive governments sought to promote rural development by opening land for agricultural selection through closer settlement, encouraging immigration and constructing developmental railways into existing pastoral districts. Glen Lewis (1973) has described this political-economic process as the 'trinity of hope' (p. 6). From separation through to the mid-1880s, the trinity went unchallenged as the primary means of promoting economic development and was expressed through a plethora of rural lands legislation and policy while actively discouraging urbanisation and industrialisation (pp. 76, 83).

The Crown Land Act of 1860 established agricultural reserves within occupied districts sub-divided into three closer settlement zone categories; town (housing land), suburban (small agricultural allotments) and country (larger mixed agricultural farms). The agricultural reserves encompassed about 40,000 hectares around all major urban areas adjacent to the coast between Moreton Bay (Brisbane) and Port Curtis (Gladstone), and around inland towns of more than 500 people. The 1860

[3] Queensland Government. (2012). *History of Aboriginal and Torres Strait Islander peoples.* Brisbane: Retrieved from website: http://www.qld.gov.au/about-queensland/history/

[4] Queensland State Archives. (2012). *Land selections prior to 1884.* Brisbane: Retrieved from website: http://www.archives.qld.gov.au/Researchers/Indexes/Lands/Pages/LandSelections1884.aspx

[5] Davison, G., & Brodie, M. (Eds.). (2005). *Struggle country: The rural ideal in twentieth century Australia.* Retrieved from http://books.publishing.monash.edu/apps/bookworm/view/Struggle+Country%3A+The+Rural+Ideal+in+Twentieth+Century+Australia/140/xhtml/title.html

[6] Cameron, D. (2005). Closer settlement in Queensland: The rise and decline of the agrarian dream, 1860s – 1960s. In G. Davison & M. Brodie (Eds.), *Struggle country: The rural ideal in twentieth century Australia* (Ch. 6). Retrieved from http://books.publishing.monash.edu/apps/bookworm/view/Struggle+Country%3A+The+Rural+Ideal+in+Twentieth+Century+Australia/140/xhtml/chapter06.html

Act encouraged many immigrants to take up selections in the south-eastern districts, particularly around the capital Brisbane. Despite early optimism, most selectors struggled to survive due to a combination of factors including their lack of farming skills and knowledge, low productivity, market instability, debt and insufficient seasonal income and not enough suitable land being available (Johnston 1982 p. 51).

Further attempts at promoting rural intensification through closer settlement were made by the Mackenzie/Lilley ministries in the late 1860s. In 1866 the freeholding lease for agricultural purposes was introduced and with it the Queensland grazing farm was born. Unfortunately this policy did more to assist pastoralists to secure freehold title over the best land within their leases, rather than help the struggling selector get a decent block of land. The Crown Lands Alienation Act of 1868 was the most effective agricultural settlement legislation of the period, albeit with limited success in areas outside of the Darling Downs. This Act authorized the resumption of land within pastoral leases for agricultural settlement. The intention was to sell, or preferably lease blocks for agricultural selection. Nevertheless, freeholding increased despite the government's objective of making leasehold the preferred tenure for pastoral and agricultural occupation (Cameron 1999a pp. 56–57; Irwin 1989 pp. 26-27; Johnston, 1982 pp. 50–52).[8]

In most areas agricultural settlement limped along during the 1860s and 1870s, hamstrung by a lack of good land and marketable staples to cultivate. Maize was the principle crop grown by selectors and returns were often meagre. Only sugar cane, and briefly cotton, showed much promise and these were worked under the plantation mode of production and were at that time not viable crops for closer settlement. It seemed that even cultivation, like pastoralism, would become the preserve of men with capital (Johnston 1982 p. 57; Fitzgerald 1986 pp. 179–180). After fifteen years of legislation promoting closer settlement, the expansion of the area of land under cultivation was also meagre. By 1875 only 31,000 hectares were being tilled, of which more than half was worked for maize production. Problems continued with the suitability of settlers, the quality and size of their selections and wild fluctuations in supply and demand for maize, all of which undermined the viability of closer settlement during this period (Johnston 1982 p. 54).[9]

The 1876 Land Act provided a boost to agricultural settlement, particularly on the Darling Downs, but the liberal-agrarian push found it fullest expression with the 1884 Land Act (Fitzgerald 1986 pp. 189–190). The Act increased the area available and term of leases for grazing farm selections.[10] Although the 1884 Act was partially effective in opening up new agricultural land for settlement, the Liberals' quest to encourage small-scale family farming failed largely because much of the land, and many of the selectors who tilled it, were unsuitable for intensive agriculture. Moreover, a number of bad seasons, both wet and dry, spread of rabbits and cattle ticks and fluctuating commodity markets, all conspired against the success of closer settlement during the 1880s and early 1890s.[11]

While the average selector struggled to make a living hoeing maize and tending a few cows, the sugar planters enjoyed greater economic success. The plantation system was based upon the gross exploitation of South Pacific Islander labour, essentially working as indentured slaves. The success of sugar as a marketable staple by the 1880s, largely due to rapidly increasing demand for sugar, encouraged the government to promote the establishment of cooperative milling in the hope of assisting the closer settlement of the sugar districts. In some ways mirroring the agricultural resumptions from the big pastoral runs, the larger sugar plantations were targeted for sub-division and settlement, to be owned and worked by 'white' labour (Johnston 1982 pp. 61–64).

The economic depression and industrial turmoil of the early 1890s that gave rise to political labour also saw the liberal-agrarian ethos challenged by the agrarian-socialist ideals of organised labour and the expanding urban and rural working class (Fitzgerald and Thornton 1989 pp. 162–163). The McIlwraith government responded to the rise of agrarian-socialist ideals within the organised labour

movement by initiating the colony's first cooperative land settlement legislation; the Co-operative Communities Land Settlement Act of 1893. The Act allowed for the establishment of cooperative farming communities to promote the re-settlement of unemployed urban workers onto farms. The scheme established at least twelve cooperative farming communities involving almost 2000 people. Unfortunately for the cooperative settlers, the scheme proved a dismal failure due to the inadequate agricultural skills of the idealistic urban workers, the poor quality of the land provided for them, and infighting and lack of cooperation within the communities (Barker and Byford 1988 p. 103; Bernays 1919 pp. 325–326; Black et al. 1978 pp. 13–15; Hughes 1980 p. 224).

Despite supportive legislation and other government inducements, the plight of the small selector was often a dire one throughout the nineteenth century. Most selections were too small, soils too poor and climate too dry. The calibre of the selectors themselves was also problematic. Most were probably enthusiastic and full of hope, but this didn't off-set their lack of agricultural knowledge and skills. Even those who got good land, and knew how to work it, struggled to make their farms economically viable. Many never rose above a level of basic subsistence. With a few exceptions, most notably dairying during the 1890s and small-scale sugar cultivation after 1900 in the coastal districts, the push to develop viable closer settlement districts during the nineteenth century failed to live up to popular expectations and dreams of most selectors (Johnston 1982 pp. 132–134, 137; Lewis 1973 pp. 25–26, 79–80).

2.5 Rationale behind Queensland's Leasehold Estate

2.5.1 Historical

The current tenure system is a reflection of the land policy of successive governments. Since allocation, leasehold land has fulfilled three key goals for emerging colonies:

- facilitated the improvement and development of land at minimal cost to government;
- dispersed settlements throughout the state; and
- provided a much needed income return for developing economies.

At the same time, as landlord, government retained the ownership of the land and the benefits of its increasing value. Amongst many of these settlers there was a general assumption that there would be a progressive transition towards greater private-property rights as the land became more closely settled and intensively used for private purposes and apart from land required for public purposes all would be freeholded with the state abandoning its tenure-related proprietary power over land in private use.[7]

[7] Holmes, J. (1996). The policy relevance of the state's proprietary power: Lease tenures in Queensland, *Australian Journal of Environmental Management, 3*(4), 240-256.

As we know now, this process never eventuated and indeed further allocation of freehold title is now viewed by many bureaucrats as unnecessary. Holmes' depiction of the phases of state government interests in leasehold land are shown below in Table 2.

Table 2.

Holmes' Phases of State Interest in Leasehold Land

Phase	Policy Orientation	Policy Role of Lease Tenures
1. 1847-1861	Managing the pastoral frontier	Providing temporary low-cost access for pioneer pastoralists while preserving future options on land allocation.
2. 1861-1884	'Unlocking the land' – settlement	Enabling free selection of small holdings under specified conditions to 'bona-fide' settlers.
3. 1884-1950s	'Progressive' closer settlement	Enabling the sequential, managed subdivision of pastoral runs into family-sized small holdings.
4. 1950s to 1970s	Policy vacuum and clientelism	Tinkering with the system and responding to lessees' concerns about tenure upgrading, reduced rentals and other concessions.
5. 1980s to 1996	Sustainability, existence values and multiple use	Emerging role in rangelands monitoring, sustainable use, preservation of biodiversity and providing controlled public access – limited role in restructuring non-viable holdings
6. 1997-	Co-existence	Settlement of native title claims and the practicalities of co-existent titles – as well as ongoing involvement with issues emerging in phase 5, which further expand the circumstances requiring coexistence between pastoralists and other interests.

Freehold land is usually described as the most complete form available for land alienation from the state, although it is noted that ownership by the titleholder is not absolute as the state is empowered to withhold certain property rights and introduce controlling legislation.[8] Further, when freehold tenure is granted the state's resumption powers are significantly curtailed. Despite this, over many years rural freehold land has developed a perception of being solely under the control of the landowners – something that was disproven by tenure-blind legislation such as the *Vegetation Management Act 1999* (Qld). Freehold property has two main attributes that distinguish it from leasehold land: it is heritable (in the absence of next of kin it is passed to the state bona vacantia as per the *Succession Act 1981* (Qld)), and it is alienable (for example, by will or inter vivos).

[8] Qld State Land Asset Management. (2010). *A guide to land tenure under the Land Act 1994.* Brisbane: Retrieved at DERM website:http://www.derm.qld.gov.au/land/state/pdf/land_tenure_qld.pdf

Holmes in his 1996 paper[9] considers the continuation of leasehold estate to be justified where one of the following five grounds are satisfied:

1. The primary use is in the public sphere but with secondary private uses (such as public parks and recreation areas).
2. Lands control access to prime resources in the public domain (such as coasts, foreshores, and streams).
3. Lands are of low income potential (where modes of extensive use require only small capital inputs and where private use requires title to very large tracts of land).
4. Lands involve multiple users as well as multiple uses (e.g. forestry).
5. Lands are currently under public ownership but to be released to private titles (strategic tracts of land which may later be transferred to private ownership).

Holmes contends that the rural leases satisfy the third ground, as due to their size the state can negotiate directly with individual titleholders. He also notes the emerging trend to utilise leasehold land to pursue land-management goals.

2.6 Historical Rights and Obligations of Lessees

To demonstrate the origins, original intent, and changes involved in the current Queensland tenure system, it is interesting to consider an historical view on the different conditions and restrictions that apply to each of the main three lease types (refer to Table 3). The table is reproduced from that in Holmes' paper.10 However, it should be noted that the introduction of legislation has now altered some of these rights, in particular rights to clear vegetation and subdivide. Bolded text within the table illustrates where rights have changed over time.

[9] *Ibid*., 7.

[10] *Ibid*., 7.

Table 3.

Selected Property Rights and Duties Capable of Being Differentiated by Land-Tenure Instruments

Tenure Type	**Freehold**		**Grazing Homestead Perpetual Lease**		**Pastoral Lease**	
Group A: Rights relating to use of land and related resources						
Right to graze livestock	Yes	✓	Yes	✓	Yes	✓
Right to cultivate land	Yes	✓	No	X	No	X
Right to introduce plant species	Yes	✓	No	X	No	X
Right to clear vegetation	**Yes**	✓	No	X	No	X
Right to take timber	Yes	✓	No	X	No	X
Ownership of water	No	X	No	X	No	X
Ownership of minerals	No	X	No	X	No	X
Ownership of wildlife	No	X	No	X	No	X
Right to exclusive possession	Yes	✓	Yes	✓	Yes	✓
General right to use at discretion of titleholder	**Yes**	✓	No	X	No	X
Group B: Responsibilities & duties						
To develop and maintain improvements	No	✓	(Yes)	(X)	(Yes)	(X)
To be in residence	No	✓	**(Yes)**	**(X)**	No	✓
To maintain stock numbers above a prescribed minimum	No	✓	**(Yes)**	**(X)**	**(Yes)**	**(X)**
Duty of care for the land	No	✓	Yes	X	Yes	X
To control stocking levels (if required)	No	✓	Yes	✓	Yes	X
To engage in property planning (if required)	No	✓	Yes	X	Yes	X
Group C: Tenure security & transferability						
Perpetual title awarded	Yes	✓	Yes	✓	No	X
Unrestricted transferability	Yes	✓	No	X	No	X

Tenure Type	Freehold		Grazing Homestead Perpetual Lease		Pastoral Lease	
Unlimited right to subdivide	Yes	✓	No	X	No	X
Unlimited right to aggregate	Yes	✓	No	X	Yes	✓
Surrender of some land on lease expiry	No	✓	No	✓	Yes	X
Liability to forfeiture	No	✓	Yes	X	Yes	X
Group D: Financial and other obligations						
Payment of rent	No	✓	Yes	X	Yes	X
Accountability to the State	No	✓	Yes	X	Yes	X

✓ In favour of titleholder: the titleholder either has this right or is not subject to this responsibility or limitation

X Indicates a limitation or responsibility generally applicable to this tenure

(X) Indicates a limitation or responsibility selectively applicable to this tenure

2.7 Recent Rationale for Holding Leasehold Estate

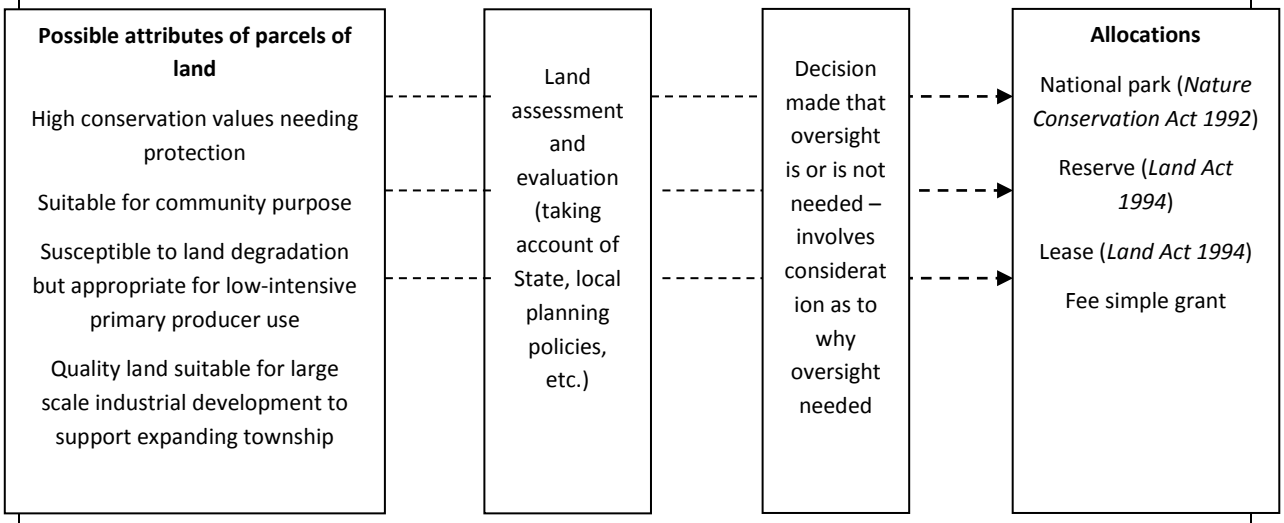
With respect to regulating land management, the State of Queensland holds a number of interests in land. They hold a basic sovereign power through which they can exercise authority to legislate. Secondly, they have a proprietorial power under which the state acts as a landlord and allocates resources.

Lessees derive their rights to manage their leases from a combination of legislation and terms of the particular leases. This is in comparison to owners of freehold land who derive their ability to manage land from common law. Hence, the latter freehold owners' ongoing rights depend on regulation and can be removed though common-law precedents. This is generally known as a set of negative obligations. This is in contrast to the rights of lessees set through tenure obligations.

The government defines these as being positive obligations because they can define the conditions upfront. As governments prefer to withdraw rights through a lease/land regulation, rather than withhold them (prohibit them), this has in part probably influenced them and resulted in a preference to retain ownership of land, hence allowing them to regulate through the withdrawal of rights across various tenures.

The object of the *Land Act 1994* (Qld), under which leasehold land is currently managed, requires that it be managed for the benefit of the people of Queensland by having regard to seven principles: sustainability, evaluation, development, community purpose, protection, consultation, and administration. The embedding of such elements represents the current government's rationale for retaining a large amount of leasehold land, i.e. policy objectives can be embedded into lease conditions and delivered by lessees.

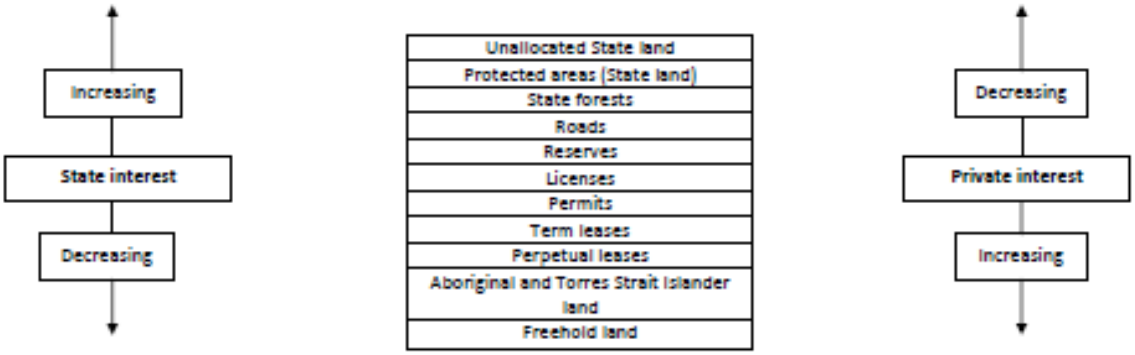
Leasehold law commentator Chris Boge has interpreted the previous state government policies into the hierarchies of tenure shown in Figure 1 and Figure 2 below.



Source: Boge, 2006[11]

Figure 1. Methods of allocation based on decision as to whether continuing state control or oversight necessary

[11] C. Boge, State Lands Handbook, 2006. Law Book Publishing.



Source: Boge, 2006[12]

Figure 2. State and private interests in various tenure arrangements

Holmes[13] recommended that in addition to periodic review of appropriate land-policy contexts and policy directions there is also a need for periodic re-examination of the core attributes of the various tenurial instruments, particularly the main types of leases and of any regulations and policy statements which facilitate these leases.

As this submission will attest, much of this rationale is based on the historical role that tenure once played, particularly within a developing colony and is of little relevance today.

[12] *Ibid*
[13] *Ibid.*, 7, at 256.

3 Taking a Long-term View: the Case for Generational and Comprehensive Tenure Change

3.1 The Common Misconceptions Driving the State's Ongoing Interest in Tenure

While it is easy to provide comment, and often criticism on the current tenure system, it is important not to be constrained by the current system and ask the ultimate question - what is the state's continued interest in this land?

In posing this question there are a number of common responses and misconceptions, which AgForce has received from various stakeholders over the years when a this question has been posed. We will respond to some of these below.

3.1.1 Misconception 1 – Lessees make poor land managers

The condition of rural leasehold land has been the topic of much discussion and conjecture over time. In particular, rural land—including the leasehold estate—has been criticised over the last 20 years for the loss of flora and fauna related to vegetation clearing prior to the ban on clearing. It should be noted however that much of this clearing occurred during the time that the state, as landlord, prescribed vegetation clearing as a condition of holding a lease. While some development still occurs across Queensland, since the availability of better science, lease conditions that do not prescribe clearing, and the introduction of tenure-blind legislative protections for flora and fauna from the 1990s this situation has dramatically changed.

Until the Land Condition Assessment (LCA) process under the recent Delbessie process which commenced in 2008/09, the condition of individual leases had never been physically inspected and assessed. The LCA guidelines were developed by a technical working group comprising experts in the fields of soil science, grazing management, resource mapping, land-condition assessment, and biodiversity and drawn from the Department of Natural Resources and Mines (hereafter 'the department'), and Queensland Primary Industries and Fisheries

As part of their renewal, all term leases are required to undergo a LCA process under which the department assesses the lease, setting a benchmark of land condition at a point in time. The results of the LCA are used to prepare and negotiate a land-management agreement with the leaseholder and will determine their eligibility for extended terms of the new lease.

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The LCA is a property-specific assessment of the following attributes of land condition which are a subset of the duty of care principles in the *Land Act 1994* (Qld)*:*

- pasture;
- soil;
- biodiversity;
- declared pests;
- salinity;
- riparian vegetation; and
- natural water resources

At 31 March, 2012, a total of 246 field inspections had been completed and, of those, 236 LCA reports completed showing:

- 2,020 in good condition (85.5 %)
- 33 in not-good condition (14 %) and
- one inaccessible lease.

Regionally, this breakdown is as follows:

Region	**Good**	**Not Good**	**Inaccessible**	**Total**
North	100	6	-	106
Central West	75	9	1	85
South West	27	18	-	45
Total				236

Contrary to the views of many conservationists, this breakdown shows that most lessees are demonstrated good land managers. Further, the department has indicated that the majority of the leases that are assessed as 'not in good condition' are located in south-west Queensland and were as a result of a combination of historical drought and government-established small block sizes that proved to be of an unviable size.

It should also be noted that over time the grazing industry has invested significant resources into developing and implementing best practice standards for grazing sustainably. The Waimbiana Grazing Trial at Charters Towers is one example of this investment and has established now widely

accepted strategy of using conservative stocking rates to increase profitability through improvements in animal quality and reduced input costs.

3.1.2 Misconception 2 - The retention of state-owned tenure is required because it provides greater control over lands management

There is some conjecture that leasehold lands should be retained because they provide greater control over land management, particularly of vulnerable lands. AgForce disputes the fact that leasehold land provides any significantly different regime of land management.

At 1 January, 2012 a desktop assessment conducted by AgForce showed that *just at a state level*, Queensland agriculture was regulated by over 55 Acts and Regulations covering over 8,000 pages (refer to Table 4). Importantly, nearly all of this legislation applies to both leasehold and freehold tenure equally.

Table 4.
Extent of Legislation regulating all Queensland Tenures

State Act/Regulation	Pages
Aboriginal Cultural Heritage Act 2003	113
Agricultural Chemicals Distribution Control Act 1966	55
Agricultural Chemicals Distribution Control Regulation 1998	36
Agricultural Standards Act 1994	46
Agricultural Standards Regulation 1997	62
Animal Management (Cats and Dogs) Regulation 2009	38
Cattle Stealing Prevention Act 1853	13
Environmental Protection Act 1994	786
Environmental Protection Regulation 2008	219
Exotic Diseases in Animals Regulation 1998	17
Food Production (Safety) Act 2000	103
Food Production (Safety) Regulation 2002	149
Land Act 1994	496
Land Protection (Pest and Stock Route Management) Act 2002	186
Land Protection (Pest and Stock Route Management) Regulation 2003	47

State Act/Regulation	Pages
Water (Commonwealth Powers) Act 2008	14
Water Act 2000	678
Water Regulation 2002	244
Water Resource (Fitzroy Basin) Plan 1999 (one of many)	64
Weapons Act 1990	218
Wild Rivers Act 2005	60
Wild Rivers Regulation 2007	8
Workplace Health and Safety (Codes of Practice) Notice 2005	19
Workplace Health and Safety Act 1995	245
Workplace Health and Safety Regulation 2008	448
	8,327

3.1.3 Misconception 3 - The state derives windfall returns off rental of this estate

In 2011, the state government derived approximately $24,998,625 from the rent of rural tenures in Queensland.[14] With a UV of just over six billion dollars in 2011 (which has been dropping over the last few years) this means the 'average' leases paid approximately 0.5 % of the UV per year in rent. In comparison, the state derived approximately $75,405,521 last year from non-rural tenure. This return is approximate to what producers are currently returning on leasehold land.

AgForce also wishes to note that the costs of administering estate must be taken into consideration when looking at the net return on the estate and AgForce has been unsuccessful in finding these costs.

AgForce is currently compiling a separate submission for a leasehold rental review to be held in 2012 which is supported by evidence to show the financial hardship that rural lessees are experiencing under the current rental methodology.

In commercial terms it is evident that the state is not deriving a windfall return off the rental of this estate and further, the economics of agriculture do not support any rise in the current total rental revenue.

[14] This figure is exclusive of freeholding payments

3.1.4 Misconception 4 – A move to freehold would result in mass subdivision

One of the controls that the state does retain in its tenure is the ability to control patterns of development through subdivision restrictions. Given some of the historical issues which have arisen as a result of small block sizes, unlimited subdivision has been used as a reason to not allow tenure conversion. In fact, the department has cited that lessees would reap windfall profits from the ability to subdivide. AgForce finds this an interesting argument given most lessees live in remote areas in which there is probably a limited interest in small subdivisions. Further, if this misconception had any basis in fact mass division would be occurring already on freehold lands.

While there are already controls available in local laws. However, these have been seen by many as weak and inadequate for the purpose of land-use control. Notwithstanding this, if the committee feels that this is a real risk, there are ample other legislative means through which to control subdivision. These include but are not limited to:

- The implementation of a state planning policy to regulate subdivision;
- Stronger control through local planning laws.
- Creation of a new tenure which places controls on subdivision - i.e. indivisible freehold.

Even a quick reading of the history of leasehold land in Queensland shows the degree to which successive governments have tried to use tenure to engineer social outcomes as seen fit at the time. As recently as Wolfe there seemed a need to provide overarching controls on land ownership and use to protect lessees against themselves. AgForce submits that today there is little relevance for the use of tenure as a tool for social engineering; rather, rural markets including rural land should strive to be market based.

3.1.5 Misconception 5 – Tenure conversion will transfer significant wealth to lessees

One of the most common misconceptions of leasehold land is that is that lessees obtain their leases for free. What is not understood, even at the most senior levels within government, is that most (term and perpetual) improved leases have historically sold for the same amounts as freehold tenure according to the government's own State Valuation Service.

While the original soldier-settlement schemes and land ballots set up by government to promote development and settlement across the state may have created a unique right to those lessees, in nearly all cases, these lots were undeveloped. Lessees received uncleared and unimproved land (for which an annual rental was payable) and were required to clear, put in fencing and watering points,

and manage all pest and weed species. Without these improvements, these leases would have a very limited value today.

It is true that subsequent sales of this land have been at appreciating levels which have been achieved through the value in improvements paid for by the lessee.

Therefore AgForce disputes any argument that the state will transfer significant wealth to lessees as part of any tenure conversion. As demonstrated above, it is the lessees alone who have created and maintained the productive ability and therefore value of this land.

3.2 Some Facts about Leasehold Land

3.2.1 Fact 1 – Lessees already hold most of the equity in leasehold land

It is a general misconception that the state holds the equity in tenures. Given the length of time many of these leases has been under the control of lessees—who have developed, improved, and provided ongoing maintenance—it is questionable just how much equity the state holds in these leases.

Many leases have been held by third parties for over a century and were often first issued as undeveloped leases, therefore requiring significant capital investment.

In a survey by AgForce in 2011/12, lessees were asked to provide their current leasehold UVs (as per their latest valuation) and the undepreciated cost of property improvements on these leases (refer to Table 5).

Table 5.
Property Improvements as a Percent of UV

Tenure Type	**Property Improvements as a percent of UV (sample size)**
Freeholding Leases	74.9 % (6)
Perpetual Leases	281 % (76)
Term Leases	138 % (63)

3.2.2 Fact 2 – Even at its highest and best use –usually grazing –most leasehold land produces low returns on asset

One well-recognised investigation into the productivity and profitability of the northern (i.e. Queensland, Northern Territory, and northern Western Australia) beef industry was conducted in 2010. Given the dominance of this industry on leasehold land in Queensland, it represents a good proxy for the economic returns of this land. The report revealed a number of key facts and concerns facing the industry.[15] The report's Queensland analysis was consistent with its broader northern conclusions and added additional observations that:

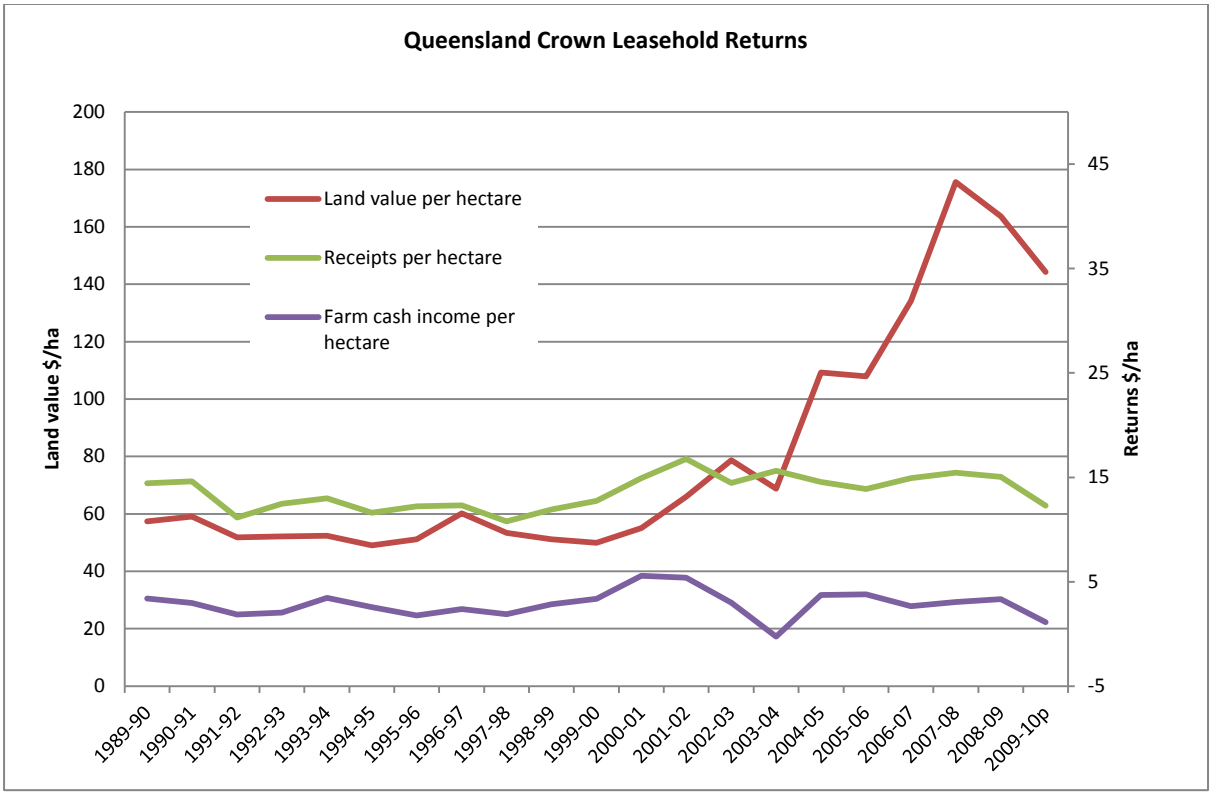
- The average Queensland beef producers have spent more than they have earned in six of the last seven years with the contributing factors relative to the top 20 %, being:
    - increased borrowings and interest burden, despite historically low interest rates;
    - uncontained or high overheads;
    - higher or more efficient use of direct costs;
    - significantly lower productivity; and/or
    - inadequate scale.[16]
- Operating margins generally finished the decade where they started.
- The spurt of confidence in the beef industry through 2006/07, which drove land prices and investment, was driven by the generally increasing operating margin (except in drought years). AgForce notes that this trend has now reversed and it should also be noted that there is substantial comment that it was in part driven by the availability of cheap credit.
- Differences between the top 20 % of producers and the average was not due to prices received, but was largely attributable to higher overheads per kilogram of production and less efficient use of direct costs.
- Scale has been a major contributor to profitability between the top 20 % of producers and the average, and this is primarily due to ever increasing overheads. This presents problems for the industry because it is a structural issue which is very difficult for an individual to correct.

Further excerpts from this report are in boxed text below.

[15] Meat and Livestock Australia. (2010). *Northern beef situation analysis 2009*. Sydney: Retrieved from website: http://www.mla.com.au/Research-and-development/Final-report-details?projectid=14980

[16] At 23

Data collected by ABARE on Queensland leasehold land paints a startling picture about the historical receipts, income, and leasehold land values in Queensland (refer to Figure 3 below).[17] It clearly demonstrates that the farm cash income per hectare of Queensland leasehold land has remained stagnant over the last 20 years.



Source: ABARES[18]

Figure 3. Queensland Crown leasehold returns

Excerpts from Northern Beef Situation Analysis:[19]

In 2009, the northern beef industry is in its worst state since the beef slump of the 1970's with average return on assets (ROA) of 0.3 % to 2.0 %. Average beef producers tend to be spending more than they have earned in 6 of the last 7 years, indicating the northern beef industry is generally in a very unprofitable and unsustainable state. There are many reasons for this, chief among which are:

External Impacts

* Land values have increased significantly (grazing property index has increased at least 250 % from

[17] P. Martin (personal communication, September 21, 2011)
[18] P. Martin (personal communication, September 21, 2011
[19] Meat and Livestock Australia. (2010). *Northern beef situation analysis 2009*. Sydney: Retrieved from website: http://www.mla.com.au/Research-and-development/Final-report-details?projectid=14980

1999 to 2008) which has both induced and encouraged higher debt.
* Rainfall has been below average across the Queensland study group for seven of the last 10 years and cost of production has consequently risen.
* Beef prices generally increased until 2004, then levelled and have declined in the study group in the last two years. However price received has not been a consistent driver of the difference between the top 20 % and average producers.
* Debt levels have more than doubled on a per large stock unit (LSU) basis over the decade.
* Legislation around vegetation management has impacted both development and maintenance options for producers in affected regions.

Internal Impacts
* Scale has shown to be a major contributor towards profitability and the effects are amplifying. The Queensland data indicates that at the beginning of the decade, 1,123 LSU were needed to maintain overheads at $80/LSU. At the end of the decade, the corresponding number was 2,405 LSU.
* Overheads per LSU have risen by 54 % over the decade and direct costs per LSU have risen by 150 % over the same period (which is a combination of both cost and use).
* Expense ratios (total expenses including interest/gross product), have been over 100 % in 6 of the last 7 years for average businesses, meaning these businesses have spent more than they earned.
* Finance ratios (finance costs/gross product) have reached 20 % for average businesses, which means 20 % of all income is paid out in interest and finance costs. This is an economically dangerous position to be in when average ROA is 0.3 - 2.0 %.
* The extremely poor performance of the extensive breeder herd is an alarming contributor to poor business performance.
* However the top 20 % (based on ROA), while not reaching the heights of a decade ago, are faring well and matching current bank deposit rates. Some of the features of the leaders include:
    * They were slightly more productive on a per animal basis (6.8 % more kg produced per LSU).
    * Production (kg/ha) was approximately the same indicating the difference in profit originated more from the combination of number of animals/scale of operation, individual animal productivity, skills of the manager and associated running costs.
    * They generally had slightly lower stocking rates (16.8 SDH /100mm vs. 18.3 SDH/100mm).
    * They had significantly lower overheads (22 % less was spent on overheads as a percentage of gross product).
    * They focus more on overall profit than productivity alone. It is not that productivity is not an important element in profitability, but the data indicate that the quality of strategic and management decisions around overheads and scale are paramount in determining profitability.
    * They utilised plant and equipment twice as effectively as the average producer (28.7 % plant income ratio for top 20 % [average value of plant and equipment/production gross product] vs 56.5 % for average).
    * Across all years and regions, they did not receive higher prices. However they did receive slightly higher prices in 3 of the 7 regions in the last 3 years.
    * They were larger in both land (+19,760ha) and livestock (+2,300LSU) scale.

3.2.3 Fact 3 – Converting leasehold land may lead to productivity improvements and increased resilience

Agriculture is already a significant contributor to Australia's economic prosperity providing an overall gross value of a production of $42 billion in 2008-09[20] which equates to approximately 20 % of Australia's total exports.

Continued export contribution is largely a result of the historical growth in farm production, despite an ongoing reduction in the prices received for farm products relative to the prices paid for farm inputs.[21]

On a world scale, Australia is one of the world's largest agricultural export nations in wheat, beef, and wool, with approximately 60 % of production exported worth over $32 billion to the economy.[22] This is close to 20 % of the total value of Australian goods and services exports in most years.

Australian agriculture is highly dependent on world markets with domestic market pricing largely following international prices. The export orientation of Australian agriculture, the inability of this sector to pass on cost increases, and the decline in real prices means that their terms of trade have declined to an average of 0.1 % over the last decade.[23]

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 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 which regularly withstands significant climatic events.

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[20] Department of Agriculture, Fisheries and Forestry. (2010). *Australia's agriculture, fisheries and forestry: At a glance 2010.* Canberra: Retrieved from website: http://www.daff.gov.au/__data/assets/pdf_file/0003/1539831/aag-2010.pdf

[21] Abare Economics. (2003). *Agricultural trade reform: Benefits for Australian broadacre agriculture.* (Conference paper 03.7). Canberra: Retrieved from website: http://adl.brs.gov.au/data/warehouse/pe_abarebrs99000932/PC12540.pdf

[22] *Ibid*., at 7.

[23] *Ibid.*

3.2.4 Fact 4 – The administrative costs of leasehold land are high compared to its returns

AgForce has been unable to source the administration costs of state land in Queensland however there has been some discussion that these costs are high compared to returns.

3.2.5 Fact 5 – A conversion program could lead to a significant injection of funds to the state

Under most scenarios, rural leasehold land could deliver a significant injection of funds through a conversion program when compared to the total, annual, rental revenue due to the state.

AgForce has not yet consulted with members about their current capacity to finance conversion opportunities; however a quick look at the accelerated conversion opportunities that have occurred in other states shows what Queensland may expect from similar scenarios in Queensland (refer to Table 6 and the Appendix for more detail on conversion opportunities).

Table 6.
Accelerated Conversion Opportunities

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**

3.2.6 Fact 6 – Rural lessees deliver wider returns than purely rental revenue, and this return would increase through a conversion program

3.2.6.1 Environmental

There are no more committed and practical environmental advocates than Queensland producers. These producers and their successors live and work on over 80 % of Queensland, and their livelihoods are reliant on the health and condition of the landscape. Table 7 below summarises some

of the significant environmental contributions of Queensland producers. Environmentally, the table demonstrates the significant ability of government to regulate on all tenures. The cutting of red tape (such as the current tenure controls) on government tenure has the potential to increase the already significant returns delivered by primary producers.

Table 7.

Environmental Contributions of Queensland Producers

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]

[24] Defined as remnant and regrowth vegetation

[25] Qld Department of Environment and Heritage Protection. (2012). *Wild rivers.* Brisbane: Retrieved from website: http://www.ehp.qld.gov.au/wildrivers/index.html

[26] A. Williams, Director Nature Refuges Sustainable Landscapes DERM (personal communication, July 19, 2011)

27 There are now 595 remnant regional ecosystems mapped as occurring within the current nature refuges as a whole. That represents 45 % of the 1332 REs mapped across Queensland. 60 of these are considered

Area of Queensland	Description
unknown	Cost of management of Queensland Parks & Reserves

3.2.6.2 Cultural

The majority (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 leases for traditional purposes. This resolution of claims which facilitates Indigenous access to land has been recently spurred by the creation of a template Indigenous land use agreement (ILUA) which reduces negotiation time between lessees and claimant groups.

Approximately 65.2 % of Queensland is currently covered in native title claims[28] and the majority of these are on rural leases (refer to Table 88).

In March 2012 there were 317 registered (ILUAs) in Queensland and 46 of these involved rural lessees.[29] An additional 151 ILUAs, all of which involved rural lessees, are scheduled for consent determination in the next nine months.

Any conversion program is likely to prompt a method through which native title is progressed.

endangered (10 %) and a further 173 are 'of-concern' (totalling nearly 40 %). Nature refuges protect 215,185 ha of 46 regional ecosystems that are not otherwise represented in the current protected area estate. An additional 242 regional ecosystems mapped in current nature refuges are otherwise underrepresented (< 5 %) in the current protected area estate, an area of 1,107,750 ha, which constitutes about 40 % of the total area of nature refuges.

[28] M. Rodd, Qld Native Title Registry (personal communication, March 22, 2012). N.B: Areas not being claimed, such as private freehold that fall within the external boundary of an application area, are included in these statistics.

[29] *Ibid.*

Table 8.
Native Title Claims and Determinations

	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

3.2.6.3 Economic

At the 2006 Census, agriculture, forestry, and fishing were the largest industry of employment for regional Queensland with 12,854 people (15.9 %) of the region's employed labour force. The next largest industries by labour force were mining (11,474 people or 14.2 %) and retail trade (7,469 people or 9.3 %)[30].

Queensland's beef industry is the largest in Australia, producing just under half of Australia's total beef-cattle numbers. The Queensland industry employs more than 20,000 people directly and supports more than 8,000 jobs in the meat processing industry.[31] The former Department of Employment, Economic Development and Innovation estimated that the combined gross value of Queensland's beef cattle production and meat processing sectors was $4.5 billion in 2009-10.[32] This equates to about 83 % of the total gross value of production of all Queensland's livestock industries and over one third of the total gross value of all Queensland's agricultural industries.[33]

[30] Qld Office of Economic and Statistical Research. (2012). *Annual Economic Report.* Brisbane: Retrieved from website: http://statistics.oesr.qld.gov.au/qld-regional-profiles

[31] Qld Department of Agriculture, Fisheries and Forestry. (2009). *Queensland product.* Brisbane: Retrieved from website: http://www.daff.qld.gov.au/27_7938.htm

[32] Qld Department of Employment, Economic Development and Innovation. (2010). *The Queensland beef industry: Current trends and future projections.* Brisbane: Retrieved from website: http://www.dpi.qld.gov.au/documents/BusinessAndTrade_IndustryTrends/Beef-situation-analysis-2010.pdf

[33] *Ibid.*

The Queensland sheep industry has historically played a significant role in Queensland agriculture. However, Queensland flock numbers have declined from highs of 25.6 million in 1942 to a record low flock number of approximately 3.6 million in 2009-10.[34]

Australia is one of the world's leading producers of lamb and mutton, the largest exporter of mutton and live sheep, and second largest exporter of lamb. The Australian public are among the biggest consumers of lamb in the world. In 2009-10 the gross value of slaughterings was approximately $45.1 million. [35]

In 2009 world greasy-wool production totalled just over two-million tonnes, of which Australia was the largest supplier, producing 370,601 tonnes. The dominance of Australia in the greasy-wool trade means that Australia is generally considered a price maker in the world market. In 2009-10 the gross value of the Australian wool industry was approximately $87.2 million.

In 2009-10, Australia produced approximately 21,834,010 tonnes of wheat with Queensland supplying more than 6 % of this on a land area of approximately 961,681 ha.[36] Between 60-70 % of this wheat is exported to the Middle East and Asia with Queensland export value estimated at approximately $479,325,991[37] in 2010-11. It is estimated that approximately 320,000 tonnes of wheat is milled domestically,[38] with the remainder of domestic supply going to feed grains for intensive livestock.

Converting leasehold land is likely to lead to productivity improvements and increased industry and community resilience in that through the conversion of land into freehold, the long-term savings of lessees in rent could go towards increasing productions.

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[34] Australian Bureau of Statistics. (2011). *Agricultural commodities, Australia, 2009-10* (Publication 7121.0). Canberra: Retrieved from website: http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/7121.02009-10?OpenDocument

[35] Australian Bureau of Statistics. (2011). *Value of agricultural commodities produced, Queensland* (Cat. no. 7503.3, 7503.0, 7113.3, and unpublished data). Canberra: Australian Bureau of Statistics.

[36] Australian Bureau of Statistics. (2011). *Agricultural commodities: National and state, 2009–10*. Canberra: Australian Bureau of Statistics.

37 Australian Bureau of Statistics. (2011). *Foreign trade statistics: Cereal and cereal preparations.* Unpublished data.

[38] Qld Department of Primary Industries and Fisheries. (2009). *Wheat quality and markets in Queensland* (Fact Sheet). Brisbane: Retrieved from Qld Department of Agriculture, Fisheries and Forestry website: http://www.daff.qld.gov.au/documents/PlantIndustries_FieldCropsAndPasture/Wheat-FactSheet-Quality-Markets-Qld.pdf

3.3 Principles for Generational and Comprehensive Change

AgForce believes there is substantial justification for generational and comprehensive change to the tenure system. Further, the state government could realise financial gain through the creation of a practical and affordable conversion program.

It is difficult to place parameters around the ultimate outcomes of such change. However, the following points may provide an adequate start for consideration:

- The state holds a limited residual value in state-owned tenure.
- Lessees have made all improvements on leases and provided ongoing maintenance of them since grant.
- Recent science-based assessments have proven that the majority of lessees are proven land managers.
- There are adequate, if not onerous, controls in existence which regulate land management across all tenures.
- Queensland's current tenure system is an extremely disparate, non-homogenous, and complex web of tenure and associated conditions which are historically-based and have little relevance to modern agriculture.
- At their highest and best use most grazing enterprises produce nominal returns on asset.
- Conversion of leasehold estate is likely to lead to:
  - A significant injection to public funds.
  - Cost and administrative efficiencies for the state.
  - Which will help meet LNP targets re food production
  - Improve rural resilience. – communities
  - A removal to impediments to investment
- Lessees deliver an array of social, environmental, economic and social outcomes to the state – not just annual rental revenue.

A lack of certainty and short-term political decisions about tenure is influencing management decisions such as a move to harvesting operations as opposed to permanent settlement. In recognition of these points, AgForce believes that the state government should consider the implementation of a tenure conversion program aimed at improving tenure security. As a preference, this would see the conversion of all leases to freehold or at the very least the conversion of term leases to perpetual.

4 A Short Term View: Small-Scale Tenure Adjustments

AgForce believes there are more than sufficient grounds for a generational and comprehensive overhaul of Queensland tenure. However, AgForce recognises that such change may not be welcomed by all, particularly those who have had an historical involvement in it, and still believe there is ongoing justification in the state's current ownership of tenure.

The conditions and restrictions on rural tenure outlined in this section highlight the anomalies and complexity of the current system and provide a starting point for the very minimum level of change required. However the parliamentary committee needs to be aware that if generational and comprehensive reform is for some reason not warranted, then a short term view will not deliver the desired outcomes of administrative efficiency, injection of funds and improved investment and industry resilience.

4.1 General Conditions & Restrictions on Rural Tenure

4.1.1 Living areas

4.1.1.1 Aggregations

The current living policy 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 of the *Land Act 1994* (Qld) provides details on the calculation of holdings while s 148 provides that holdings in excess of what an individual may hold may be forfeited.

The limit on living areas was 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".[39]

Wolfe[40] stated 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 smaller business and to provide a further mechanism for ensuring these

[39] Wolfe, P. M., Murphy, D. G., & Wright, R. G. (1990). *Report of a review of land policy and administration in Queensland* (p. 90). Brisbane: Land policy and administration review committee.

[40] *Ibid.,* p. 40.

> lands are properly employed in the industry or for the use 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.

Whilst the Wolfe report[41] recognised there are benefits to aggregation, it discussed the following perceived negative benefits:

- 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.

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.

While it is understood that the living areas policy has not been implemented, for the purpose of assessing aggregation, for over a decade due to resourcing issues its ongoing presence in the *Land*

[41] *Ibid.,* p.89.

Act 1994 (Qld) and lease agreements raises a number of questions about the benefit and effectiveness of such a policy.

4.1.1.2 Subdivision

The living area limits also play a significant role in whether leases can be subdivided. Subdivision of leases is generally not supported by the *Land Act 1994* (Qld) and specifically not allowed where the condition of the lease prohibits it, or it is one of the leases specified in the state policy on subdivision PUX/901/528 where the subdivision approach is described as 'precautionary'.[42] Under PUX/901/528, subdivisions will only be considered where the outcome is:

1. To enable the state to obtain land:
    - for a public purpose; or
    - for use in a property build-up scheme approved by the chief executive; or
    - for new settlement or an additional area to be distributed through Chapter 4 Part 1 of *the Land Act 1994*
2. The lease is subdivided to enable the disposal of the entire lease to assist property build-up or other pastoral, agricultural or grazing lands in the locality in which the lease is located.
3. The subdivision is to rearrange contiguous lots to provide for improved cadastre or natural resource management.

The policy further states that the subdivided lots must remain a viable entity or be amalgamated with, or tied to, other lots within the aggregation. Further, it states that no more than two lots should be created.

The policy came about as a result of historic closer-settlement policy which resulted in the creation of small rural lots that were unable to withstand market and climatic fluctuations to generate sufficient revenue. These occurrences resulted in a number of issues. Firstly it created a range of lessees that were forced to either build up their small lease or leave the property. There is also evidence to suggest that the creation of these small lots resulted in land degradation. Today's policy is presumably to prevent a recurrence of this event and to prevent the creation of an overabundance of smaller lots which are considered to only be of value as 'starter' blocks or for rural lifestyle opportunities.[43]

[42] Qld Department of Environment and Resource Management. (2007). *Lease Subdivision PUX/901/528 Version 2* (SLM/2005/1928 – Version 2). Brisbane: Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3325/slm_2005_1928.pdf

[43] *Ibid*.

In recent years AgForce has received numerous complaints from lessees looking to subdivide, or convert a lease, who do not meet the historic living areas standard and therefore have their applications rejected. As stated earlier, the living areas standards have not been reviewed in over 15 years and are therefore of questionable relevance today. Notwithstanding this, lessees who have been able to financially show evidence as to the viability of a lease portion have been prevented from being granted approval for subdivision.

With respect to the living area standard application to aggregations, given the department's admission that this has not been enforced for many years, 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. Further, the living areas policy has at times attracted criticism for being 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). The majority of the negative impacts considered and discussed in Wolfe are clearly no longer applicable. In particular the inefficiency argument; the statement that rents are not a constraining factor, and the statement that demands for new land comes mainly from family units are clearly incorrect.

While AgForce is supportive of an approach that minimises the subdivision of agricultural land into small parcels, there are other, more effective means of regulating this than through tenure control.

With respect to the living area standard application to tenure subdivisions, where a lessee can demonstrate that the subdivision will result in a commercially and environmentally viable enterprise (regardless of whether it meets the living area standards) it should be approved.

4.1.2 Corporations & trusteeships

The *Land Act 1994* (Qld) currently places a range of controls on the ability of corporations and trusteeships to hold and manage tenure. Table 9 below outlines some of these restrictions:

Table 9.
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.

At May 2011, there were close to 2,500 rural leases (13.3 % of Queensland) that are subject to the corporations and aggregations restrictions in the *Land Act 1994* (Qld).

Successive Queensland Governments have shown staunch opposition to the removal of these restrictions. It is understood that in late 2011 a proposal was narrowly defeated in Cabinet to remove these provisions.

The restrictions have been a contentious issue for AgForce with many family-owned members opposing any change to the policies and some (particularly corporate members) in favour of a less-restrictive tenure approach. Historically, AgForce and its predecessors (including the United Graziers Association) have supported the retention of the restrictions on the grounds that they continue to

support the family-farm unit which is representative of the majority of the membership base. Since the formation of AgForce, the organisation has come under pressure from some members to approach government seeking removal of the provisions.

In 2011, AgForce reconsidered the restrictions with feedback sought from a range of internal groups. Ultimately the AgForce State Council held that they were in favour of the retention of provisions limiting corporations to hold restricted tenures.

Notwithstanding this, AgForce supports an approach which sees increased security of tenure through greater conversion opportunities and any freeholding program should not exclude corporations.

4.1.3 Additional areas

Some leases contain restrictions which prohibit any sale that is independent of another property. This policy[44] which is known as the additional areas policy came about from a concept which was introduced in the 1920s to enable lands reverting to the state to be made available as a separate lease to build up smaller properties. These leases were made available on condition that they could not be sold separately from the primary property.

In the early stages of policy implementation it was a requirement that the additional area had to be contiguous. This was later replaced with 'in the neighbourhood' and for many years was interpreted as within 50 kilometres to an upper limit of 100 kilometres of the original property, depending on the locality.

Additional area ties have often been used as a condition of private subdivision, and in instances where uneconomic blocks were derived from the private subdivision of leases the state required that the subdivided lease be amalgamated or worked in conjunction with other lands that together constituted an economic enterprise unit. Under this arrangement the additional areas policy provides that a condition precluding separate sale is added to these leases.

The additional areas policy was a feature of packages such as the South West Strategy (a structural adjustment process), in which a number of land administration changes were implemented to decrease costs involved in aggregating parcels and also to facilitate procedural reform in tenure

44 Qld Department of Environment and Resource Management. (2007). *Additional area covenants and conditions PUX/901/529 Version 2* (SLM/2005/1929 – Version 2). Brisbane: Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3326/slm_2005_1929.pdf

administration. In a number of cases in the South West Strategy and Desert Uplands Build-up Schemes, funding was made available on the condition that the lessees agree to the inclusion of a sale restriction.

The South West Strategy also discussed and advocated for the setting of policies on subdivision by local government.

AgForce does not have detail on the current number of leases with additional areas ties and how many of these leases share boundaries. This detail is required in order to make considered comment on the potential reform that could be implemented to improve efficiency.

Suffice it to say, the additional-areas policy has resulted in a complex array of ties being placed on leases. As a general rule AgForce submits that the ties serve little relevance, and any risk on enterprise size should be borne by lessees.

AgForce submits that

- Where blocks are contiguous/share boundaries they should be amalgamated as part of the one lease to remove inefficiencies and be eligible for tenure upgrades as part of any freeholding/tenure conversion process which may arise from this review. Such a process would have to be cost effective to encourage uptake and should take into consideration future administrative savings.
- At the lessee's discretion, where existing additional areas are non-contiguous that a review process be put in place to consider how additional ties can be removed. This would allow for the independent transfer of leases, and potentially amalgamation with contiguous tenures, thereby resulting in an improvement in property sizes and operational efficiency.

4.1.4 Diversification

Under the *Land Act 1994* (Qld) lessees of agricultural leases are able to undertake all forms of primary production and horticulture, viticulture, broad hectare cropping, feedlots, aquaculture, farm forestry, and the farming of pigs and poultry are considered "as of right" uses under the definition of agriculture.[45] Under the current policy, any additional purpose must be complementary to, and not interfere with, the purpose for which the lease was originally issued.

Diversification policy PUX/901/337 states that:

[45] 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

> 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.

The policy states that where a lessee proposes to diversify to the extent that the new activity becomes the dominant activity, options such as the freeholding of the lease or excision of an area for the new activity should be considered. However, the department's penultimate decision will be guided by the most appropriate tenure and use of the land. In a number of cases, the department has imposed lease conditions under s 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.

Changing the operations on a lease may result in a change to the rental category except where the additional impact is considered low impact – ie. farm-based tourism, filmmaking, and nature conservation.

AgForce has received a number of complaints regarding the current diversification policy, particularly from people who sought to jointly conduct grazing and aquaculture on their lease. In these instances there appears little practical argument to stop such development. Diversification of enterprise is a key, but often elusive, goal for many rural enterprises, and AgForce opposes anything that would impinge on what is likely to result in a more viable and resilient enterprise. Hence, it is recommended that the simplest way to remove restrictions, such as diversification, is to move restricted tenures, such as leasehold, to a less-restrictive tenure type (i.e. freehold).

If the legislation is truly based on the working to the 'highest and best use' of land, then it is questionable why genuine applications can be denied where the additional purpose 'results in a significant change'. This would indicate another justification for moving to a different tenure type rather than restricting innovation.

4.1.5 Infrastructure

Despite having been installed and paid for by lessees, under the *Land Act 1994* (Qld), upon lease expiry, infrastructure on the lease becomes the property of the state. The lessee has the right to remove all moveable improvements within a period of three months from the forfeiture, surrender, or expiry of the lease.

4.1.6 Indefeasibility of title

Australia's land system is known as the Torrens system. This is a system of title to land by registration and conveyance by instrument. It has some inherent features including:

- Allowing for registration of all dealings in respect of lots to be registered on one certificate of title entered into a register which is the conclusive evidence of title.
- Providing that a bona fide purchaser for value from a registered proprietor who enters his transfer in the register acquires an indefeasible right, notwithstanding the infirmity of his author's title.

The latter provides that a rightful owner deprived of that interest in land will be compensated for their loss and hold a right to recover monetary damages. In practice, this guarantee is underwritten by a state compensation/assurance system. While 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.

The *Land Act 1994* (Qld) does not contain any provision for dealing with the quality of the registered interests created. That is. it does not grant indefeasibility of title. Nor does it provide for a method of compensating a party for loss arising as a result of that party being deprived of their interest in the land. As a result, Queensland lessees are not afforded the usual rights of indefeasible title and subsequent access to compensation that is experienced in other Australian jurisdictions.

Cradduck and Blake (2011) have noted that the lack of indefeasibility is perhaps most obvious when considering the differences in permissible leasing practices between freehold and Crown land.[46]

> 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 (Cradduck & Blake, 2011, p.6).[47]

[46] 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), 1-10.

[47] *Ibid*., p.6.

Other business journals on this issue have noted that similarly, an option to renew a sublease of Crown land contained in a subleasing contract does not automatically form a part of the registered legal sublease as each lease requires specific approval. Further, an option to renew a sublease of Crown land, although contained within the sublease document, does not automatically form part of the registered legal sublease as each lease requires specific approval.[48] Options therefore do not have the indefeasibility of an option contained within either a short-term or a registered freehold lease.[49]

The absence of infeasibility 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 freehold titleholders. This inequity is one faced only by Queensland lessees as all other state lessees in other jurisdictions have been granted indefeasibility of title.

State land should be brought 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.

4.2 Comments on Specific Tenure Limitations

4.2.1 Term (Delbessie) leases

4.2.1.1 History of state rural leasehold land strategy

The Delbessie Agreement (also known as the State Rural Leasehold Land Strategy (SRLLS)) was the result of over 10 years of negotiation between AgForce, the Queensland State Government under Labor, and a number of conservation and indigenous groups. It was finally agreed to in December 2007 and is comprised of a framework of legislation, policies, and guidelines supporting for the renewal of rural leasehold land for agriculture.

The negotiating phase of Delbessie took 10 years due to disparate views and was focussed heavily on assessing the land condition of leases. Some of the major points of disagreement between parties included:

[48] Ibid, p. 6
[49] Ibid, p. 6

- The majority of conservation groups did not support a lease term of longer than 10 years. This was ultimately negotiated as the current 30/40/50-year renewal processes following realisations of the lack of security that would have been caused by granted 10 year renewals and the fact that this would not have represented a viable business prospect.
- The state and conservation groups were keen to retain the ability to resume leases upon expiration for protected areas. This was ultimately negotiated to change to the current 'future conservation area' policy requirement which requires the state to provide at least one term's notice of any intention to resume a lease for protected areas.
- The incentives offered to achieve longer leases. AgForce's view is that the incentives offered to achieve longer leases (i.e. ILUA and nature refuges) limited update due to the high level of negotiating difficulty. This has proven be to correct.
- There was substantial opposition from the conservation sector to conversion of term leases to perpetual or freeholding leases due to perception that government needs to retain control over activities on the land.

4.2.1.2 AgForce experiences and observations with Delbessie during implementation

For the last five years, AgForce Projects (the training arm of AgForce Queensland) has run a government-funded project to assist producers in renewing leases under the Delbessie Agreement. This has taken the form of free information sessions across the state outlining the Delbessie process and the provision of confidential advice to graziers in the process of renewing leases. Through this experience, combined with feedback received through branch meetings, member discussions, and other policy forums convened by AgForce Queensland, a range of feedback on the process has been collated below.

Positive Feedback

- The Delbessie process is one of the only that has proactively worked with landholders, actually visiting properties, and attempting to address any deficiencies in land management and/or condition.
- By the end of March 2012,[50] 202 out of 246 leases have been assessed as in good condition. This may have come as a surprise to many who felt the leasehold estate was in poor condition. However, for AgForce, it confirmed previously unverified views that the majority of the leasehold estate is well cared for.

Negative Feedback

- There has been substantial feedback regarding the failure to use plain English and include short, practical, management options in written Land Management Agreements (LMAs). Once a land assessment is completed, the department will send a landholder an LMA which

[50] R. Hassett, *Implementation progress as at March 31, 2012*. (personal communication, April 27, 2012)

can be legalistic in nature rather than written as a practical set of principles able to be implemented on the ground.

- In addition, some of these agreements contain complex science terminology and desktop data which has not been ground truthed and often has no physical linkage to what happens on the property, or both. While these desktop assessments are presented to the lessee for discussion, in many cases it can take substantial time to identify and correct errors in mapping and desktop assessments, or both.
- In most cases, lessees are presented with lengthy LMAs. In many cases, these LMAs, which the landholder is required to translate and apply on the ground, are over 100 pages in length. This was not something endorsed by AgForce during the Delbessie negotiations.
- On some occasions, the department's renewal process has failed to consider external factors on a lease such as mining. As CSG and mining activities expand in Queensland more lessees are going to be affected by this issue.
- Costs of resurveying. There have been a number of cases where property owners have been asked to have surveyors define the legal boundary, at their own cost, as a condition of renewing the lease. In all cases that AgForce has seen, the lessee has been required to foot all costs of resurveying, even when the requirement has arisen from a joint issue between the department and neighbouring properties (i.e. the department has resumed part of a lease but in doing this did not survey appropriately at the time of resumption). This has resulted in bills of over $40,000 in some instances. To add further difficulty, the ability of graziers to source surveyors in regional areas comes at premium costs, and services can be very difficult to obtain in the timeframes required for renewals.
- There has been limited uptake of Indigenous access and use agreements (IAUAs) and Nature Conservation agreements incentives in Delbessie. Due to the complexities and costs in obtaining an IAUA few lessees have taken up the opportunity to extend their lease to 50 years. In addition, many lessees do not feel they need to get a nature conservation agreement over land they have managed well since the lease began and which they intend to continue managing well.
- The future conservation areas (FCA) policy has allowed the relevant environment department to not renew leases on some of the best cared for areas of leasehold estate. The FCA policy means that where governments wish to acquire identified leasehold land they must negotiate the purchase of all or part of the lease with the lessee at market value (inclusive of improvements) prior to lease expiry. Where negotiations are not concluded, the lease is renewed and the desired land reserved as a 'future conservation area' in the new lease. These renewed leases are also usually subject to lengthy conditions on the management of identified FCAs for the lease term.
- The FCA policy has caused significant angst in the grazing communities and has been seen by industry as penalising lessees who have managed land well by taking land away from them. For lessees who are unable to reach agreement on compensation for the identified FCA, and therefore incur a lease which specifies that the department can take the FCA away at the

expiry of that term without compensation, this has caused financial stress on lessees, particularly where the remaining lease portion does not constitute a viable enterprise.

- The duration of the renewals process is overly lengthy. The department currently recommends that lessees commence the process at least two years prior to lease expiry in order to gain a renewal.

- The renewals process at times has been constrained by resourcing, and therefore time, which has proved difficult for lessees who have sought an expedited renewal. That is, where the lessee may be selling or needs to transfer the lease. While the department accepts some reasons for early assessments, including where renewal is required as security for a bank loan, saleability enhancement, as part of succession planning, or as part of an estate, in some instances there have been cases where the inability to renew in a timely manner has financially impacted lessees.

- LMAs utilise good advice 'of the day', and there has been some criticism that in the long term this may end up being disproved, hence affecting the final land condition. In the past, similar advice pertaining to issues such as stock management, stock type, fire management, clearing practices, and the growing of exotic plants (i.e. prickly acacia and hymenachne) and pastures has caused significant long term issues for graziers when it is ultimately proven to be not best practice.

- There has been a general failure to integrate LMA requirements with other legislative requirements. Despite agreement, during the original Delbessie negotiations that the LMA could be integrated with other legislative requirements, this has not happened. For lessees to meet some of their LMA obligations they need to work with other legislation. For example, the *Vegetation Management Act 1999* (Qld) under which they need to stop encroaching vegetation in grassland regional ecosystems, stop vegetation thickening, manage fire, and clear weeds in remnant areas. In addition they may need to clear native vegetation to improve pasture management by installing new fences and water points. Putting in new water points could also be linked with wetlands regulation and *Water Act 2000* (Qld). AgForce has seen little work on the integration of these other legislative requirements into the LMA, despite it being several years since implementation of the program.

- There has been a widening in the scope of the renewals process. It appears that a number of government departments have seen some of the successes of an on-ground program working with lessees and attempted to use LMAs/the Delbessie process to achieve a variety of additional purposes which are not purely aimed at renewing leases. For example, in 2011 Minister Vicky Darling agreed that a review on biodiversity would be conducted on the SRLLS to ensure leases were meeting the state's biodiversity objectives. Similar observations can be made of the current lengthy biodiversity assessments done as part of the renewals process.

AgForce believes that if tenure upgrades are not available for term leases, that an overhaul of the current renewals/Delbessie program should be performed, recognising that most lessees are good

land managers. The overhaul should be aimed at realigning the program to meet the primary purpose of renewing leases issued for agricultural purposes. This should include:

- Significantly simplifying and shortening the LMAs.
- Reducing the timeframes for renewal.
- Removing the need for lessees to resurvey for lease renewals.
- Reinvestigating more appropriate incentives for additional terms.
- Removing the current FCA process.
- Removing the need for desktop biodiversity assessments.
- Writing LMAs that allow for new science to be implemented and that do not penalise producers for implementing science which may later be proven to be incorrect.
- Better integration of other legislative requirements into LMAs where it provides efficiencies for lessees and the department.
- Removing the 80% rule for tenure upgrade applications

4.2.2 Forestry leases and permits

In addition to leases granted under the *Land Act 1994* (Qld), many of AgForce's members hold a range of grazing leases and permits, often issued pursuant to the *Forestry Act 1959* (Qld). These permits and leases entail their own issues and history.

4.2.2.1 South-East Queensland regional forests agreement & Western Hardwoods plan

Under a process (agreed to by conservation groups, the Queensland government, and the Queensland Timber Board in 1999) known as the South-East Queensland Regional Forests Agreement (SEQRFA), many of AgForce's members lost grazing rights to Forestry Areas. The SEQRFA saw the transition of forestry and other protected areas into National Park, and in doing so made an arbitrary decision that grazing was incompatible with this use. Since 1999, the grazing rights on these areas have been wound back or allowed to expire and not be renewed. Often this has been done through a practice of converting pastoral leases into 'Permit to Occupy'. These permits provide no security or tenure to landholders and put at risk millions of dollars of assets and pastoral and infrastructural improvements. They do not encourage producers to invest in management of the land or infrastructure but instead encourage producers to carry out only the bare minimum of work to ensure that they meet their responsibilities outlined by the terms and conditions of their permits.

In a 2004 election deal between the Labor Government and conservationists, a decision was made to remove grazing from an additional 1.2 million hectares of selected forestry to convert it to National Park. This deal was known as the Western Hardwoods Plan and aimed to increase biodiversity and

enhance conservation. Under this plan an estimated 280 graziers would lose their grazing permits. Nearly nine years on, graziers in these Western Hardwoods areas have received no notification from any government about whether their rights will be renewed. In many cases the actions taken by the previous government to proceed in terminating state forest 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.

In many instances these permits and leases have been in families for generations and have through time proved to be compatible with the continuation of sustainable timber harvest. Despite some lessees having 30- and 40-year leases, that have nearly a decade until expiration, the lack of security these political decisions have created has substantial financial implications for individual lessees. The majority of AgForce members holding these leases have recognised the need to exit from these leases. However, despite investing years in infrastructure and other improvements, are denied the ability by banks to use the leases as equity to borrow for a more secure freehold property.

Data collected from an AgForce survey[51] reveals that 59.4 % of businesses will be severely affected by these conversions, with 34 % of these becoming unviable.

In most instances, due to the lack of funding available for management of this land, this decision has resulted in a rise in fuel loads and other pest and weed management which was previously borne by the lessee. Given the recent good seasons the increase in fuel load represents a significant risk to most rural enterprises .The decision has also resulted in a loss in revenue available to the state government and local government through rents and rates respectively, as these were previously paid by lessees.

Undoubtedly producers are the best managers of these forests as they have a vested interest in ensuring the land remains productive and fertile. AgForce argues that producers conduct the most effective management regimes for feral pests and weeds, fire management, and other land conservation practices, and that there would be no net benefit for government or industry should these State Forest areas be converted to National Parks. AgForce also notes that while grazing has been, or will be, excluded from these areas, resource activity will not.

AgForce has requested a renouncement to the Bligh Government's policy of phasing out grazing on forestry leases in Western Hardwoods areas and the reintroduce of grazing onto forestry land thereby reinjecting revenue into state and local government treasury (through payment of rent and

[51] AgForce. (2011, Jan). Unpublished data.

rates respectively). Further, AgForce advocates that investigation be done on the potential for the reintroduction 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.

AgForce also believes that new tenure arrangements for grazing leases and permits in forestry areas be implemented to provide long-term investment security.

4.3 Tenure conversion and barriers to more secure tenure

Currently, in order to achieve more secure tenure and avoid rentals, lessees must upgrade their tenure. However, as discussed below, there are a number of significant barriers in order to do so.

Conversion of tenure, as provided for under the *Land Act 1994* (Qld), to a more secure tenure is only allowed where the prescribed criteria have been satisfied and where the state deems the tenure is consistent with the most appropriate use of the land. Under the current legislation and policy, where criteria are met, [52] the following leases can be converted:

- perpetual lease to freehold;
- term lease to a perpetual lease; and
- term lease to freehold.

4.3.1 Term to perpetual lease

Conversions of term leases for pastoral purposes to perpetual leases are not considered unless the following, in order of priority, has been satisfied as a prerequisite to any offer:

- native title has been resolved either by evidence of extinguishment, or presentation of an ILUA that extinguishes native title, or a successful non-claimant application, to the satisfaction of the Minister;
- the land is in good condition;
- the land has been determined to be resilient; and
- all public interest and planning requirements have been identified, and all other statutory requirements have been met.[53]

[52] Qld Department of Environment and Resource Management. (2008). *Conversion of leasehold tenure PUX/901/334 Version3* (SLM/2002/104 – Version 3). Brisbane: Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3402/slm_2002_104.pdf

[53] Qld Department of Environment and Resource Management. (2010). *Applications for conversion of leases over rural leasehold land to a perpetual lease notification* PUX/952/115 Version 1 (SLM/2010/4149 – Version 1). Brisbane: Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/4149/slm_2010_4149.pdf

Offers of perpetual leases for term lease currently require lessees to enter into LMAs.

4.3.2 Perpetual lease to freehold

A grazing homestead freeholding lease (GHFL) may be issued for conversion of a grazing homestead perpetual lease (s 469 *Land Act 1994* (Qld)). In accordance with sections 469, 471 and 478 *Land Act 1994* (Qld), lessees of those grazing homestead perpetual leases, non-competitive leases, and special leases that existed at the commencement of the *Land Act 1994* (Qld) may elect, if successful in gaining approval to convert to freehold, to pay the purchase price by instalments.

Where a lessee elects to upgrade to a freeholding lease they must pay the purchase of freeholding by instalments to the state:

- within a maximum term of 30 years; and
- where the payment value includes the market value of commercial timber by instalments on terms stated by the Minister

4.3.3 Term lease to freehold

A freeholding lease (i.e. a lease which allows the lessee to pay the purchase price by instalments) may only be issued for conversion of:

- a non-competitive lease (s 471 *Land Act 1994* (Qld))*;* or
- a special lease (s 478 *Land Act 1994* (Qld)).

Both lease types are issued under the (repealed) *Land Act 1962* (Qld). A term lease (not issued for pastoral purposes) to freehold may only occur when 80 % term lapsed.

4.3.4 Discussion on the barriers to tenure conversion

4.3.4.1 Discounting regime

The current discounting regime provides a discount of up to 25 % for upfront payment of the purchase price. Prior to the introduction of the *Land Act 1994* (Qld), this discount was up to 68 % of the land's UV.

4.3.4.2 Offer-Acceptance conditions

AgForce has heard of lengthy delays in the Department in responding to applications to freehold leases, with many lessees waiting years with no response to the initial application. Under the current policy, offers to freehold are issued with a strict 30-day acceptance period, providing lessees with limited time to avail themselves of the often substantial costs required to pay the purchase price.

4.3.4.3 Native title

One of the largely unresolved barriers in converting from a term lease to a perpetual lease, or freehold title, is native title. The large majority of Queensland is currently covered by native title claims.

The High Court decision of Mabo in June 1992 held that Australia's common law recognised a form of native title to the land. It was deemed that governments could extinguish native title by legislation, through the grant of a tenure or by using land in a manner that was inconsistent with native title.

Following the decision of Wik[54], Ward[55] and the subsequent enactment of both state and commonwealth Native Title Acts, a number of decisions on statutory interpretation were made regarding the application of native title to various Queensland leasehold tenures.

At the time of this statutory interpretation, AgForce sought legal advice regarding the potential for the creation of a perpetual lease that does not extinguish native title. For a summarised version of this legal advice see the boxed text overleaf. Acting upon this advice AgForce proposed this solution to government however it was not agreed to; despite the obvious benefits that such a title might bring to the claims determination process.

Under the current provisions preventing non-claimant claims it is difficult to get final determination on whether native title is extinguished over rural leases or whether it must be addressed through ILUA when there is no claimant party. This means that landholders seeking to lodge non-claimant claims must self-fund this process at an estimated $150,000 to $300,000 cost.

In 2010/11, the department, AgForce Queensland, Queensland South Native Title Services, and North Queensland Land Council collaborated to develop the Pastoral Indigenous Land Use Agreement (Pastoral ILUA) template. The template means that landholders considering reaching access agreements with local indigenous people now face a much simpler process, and native title claimants who can demonstrate an ongoing relationship to their tribal lands are able to access pastoral properties for traditional purposes.

Perpetual Leases and Native Title in Queensland: AgForce advice

[54] *Wik Peoples v State of Queensland*, HCA 40, 187 CLR 1, 141 ALR 129, 71 ALJR 173 (1996, Dec 23).

[55] *Western Australia v Ward*; HCA 28, 213 CLR 1, 191 ALR 1, 76 ALJR 1098 (2002, Aug 8).

What are the native title implications if an existing term lease for pastoral purposes is converted to a perpetual lease for the same purpose in Queensland?

1. The answer hinges on whether the conversion is a future act for the purposes of the *Native Title Act 1993* (Cth) [the "*NTA*"].

2. A future act is an act done after 1 January 1994 (the date of the commencement of the *NTA)* which affects native title.

3. An act 'affects' native title if it extinguishes or is otherwise wholly or partly inconsistent with the continued existence, enjoyment or exercise of native title. The word 'act' is defined widely in the *NTA* and includes the granting of leases.

4. For there to be a future act there must be some native title to affect. For the purposes of answering the question it will be assumed that native title does exist on the term lease for pastoral purposes.

A Future Act?

5. The grant of a term lease for pastoral purposes over an area of land has extinguished some native-title rights but not all native-title rights.[56]

6. There is an argument that simply converting a pastoral lease from a term for a specified number of years to one in perpetuity cannot impair the "continued existence, enjoyment or exercise" of the surviving native title.

7. However, Shane Doyle SC in an advice to AgForce dated 16 May 2003 opined that "it is likely to be held that (other things being equal) the conversion of a pastoral lease to a perpetual lease will affect native title (assuming any survive the grant of the pastoral lease in the first place)."

8. The state government is of the same view as Mr Doyle SC.

A permissible Future Act?

10. Section 24AA of the *NTA* provides that a future act will be valid to the extent covered by 12 specified sections – including section 24IA (acts involving renewals and extensions etc. of acts).

11. The grant of a perpetual lease can be valid under the *NTA* (as it falls within section 24IC) provided there is compliance with subsection 24MD(6B) of the *NTA* as the grant of a perpetual lease is treated as if it is a compulsory acquisition of native title.

12. Subsection 24MD(6B) prescribes a regime that must be followed by the state government before it can grant a perpetual lease (including notification and consultation with objectors).

13. For this reason the state government does not rely on section 24IC but instead insists on a lessee obtaining the consent of the native-title holders to the grant of the

[56] That is the effect of the High Court's rulings in *Wik* and *Ward.*

perpetual lease in an Indigenous Land Use Agreement (ILUA). That compels the lessee to negotiate the conditions on which consent will be given.

Can a Perpetual Lease be Qualified?

14. As native title is affected where an act is in some degree inconsistent with the enjoyment of the native-title rights, a lease ought to be capable of being drafted in such a way as to make clear it does not confer rights which would in any way operate inconsistently with native title.

15. Mr Doyle SC in his advice suggested as a possible clause in a perpetual lease for pastoral purposes:

> *"This lease shall not affect in any way, rights of native title still held in the land as at the date of the grant of this lease, nor shall it grant a right of exclusive possession such as to exclude native title rights."*

4.3.4.4 Survey standards

Prior to the issue of a deed of grant, or a freeholding lease, land must first be surveyed according to the survey standards of the day. The preparation of the survey plan is the responsibility of the lessee and often comes at significant costs – sometimes in excess of $100,000. The determination of any additional survey requirements usually comes during a conversion assessment and can even come during the renewal of a term lease in cases where the survey is held to be unsatisfactory. Survey standards can be found to be unsatisfactory, but commonly this may occur where a road reserve or lease has been resumed from the larger lease for a third party. Even in such instances it is the lessee who foots survey costs.

Only in instances where the survey of public requirements is to identify the location of existing infrastructure (that is, infrastructure that is located on the leased land prior to the date of application for conversion), would the local government or agency be expected to be responsible for the survey costs of the land required for such infrastructure.

Today it is the *Survey and Mapping Infrastructure Act 2003* (Qld) which provides for the making of standards and guidelines for achieving an acceptable level of survey quality (para 3(2)(a)). Under this Act, land-boundary surveys are required to be performed by people registered with the Surveyors' Board of Queensland. Throughout Queensland, the department holds an archive of all survey plans dating back to when Queensland was still a colony, and these are searchable with images of the plans available digitally.

The survey methods used last century in many instances involved planning survey posts at the corner of properties and cutting 'shields' into trees to reference the corners. This rudimentary survey quality is likely to be the best across much of the rural leasehold estate in Queensland. This poses issues for new surveys, especially in areas of steep terrain and thick vegetation and where fire or age has removed 'shields'. This is exacerbated by the fact that original surveys usually did not follow natural land marks. Today, reference marks are placed in corners, but usually permanent survey marks are placed in the ground.

In Queensland the department has historically not provided any leeway on meeting the set survey standards of the day. They have however provided resourcing in situations where large survey programs were required. For instance, to resolve the survey standards required to grant ILUAs for the Eastern Kuku Yalanji People and other stakeholders in the Mossman-Cooktown area, the Department of Environment and Resource Management Cairns office provided two, full-time, specialised officers in land tenure for a period of three years from 2007. These officers were able to offset the cost of private survey contracts.

Any conversion program would need to address the significant impediment that survey standards represent. Such a review should seek to reduce the cost of survey while achieving a reasonable level of security required for freehold whilst recognising the scale of rural properties and the technical capability availability in survey standards.

4.3.4.5 Access

Another requirement of any conversion to freehold is dedicated access. This can be achieved via:

1 Creation of an easement over adjoining land with dedicated access.

2 Grant by the Supreme Court in terms of the *Property Law Act 1974* (Qld) of a statutory right of user order for an access right in perpetuity imposed upon servient land (freehold only) and registered.

3 A covenant to tie the deed of grant to be issued to provide for no separate transfers to adjoining freehold, freeholding lease, or perpetual lease with dedicated access and owned or leased by the lessee of the lease being converted.

4 A freehold survey plan amalgamating the lessees adjoining freehold land with dedicated access.

4.3.4.6 Statutory & planning considerations

Under the current process, departmental tenure evaluations must take account of state, regional, and local planning strategies and policies and the objectives of the *Land Act 1994* (Qld).[57]

When allocating land, for an appropriate use, the department will consider retaining the land as leasehold or as a reserve where it has determined that there is a need for additional oversight of the management and use of the land. Where land and its values are adequately protected by the regulatory framework, freehold tenure may be applied.[58] [59]

Accordingly, where conversion to freehold does occur, covenants and other instruments can be used to protect or manage natural resources, cultural heritage, or other significant value, thereby creating additional complexity in the tenure system.

Assessments will also take into account:

1) Attributes of land including the environmental, social, and economic values of the land and opportunities and constraints based upon land capacity (capabilities) and condition.
2) Views and rights of interested parties - this may require a consideration of interest holders' views (including lessees, native title holders, secondary interest holders such as a grantee of an easement and holders of rights and interests under the *Mineral Resources Act 1989* (Qld)) and consideration of the views of interested parties such as state and local government agencies and, at times, conservation groups, community groups, and adjoining property owners or managers.
3) Strategies and Policies - e.g. regional plans and local-government planning schemes need to be checked to determine if the proposed use is consistent with a use under the relevant strategies and policies. Again, expert advice will be largely relied upon to provide information. For example, the relevant local-government agency will provide advice on whether a proposed use is consistent with its planning scheme and policies.
4) Appropriate Use of Land. Community use – what is the most appropriate tenure where the land is found to have significant inherent values that warrant specific protection for and/or access by current and future generations.[60]

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[57] At ss 16(2)

[58] Qld Department of Environment and Resource Management. (2009). *Deciding the most appropriate tenure of state land: Guideline for state land asset management notification no. PUX/952/106 Version 1* (SLM/2009/3743 – Version 1). Brisbane: Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3743/slm_2009_3743.pdf

[59] Qld Department of Environment and Resource Management. (2010). *Land allocation: Deciding most appropriate use, tenure and management PUX/901/101 Version 3* (SLM/901/101 – Version 3). Brisbane: Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3308/slm_901_101.pdf

[60] *Ibid.* 54, at p.6.

The current policy deems that leasehold may be deemed the most appropriate tenure where the state believes it needs to retain oversight of the use of the land, for example where:

- Specific legislation does not allow the issue of freehold, e.g. land seaward of a tidal boundary.
- There is specific government policy to retain oversight of land by the state, e.g. on islands, or where it is desirable in the public interest to place some condition or requirement upon a volumetric title.
- Environmental values or natural features and/or resources on, or associated with, the site require management which cannot be adequately provided via existing regulatory mechanisms.
- The land is degraded or at risk of degradation.
- The state wishes the development on the land to proceed in a certain and timely manner.
- The most appropriate use and tenure has not yet been finally determined, or a suitable long-term manager is not yet available, and a short-term interim tenure provides a temporary management arrangement.

The real relevance of many of these historical policies to today's rural leasehold estate is dubious. For this reason a generational and comprehensive review is recommended with a view to removing restrictions and limitations in favour of a market-based approach to tenure.

Appendix: Rural Leasehold Land: Australian Jurisdictional Comparison

AgForce Queensland

5 Introduction

The purpose of this document is to gain a better understanding of the systems used to administer and calculate rent on rural Crown lands throughout a number of Australian jurisdictions.

The Australian Capital Territory, Victoria, and Tasmania have been excluded from this comparison due to the limited leasehold tenure in these states and territories.

All references to 'Act' refer to the legislation noted in 'relevant legislation' in that particular section.

6 Australian Jurisdictions

6.1 Queensland

6.1.1 Relevant legislation

Lease conditions, tenure, and renewals are defined in the *Land Act 1994* (Qld) and associated *Land Regulation 2009* (Qld). The *Land Regulation 2009* (Qld) is a key element of the legislative regime governing the rental arrangements for state land, including the grouping of leases according to categories of land use, the rental percentage rates applicable to each category, and the provisions regarding minimum rents and the payment of rent generally (including financial hardship provisions).

Rural rent payments are derived from a formula using unimproved value (UV or UCV interchangeably) which is calculated under the *Land Valuation Act 2010* (Qld).

The objectives of the *Land Act 1994* (Qld) s 4 are listed as:

- Sustainability – sustainable resource use and development to ensure existing needs are met and the State's resources are conserved for the benefit of future generations;
- Evaluation – land evaluation based on the appraisal of land capability and the consideration and balancing of the different economic, environmental, cultural and social opportunities, and values of the land;
- Development – allocating land for development in the context of the State's planning framework and applying contemporary best practice in design and land management. When land is made available, allocation to persons who will facilitate its most appropriate use that supports the economic, social, and physical wellbeing of the people of Queensland.
- Community Purpose – if land is needed for community purposes, the retention of land for the community in a way that protects and facilitates the community purpose;
- Protection – protection of environmentally and culturally valuable and sensitive areas and features;
- Consultation – consultation with community groups, industry associations, and authorities is an important part of the decision-making process;
- Administration – consistent and impartial dealings. Efficient, open, and accountable administration. A market approach in land dealings, adjusted when appropriate for community benefits arising from the dealing.

Leasehold land purpose, administration, and dealings have changed substantially since it was first granted. For a background on pre-Delbessie land reform in Queensland, refer to **Error! Reference source not found.**.

6.1.2 Administration

The Department of Environment and Resource Management (DERM) administers lease renewals, conditions, valuations, and rentals. The Minister for DERM has established the State Rural Leasehold Land Ministerial Advisory Committee (SRLLMAC), (*Land Act 1994* (Qld) s 394), to

- provide strategic advice about management and use of leasehold land;
- advise on the effectiveness and appropriateness of practice guidelines, policies, and legislation to achieve sustainable management;
- oversee delivery of Delbessie's key priorities and targets;
- facilitate communication with stakeholders and promote ownership of the state;
- undertake advocacy role for the implementation of the strategy; and
- advise on a range of other matters including (a) development of science and technical capacity; (b) development, implementation, and review of land management agreements; (c) policies about management and use of leasehold land; (d) preparation of guidelines for natural-resource condition assessment including definition of 'good condition'; (e) appropriate incentives for achieving long-term sustainability; and (f) appropriate timeframes for recovery/change in landscape.

The SRLLMAC is comprised of a chair; an industry representative; an indigenous representative; an environmental land management/nature conservation representative; Departmental representatives from each of DNRW, DPI, and EPA; a social science representative; an NRM member; an agricultural-science member; and an NRM regional bodies representative. Appointments are made for terms of three years. The Committee was first established in 2007.

6.1.3 Lease purpose

Defined under *Land Regulation 2009* (Qld) s 9, Category 1 leases may be used primarily for grazing or broad hectare agriculture. In addition, a lease for grazing purposes over a state forest or a reserve is a category 1 lease. There are a smaller number of category 2 leases which are granted for intensive (non-broadhectare) primary production (*Land Regulation 2009* (Qld) s 10).

6.1.4 Lease terms and renewals

If all statutory elements of the renewal process are satisfied, and it is determined that the most appropriate land use is long-term agricultural, grazing, or pastoral purposes, lessees are eligible for a

30-year renewal. A 40-year lease may be offered where the land is in good condition. A 50-year lease may be offered where the land is in good condition and the lessee has negotiated an Indigenous access and use agreement (IAUA) or a conservation agreement/covenant.

During the six-year period (2007–2012), 65 % of these leases will be eligible for renewal.

6.1.5 Lease transferability

In the event of a lease transfer, the new lessee must comply with the terms of the current land-management agreement.

6.1.5.1 Tenure reviews, reform, & conversion opportunities

A summary of the history of changes made to land policy in Queensland is contained in Appendix 1 of this report.

Wolfe Review

In 1990 the Queensland Government established a committee to examine and report on land policy and administration in Queensland. Chaired by Patsy Wolfe, the Committee advocated a range of reform measures through the Report on Land Policy and Administration in Queensland (Wolfe, Murphy, and Wright, 1990) which ultimately resulted in the *Land Act 1994* (Qld), which significantly reformed:

- the rental calculation for rural leasehold land;
- a reduction in the number of rural-tenure types;
- a reduction in the discounting available for the freeholding of leases (making it more expensive);
- the introduction of the principle of sustainability to state land administration and management; and
- the imposition of a statutory duty of care for the land for the benefit of the community without precluding its future use for a different purpose.
- A change in the duration allowed for payout of freeholding leases.

State Rural Leasehold Land Renewals Strategy

Commencing in 1997, the State Rural Leasehold Land Renewals Strategy (SRLLRS, also known as Delbessie) was finalised in 2007 as the policy-setting agreement upon which most rural-term leases

would be renewed. The SRLLRS resulted in amendments to the *Land Act 1994* (Qld) which provided for renewal of leases as follows:

- thirty years as a standard lease term;
- forty years where the land is assessed as being in good condition;
- fifty years where the land is assessed as in good condition, and the leaseholder has entered into an Indigenous access and use agreement (IAUA) or Indigenous land use agreement (ILUA), and a conservation agreement or covenant (where the Minister responsible for administering the *Land Act 1994* (Qld) considers these appropriate).

Further, the SRLLRS required that any decision on lease renewal firstly considered:

- the condition of the lease land, including whether or not it is degraded or at risk of becoming degraded;
- whether part of the lease should be set aside as State forest or for conservation purposes;
- the public interest, including whether part or all of the land is required for a public purpose; and
- the interests of the leaseholder, and their record of compliance with the lease conditions.

Currently

Conversion of tenure is provided for under the *Land Act 1994* (Qld) to a more secure tenure, so long as the prescribed criteria have been satisfied and such tenure is consistent with the most appropriate use of the land.

A lessee may only apply to convert a:

(a) perpetual lease to freehold land;

(b) term lease not issued for pastoral purposes only to freehold land;

(c) term lease issued for pastoral purposes only to a perpetual lease, and only after 80 % of the existing term on the lease has expired unless special circumstances are considered to exist.[61]

[61] Department of Environment and Resource Management. (2002). *Conversion of leasehold tenure PUX/901/334 Version 3*. Brisbane: Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3402/slm_2002_104.pdf

A freeholding lease (i.e. a lease which allows the lessee to pay the purchase price by instalments) may only be issued for conversion of a non-competitive lease (*Land Act 1994* (Qld) s 471), or a special lease (*Land Act 1994* (Qld) s 478),with both of these types of leases being issued under the (repealed) *Land Act 1962* (Qld).

In addition, a grazing homestead freeholding lease (GHFL) may be issued for conversion of a grazing homestead perpetual lease (GHPL) (*Land Act 1994* (Qld) s 469), which is another type of lease issued under the repealed Act.

There is no other provision for the issue of a freeholding lease under the *Land Act 1994* (Qld). For conversion to freehold of a term or perpetual lease issued under the Act, the purchase price must be paid in full and a deed of grant issued.

In accordance with the *Land Act 1994* (Qld) s 469, s 471, and s 478, lessees of GHPL and special leases in existence at the commencement of the Act may elect to pay the purchase price in instalments. For conversions of grazing/agricultural GHPLs lessees are entitled to a discount if they elect to pay in full.

6.1.6 Lease conditions

The *Land Act 1994* (Qld) states that every leaseholder has a duty of care for their lease land. Under the agreement the existing duty of care condition, that governs all landholders, will continue to apply. However, it is more clearly defined for rural leasehold land, requiring that they take all reasonable steps to:

- maintain pastures dominated by perennial, preferential, and productive species;
- maintain native grasslands free of encroachment;
- protect riparian vegetation;
- manage declared pests;
- avoid causing or contributing to salinity that reduces the productivity of the leased land, or causes damage to any other land; and
- conserve soil, water resources, and biodiversity. Examples where lessees may show that they are exercising a duty of care are:
    - preparing, implementing, and reviewing a comprehensive property-level plan;
    - regularly monitoring the condition of natural resources;
    - keeping records of activities and the results of monitoring; and

- demonstrating compliance with codes of practice by using farm-management systems or best-management practice.

Lessees are required to have individual land-management agreements. These are self-assessable every five years and reviewed every 10 years (or earlier at the request of either party).

6.1.7 Rental basis

On 23 May 2007, the Queensland Government announced its intention to cap annual rental increases at 20 % for 10 years for Category 1 tenures (*Land Regulation 1995* (Qld) s 19A).

The *Land Act 1994* (Qld) s 183AA (as amended) provides that, where the Minister considers an increase in calculated rent to be 'undue', a cap may be applied to protect tenure holders from the effect on rents of extreme movements in land values.

Until 2017, existing and renewed Category 1 tenure holders may be certain that their rent will not exceed that payable for the previous year by more than 20 %, irrespective of any annual increase in the unimproved value of the leasehold land during that time.

6.1.7.1 Native title

Queensland term leases are non-exclusive leases and therefore subject to native title.

6.1.7.2 Rental reviews

Under the new *Land Valuation Act 2010* (Qld) ss 181(1), valuations are conducted annually.

6.1.7.3 Rental concessions

The capping methodology above is considered a key rental concession.

6.1.7.4 Role and contribution of leases to state

State rural-leasehold land covers about 63 % of Queensland (mostly in the north and the west), and it is land for which tenures have been issued for pastoral, grazing, or agricultural purposes. Refer to *Figure A4* below for a 2010 breakdown of lease tenure in Queensland.

Tenure Type	Number	Total Area of Land in HA	% of the State	Unimproved Value
PH (Pastoral Holding)	1,321	78,409,659	45.22%	$2,401,520,000
IL (Informal Leases)	9	460	0.00%	$0
OL (Occupation Licence)	163	692,199	0.40%	$2,675,500
GHPL (Grazing Homestead Perpetual Lease)	2,700	19,361,222	11.74%	$2,219,718,200
NCL (Non-Competitive Lease)	426	17,066	0.01%	$282,588,450
SL (Special Lease)	3,528	1,790,660	1.03%	$638,191,350
DL (Development Lease)	2	1,009	0.00%	$0
PO (Permit to Occupy)	4,741	594,273	0.34%	$147,256,663
RL (Road Licence)	4693	29,907	0.02%	$40,519,400
TL (Term Lease)	4,903	9,874,877	5.70%	$977,053,980
PPL (Perpetual Lease)	198	152,800	0.09%	$102,804,025
TOTAL LEASES	**22,684**	**110,924,132**	**63.98%**	**$6,812,327,568**
				Instalments Owed
AF (Agricultural Farm)	120	74,829	0.04%	$889,099
GHFL (Grazing Homestead Freeholding Lease)	698	4,223,328	2.44%	$24,874,889
PLS (Perpetual Lease Selection)	436	208,717	0.12%	$5,203,693
APLC (Auction Perpetual Lease converted)	2	0.17	0.00%	$322
NCLC (Non-Competitive Lease converted)	28	7.69	0.00%	$318,141
APL (Auction Perpetual Lease)	8	38	0.00%	$0
APF (Auction Purchase Freehold)	1	101	0.00%	$368,794
SLPF (Special Lease Purchase Freehold)	31	6,921	0.00%	$682,190
FL (Freeholding Lease)	1,623	8,727	0.01%	$67,364,728
TOTAL FREEHOLDING LEASES	**2,947**	**4,522,669**	**2.61%**	**$99,701,856**
				Asset Value
TOTAL LEASEHOLD	**25,631**	**115,446,801**	**66.59%**	**$6,912,029,424**

Source: DERM 2010

Figure A4. Land tenure statistical information (2010)

Revenue derived from Queensland leasehold land is reported in budgets as an aggregate only,[62] including all non-rural rents (refer to Table A11).

Table A10.
Revenue Derived from Land Rents, Queensland

	2006-07 Actual $ million	**2007-2008 Est. Actual $ million**	**2008-09 Actual $ million**	**2009-10 est. Actual $million**	**2010-11 Budget**
Land rents	70	48	107	113	114

In 2002 the annual rental revenue billed for all rural leases in Queensland for 2002 was $10,128,752, up from $6,952,609 in 2001.[63] An AgForce press release outlines that these figures were to increase

[62] Commonwealth of Australia. (2008). *Budget strategy and outlook 2008-09* (2006-2008 data). Canberra: Retrieved from website: http://www.budget.gov.au/2008-09/content/bp1/download/bp1.pdf

to $12,000 in 2004. Under the cap, assuming a full 20 % rise annually across all leases, this would result in projected revenue as shown in Table ***A11***:

Table A11.
Revenue from Term and Perpetual Leases

Year	Revenue from Term and Perpetual leases (2002 and 2001 figs from NRW report; 2004 onwards projected); Across an estimated 7,100 leases.
2001	$6,952,609
2002	$10,128,752
2003	
2004	$12,000,000
2005	$14,400,000
2006	$17,280,000
2007	$20,736,000
2008	$24,883,200
2009	$29,859,840
2010	$35,831,808
2011	$42,998,170
2012	$51,597,804
2013	$61,917,364
2014	$74,300,837
2015	$89,161,004
2016	$106,993,205

6.1.7.5 Other

An advisory service for landholders was established within AgForce to assist landholders in complying with land-management agreements and, where necessary, remedial action notices and orders.

[63] Department of Natural Resources and Water. (2004). *Delbessie agreement (State rural leasehold land strategy)* (Draft, p.2). Brisbane: Department of Natural Resources and Water.

The Queensland Government has publicly stated that it will consult with industry in 2012 regarding an appropriate transition to the application of the proposed (uncapped) 1.5 % in 2017. Under the *Statutory Instruments Act 1992* (Qld), subordinate legislation expires automatically after 10 years, unless it is specifically exempted or extended. Historically, this has enabled government departments to conduct comprehensive reviews of regulations: such a review may be utilised in reopening the 'capping' methodology (as this sits in regulation).

6.1.8 Northern Territory

6.1.8.1 Relevant legislation

Leasehold land in the Northern Territory is regulated under the Pastoral Land Act 1992 (NT) and associated regulation. Under the *Pastoral Land Act 1992* (NT) s 6 it is a fundamental duty of pastoral lessees :

> (a) to carry out the pastoral enterprise under the lease so as to prevent degradation of the land;
>
> (b) to participate to a reasonable extent in the monitoring of the environmental and sustained productive health of the land; and
>
> (c) within the limits of the lessee's financial resources and available technical knowledge, to improve the condition of the land.

6.1.8.2 Administration

Leases are administered by the Department of Natural Resources, Environment, the Arts and Sport. A five-member Pastoral Land Board must include two members with experience as pastoralists (Pastoral Land Act 1992 (NT) s 13). The functions of the Board (Pastoral Land Act 1992 (NT) s 29) are:

> (a) to report regularly to, and as directed by, the Minister, but in any case not less than once a year, on the general condition of pastoral land and the operations of the Board;
>
> (b) to consider applications for the subdivision or consolidation of pastoral land and make recommendations to the Minister in relation to them;
>
> (c) to plan, establish, operate and maintain systems for monitoring the condition and use of pastoral land on a District or other basis;
>
> (d) to assess the suitability of proposed new pastoral leases over vacant Crown land;
>
> (e) to direct the preparation, and monitor the implementation, of remedial plans;
>
> (f) to monitor, supervise or cause to be carried out work in relation to the rectification of degradation or other damage to pastoral land;
>
> (g) to monitor the numbers and effect of stock and feral and other animals on pastoral land;
>
> (h) to monitor and administer the conditions to which pastoral leases are subject;
>
> (j) to make recommendations to the Minister on any matter relating to the administration of this Act;
>
> (k) to hear and determine all questions, and consider and make recommendations on all matters, referred to it by the Minister; and
>
> (m) such other functions as are imposed on it by or under this or any other Act or as directed by the Minister.

6.1.8.3 Lease Purpose

Pastoral leases are intended for pastoral purposes as described by the Pastoral Land Act 1992 (NT) and the terms of individual leases. The Act defines pastoral purposes as:

- the pasturing of stock for the sustainable commercial use of the land; or
- agricultural or other non-dominant uses.

In the latter case, agriculture or some other use must not dominate or be more important than the pastoral enterprise. Any non-dominant or supplementary use must also be either:

- essential to the pastoral enterprise; or
- carried out in conjunction with the pastoral enterprise; or
- inseparable from the pastoral enterprise.

An allowed non-dominant use may include the production of agricultural products for use in stock feeding. Pastoral-based tourist activities such as farm holidays may also be allowed. (Specific uses may be declared by the Pastoral Land Board as not being for pastoral purposes.)

6.1.8.4 Lease terms and renewals

Lease terms are set at a maximum of 25-years or in perpetuity (refer to **Error! Reference source not found.**A11). Lease renewals are available in the last two years of a lease (*Pastoral Land Act 1992* (NT) s 48-49).

6.1.8.5 Lease transferability

Under Part 4, Division 3 of the *Pastoral Land Act 1992* (NT), the Minister's approval (or consent) is required to transfer or sublet a pastoral lease.

6.1.8.6 Tenure reviews, reform & conversion opportunities

1980 Review

The last tenure reform process in the Northern Territory took place after 1978 when pastoralists lobbied the new Northern Territory Government for freehold tenure. The Territory's first Chief Minister, Paul Everingham, subsequently commissioned a report into freeholding by Brian Martin (a previous Chief Justice). Although the report recommended in favour of it, the recommendations were never implemented. Accordingly today, most pastoral lands in the Northern Territory are held under perpetual lease.

Concurrent to this freeholding aspirations were coupled with a proposal to resolve native title by MacDonnell Shire (NT) MLA John Elferink who argued that a freeholding system could be "opened up to sharply increased productivity"[64] (Chlanda, 2003) and Aboriginal native-title issues defused. Wherever pastoralists and Aborigines come to agreement between themselves over division of a station lease into portions of their mutual agreement, each party would be rewarded with "freehold in fee simple" over their land.[65] Subsequently, native title could be extinguished over land held by the pastoralist, and it was considered that what the pastoralist would lose in area would be made up for in new commercial opportunities. Ultimately Elferink's proposals were not enacted by the new Northern Territory Government.

2004 Review

Following the Productivity Commission's report into Pastoral Leases, the Northern Territory Government initiated a review of the *Pastoral Land Act 1992* (NT), mainly responding to the Productivity Commission's view that pastoral leases limited diversification opportunities.

It should also be noted that in the majority of areas where pastoral leases are held, while the lessee pays leasehold rents, they do not pay local-government rates as there are no local-government councils there.

The 2006 review also considered limiting the ability for foreign ownership of leases. However, it responded by stating "Foreign ownership provisions are controlled by the Commonwealth Government and incoming lessees who are affected by the provisions must apply for Foreign Investment Review Board approval".66

Currently

Under the *Pastoral Land Act 1992* (NT) s 62, a lessee may at any time during a pastoral lease, apply to surrender the lease in exchange for a perpetual pastoral lease over the whole, or a specified part, of the land.

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[64] Chlanda, E. (2003, July 30). Elferink revives debate on cattle station freehold title. *Alice Springs News.* Retrieved from: http://www.alicespringsnews.com.au/1026.html

[65] Ibid

[66] NT Department of Natural Resources, Environment and the Arts. (2006). *Review of the Pastoral Land Act 1992: Recommendation paper*. Darwin: Retrieved from website: http://www.nretas.nt.gov.au/__data/assets/pdf_file/0003/12855/recommendationpaper.pdf

However, the Department of Natural Resources, Environment, Arts and Sport advises that the only way to convert a pastoral lease to freehold is if it is converted to Aboriginal Trust Land.

6.1.8.7 Lease conditions

Section 6 of the *Pastoral Land Act 1992* (NT) establishes the following duties upon lessees:

It is the duty of a pastoral lessee:

> (a) to carry out the pastoral enterprise under the lease so as to prevent degradation of the land;
> (b) to participate to a reasonable extent in the monitoring of the environmental and sustained productive health of the land; and
> (c) within the limits of the lessee's financial resources and available technical knowledge, to improve the condition of the land.

Section 39 of the *Pastoral Land Act 1992* (NT) sets broadly the land-management conditions of pastoral leases. The lessee will:

> (a) not use or stock the land other than as permitted by or under this Act or the lease;
> (b) take all reasonable measures to conserve and protect features of environmental, cultural, heritage or ecological significance;
> (c) prepare a remedial plan, as directed by the Board and undertake such action as is required in the plan;
> (d) allow the establishment on the leased land of monitoring sites as required by the Board and allow reasonable access to those sites for the purposes of this Act;
> (e) allow fencing of reference areas declared under section 74(1) and access to those areas and fences for maintenance purposes; and
> (f) maintain in good repair all improvements necessary for sustainable pastoral production on the land.

6.1.8.8 Native title

Northern Territory leases are non-exclusive leases and therefore are subject to native title

6.1.8.9 Rental basis

Section 55 of the *Pastoral Land Act 1992* (NT) allows the Valuer-General under the *Valuation of Land Act 2007* (NT) to set a percentage of the UCV of the leased land for rent. This is done annually.

Currently, rent is set at 0.248 % of unimproved value, from 1.22 % of the unimproved value in the previous financial year. The maximum rate has been 2 % of the unimproved value.

6.1.8.10 Rental concessions

Rents are applied in the financial year following the financial year in which they were assessed and declared. Hardship provisions enable waiving or postponement of the whole or a portion of the rent (*Pastoral Land Act 1992* (NT) s 58).

6.1.8.11 Role and contribution of leases to state

As of 2004 there were 217 pastoral leases in the Northern Territory. These covered approximately 619,000 km^2 (around 46 % of the land area of the Northern Territory).[67]

As of 2011, the Northern Territory Government holds approximately 1,352,000 km^2 of leasehold land. See *Table A12* for a summary.[68]

Table A12.
Major Tenure Types and Areas, Northern Territory

Tenure Type	**Area (km ^{2})**	**% of leasehold estate**
Aboriginal Freehold	591,276	43.73
Perpetual Pastoral Lease	567,219	41.95
Pastoral Lease	41,978	3.1
Crown Lease Perpetual	42,698	3.16
Term	9,635	0.7

6.1.8.12 Other

Restrictions on Ownership

Section 34 of the *Pastoral Land Act 1992* (NT) prohibits a person from holding, either along or together with an associate, pastoral land that exceeds in aggregate an area of 13,000 km^2. Eighty-four percent (182) of pastoral leases were perpetual pastoral leases with a continuous term. The

[67] NT Department of Infrastructure, Planning and Environment. (2004). *Discussion paper: Review of the Pastoral Land Act 1992*: Darwin: Retrieved from website: http://www.nretas.nt.gov.au/__data/assets/pdf_file/0017/12860/julydiscussion.pdf
68 Land Records Unit, Survey Branch (personal communication, March 22, 2011)

remaining 16 % (35) of pastoral leases were term leases with a requirement to develop infrastructure such as fencing, waters, and yards.

6.1.8.13 What industry says

NTCA remain committed to improving the security of tenure in their state and advocate for a move to freeholding of leases.

Industry says that limited confidence in the valuation system, and low profitability, has resulted in a move to downgrade the percentage of UV applicable to rent from 1.22 % to 0.24 % in recent years, with increases capped at CPI.

6.1.9 New South Wales

6.1.9.1 Relevant legislation

The *Crown Lands Act 1989* (NSW) applies to most of the Eastern and Central divisions (the white area in *Figure A5*), except for continuing leases under the *Crown Lands (Continued Tenures) Act 1989* (NSW).

The *Western Lands Act 1901* (NSW) applies to leases shown in red in *Figure A5*) under the provisions of the *Crown Lands Act 1989* (NSW) which are specified in Schedule 2 of the *Western Lands Act 1901* (NSW).

A third Act, the *Crown Lands (Continued Tenures) Act 1989* (NSW), governs the continuation and administration of Crown tenures which were already in force under the provisions of the repealed *Crown Lands Consolidation Act 1913* (NSW), the *Closer Settlement Acts* (NSW) and certain other Acts. Holdings are no longer granted under this legislation (see *Crown Lands Act 1989* (NSW) for new holdings).

The objects of the *Western Lands Act 1901* (NSW) are listed in s 2 as:

> (a) to establish an appropriate system of land tenure for the Western Division, and to facilitate new land uses and development opportunities for land in the Western Division,
> (b) to regulate the manner in which land in the Western Division may be dealt with,
> (c) to provide for the establishment of a formal access network, by means of roads and rights of way, in the Western Division,
> (d) to establish the rights and responsibilities of lessees and other persons with respect to the use of land in the Western Division,
> (e) to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development referred to in section 6 (2) of the *Protection of the Environment Administration Act 1991*,
> (f) to promote the social, economic and environmental interests of the Western Division, having regard to both the indigenous and non-indigenous cultural heritage of the Western Division,
> (g) to make other provision for the effective integration of land administration and natural resource management in the Western Division

Source: Environmental Defender's Office, 2012[69]

Figure A5. Western Lands division, New South Wales

6.1.9.2 Administration

The NSW Land and Property Management Authority, through its District Offices, administers all leases in New South Wales.

The *Western Lands Act 1901* (NSW) establishes the Western Lands Advisory Council which is comprised of 15 members, including:

- an independent chair;
- four people representing lessees in the Western Division (with two nominated by NSW Farmers Western Division Council, one representing Pastoralist of West Darling and one to be non-aligned;
- one person representing Nature Conservation Council;
- two people representing local government;
- one person representing Catchment Management Boards;
- two people representing the interests of Aboriginal people;
- the Western Lands Commissioner;
- one person representing the Minister for Environment; and
- one person representing the Minister for Agriculture.

[69] Environmental Defender's Office. (2012). *The Western Division of NSW* (Fact sheet 2.6). Sydney: Retrieved from website: http://www.edo.org.au/edonsw/site/factsh/fs02_6.php

Local Land Boards have powers to hear and determine matters arising under the *Western Lands Act 1901* (NSW) in an open court forum, such as claims in relation to fencing, disputes in relation to easements for public access, road reservations, and determinations of rent for leasehold land.

6.1.9.3 Lease purpose

Most leases can only be used for designated purposes (i.e. only grazing). If different or additional uses are sought, an application to the Department of Lands must be made, which requires a review of environmental factors.

6.1.9.4 Lease terms and renewals

The *Crown Lands Act 1989* (NSW) s 41, allows the Minister to grant leases up to 100 years. Prior to the introduction of the *Crown Lands Act 1989* (NSW), a lease for a fixed term administered by the LPMA Crown Lands Division was registered as a Crown land tenure Term Lease

Western Lands leases are granted either in perpetuity (the majority) or for a term that does not exceed 40 years (*Crown Lands Act 1989* (NSW) ss 28A(3)).

6.1.9.5 Lease transferability

Under Part 4 *Crown Lands Act 1989* (NSW), consent must be secured from the Minister prior to a transfer in interest of a lease. This section is applicable to Western Lands leases.

6.1.9.6 Tenure reviews, reform, & conversion opportunities

From 1998-2000 the NSW Government conducted a large tenure review (the Kerin Review) across both the Crown and Western Lands areas. This resulted in new rent calculations and the ability to upgrade some forms of tenures.

Crown-lands leases

Following the Kerin Review, the NSW Government offered a special purchase of perpetual leases with the aim of placing ownership of the land into the hands of those who already control it. Holders of perpetual leases whose leases were not subject to periodic redetermination of rent had until 30 June 2009 to make an application to convert their perpetual leases to freehold. While many of these leases were standard pastoral leases, many were road and water leases that cost substantially more to administer per year than the minimum annual rent payable.[70]

This was made in acknowledgement that the landholders hold the great majority of the equity in the land which was already treated as a form of title that was almost equivalent to freehold. Further, it

[70] Personal conversations with NSW Farmers Federation.

was held that it was no longer essential these lands were held in public ownership to maintain environmental and conservation controls over them.

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).[71] The purchase price was payable in full within six weeks of the date of the approval.

Lessees who did not apply to convert before this date were liable for rent, based on the market value of the land, rather than the current low Crown rent. The minimum rent for all holdings was not less than $412 per annum (plus GST, plus CPI). Where the Authority identified conservation values, a covenant to protect the values was imposed, although this was recently removed. The reforms did not apply in the Western Division of the State. In 2009-10 the sale of perpetual leases, and closed roads, in these eastern areas created additional revenue of $7 million and $11 million respectively.[72]

A restriction on subdivision of the land and a restriction on allowing any dealing with multiple lots separately, where they comprised a former lease, were also imposed upon conversion of perpetual leases except for some leases of minimum area in some urban localities.

Other continued tenure leases

Perpetual leases where the rent was redetermined, term leases (Conditional lease, Crown lease ,and Prickly-Pear leases held for a term of years), and Special Leases which are held in perpetuity are also subject to the *Crown Lands (Continued Tenures) Act 1989* (NSW). The holder of one of these leases could lodge an application for conversion, but the special purchase price was not applicable for these leases. The purchase price was either the notified value recorded in the Department's records, or the market value of the land.

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[71] NSW Office of State Revenue. (1985). *Crown land holdings rate of capitalisation of rentals of perpetual leases to determine "present title" values* (Revenue Ruling No. SD 006). Sydney: Retrieved from website: http://www.osr.nsw.gov.au/lib/doc/rulings/rrsd6.pdf Pursuant to Revenue Ruling No. SD 006 this applied a capitalisation rate of 5 % and, therefore, the "freehold" value must be reduced by 20 times the annual rental in order to determine the "present title" value. The maximum "present title" value of leases was calculated as the "freehold" value less 20 times the annual rental.

[72] NSW Treasury. (2009). *NSW budget estimates 2009-10*. Sydney: Retrieved from website: http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0017/17630/bp3_22trser.pdf

The previous provisions for payment of the purchase price over a period of up to 32 years was no longer available for any lease purchased under the provisions of the *Crown Lands (Continued Tenures) Act 1989* (NSW) where the application for purchase was lodged after 30 June 2004 and the purchase price was payable in full within six weeks of the date of the approval—or other title commencement date—as allowed in the legislation.

Western Lands leases

The lease upgrades described above did not apply to Western Lands Leases. However, under some limited circumstances, outlined in s 28BB of the *Western Lands Act 1901* (NSW), the holder of a lease granted before 23 December 1996 for residential, business, motel, community, agricultural, or mixed-farming purposes can apply to the Minister (in practice, the Commissioner) to purchase the whole or part of their land. Grazing or pastoral leases cannot be converted to freehold (paragraph 28BB(1)(a) *Western Lands Act 1901* (NSW) refers).

In 2005, following the Kerin Review, a scheme allowed lessees of residential leases (< 1 ha) to freehold leases, and 25 % of lessees took this option up in the first six months.

While the issue of tenure conversion of grazing properties in the Western Lands area was pursued in the Kerin Review, the review ultimately concluded that "Western Division leases should remain as perpetual leases, except in the cases where provisions are made for freeholding, of urban and agriculture leases." (Kerin, 2000, p.XX).[73] It was considered that a system of leasehold tenure was the most relevant to extensive low-productivity areas of rangelands due to the ability of leasehold tenure to accommodate multiple uses, as opposed to exclusive use by freeholding.

6.1.9.7 Lease conditions

Each lease sets out the type of activity which is allowed on that parcel of land (e.g. grazing, agriculture, mixed farming); the type of cultivation that is permitted; the permitted stock levels; and requirements concerning the removal of vegetation or timber.

All leases are subject to certain statutory conditions set out in the *Western Lands Act 1901* (NSW), such as those regarding fencing and the removal of timber and other material from the land. The Commissioner has broad powers to direct how the land must be managed. For example, the Commissioner can direct a lessee to take specific measures to protect land, such as:

[73] Kerin, J. (2000), *Western lands review.* Sydney: NSW Department of Land and Water Conservation.

- taking stock off certain parts of the land;
- preventing overstocking ;
- preventing any part of the land being used for specified types of agriculture ;
- preserving trees and scrub and vegetative cover ;
- taking measures to prevent soil erosion ; and
- erecting gates on public roads.

6.1.9.8 Native title

Native title is considered to be extinguished on perpetual Western Lands leases for grazing or agriculture. Non-perpetual Western Lands leases are subject to native title.[74]

6.1.9.9 Rental basis

Crown Lands Act

Under s 143 of the *Crown Lands Act 1989* (NSW), the Minister, the local land board, and the Land and Environment Court should apply the following principles when determining rent:

> (a) the rent shall be the market rent for the land comprised in the lease, licence or enclosure permit having regard to any restrictions, conditions or terms to which it is subject,
>
> (b) any improvements on the land which were made by the holder, or are owned or in the course of being purchased from the Crown by the holder, shall be disregarded,
>
> (c) regard may be had to any additional value which, because of the lease, licence or enclosure permit, has accrued, or may reasonably be expected to accrue, to other land held by the holder,
>
> (d) regard may be had to the duration of the time for which the rent determined will be payable.

The Independent Pricing and Regulatory Tribunal (IPART) has a role in recommending rents to the Minister and local land board.

Section 143C of the *Crown Lands Act 1989* (NSW) provides the CPI-adjusted rent under the following formula:

The "CPI adjusted rent" is to be determined in accordance with the following formula:

[74] *Wilson v. Anderson & Ors,* HCA29, S101/2000 (2002, Aug 8). Decision the result of a 2002 High Court decision where it was deemed that a perpetual lease extinguished native title through exclusive possession.

$$R = A \times \frac{C}{D}$$

Where

"R" represents the CPI adjusted rent.

"A" represents the determined rent, being:

(a) in the case of an existing licence or permit-the rent as at the last due date before the commencement of this section, or as at the effective date of the last redetermination of rent to take effect on or before the due date, whichever is later, or
(b) in the case of a new licence or permit-the rent set as at the commencement of the licence or permit, or as at the effective date of the last redetermination of rent to take effect on or before the due date, whichever is later.

Redeterminations of rent can be appealed to the Local Land Board if the annual rent does not exceed $10,000. In other cases it goes to the Land and Environment Court.

Western Lands

Grazing, pastoral, agriculture, cultivation, or similar leases are assessed according to property size, land use, and rehabilitation areas. Historically, rent was based on sheep areas and carrying capacity. Section 20 of the *Western Lands Act 1901* (NSW) provides that annual rent is to be calculated for rural holdings under the following formula:

Rent = (base rent + cultivation + intensive agriculture – rehabilitation) x index

Where:

1. Base rent

The base rent will be calculated on the total land area of the holding, which may be comprised of several leases, provided that they are a single property unit run under a common-family or business name. The leases do not need to adjoin each other. The base rent will involve a sliding scale where rent per hectare will decrease as the size of the holding increases. This recognises that on larger holdings, productivity per hectare is generally lower. The scale is set by regulations under the *Western Lands Act 1901* (NSW).

2. Cultivation

The number of hectares approved for cultivation will be charged at the cultivation rate per hectare and added to the basic charge.

3. Intensive agriculture

The number of hectares used for intensive agriculture, such as irrigation, will be charged at the intensive agriculture rate per hectare and added to the basic charge. The scaling factor is defined in Reg 15 of *Western Lands Regulation 2004*(NSW) as starting at 1.0 on 1 July 2004 and more each subsequent financial year to be the immediately preceding financial year plus half of the CPI movement.

The unit charges on cultivation and intensive agriculture represent premiums for land uses that impose greater 'wear and tear' on the environment, including the impacts on soil, vegetation, biodiversity, and salinity.

This system of rent calculation was introduced in 2002. Prior to that, rent was calculated per hectare on identical adjoining properties and varied enormously, with some landholders paying up to 30 times as much rent as their neighbours for the same land use on adjoining leases.

4. Rehabilitation rebate

The number of hectares set aside for managed rehabilitation will be calculated at the cultivation rate per hectare anddeducted from the basic charge. The rehabilitation rebate applies where a portion of a landholding is specifically managed to achieve a positive environmental outcome.

5. Annual adjustment

The total annual rent will be adjusted each year by an index. In 2004, the index amount was 1. This amount is adjusted each year by an amount equivalent to 50 %of the Australian Consumer Price Index.

6.1.9.10 Rental concessions

Section 150 of the *Crown Lands Act 1989* (NSW) allows the Minister the discretion to postpone or waive all or part of rents owed.

Section 27E of the *Western Lands Act 1901* (NSW) allows the Minister to waive, reduce, remit, or postpone the whole or part of the annual rent that would otherwise be payable by a lessee for classes of lessees or classes of land prescribed by regulations.

6.1.9.11 Role and contribution of leases to state

The Land and Property Management Authority (LPMA) administers an area of approximately 36 million hectares of Crown land (this includes the three nautical-mile zone and Western Crown land). This includes 72,600 licences and permits state wide, along with 14,800 leases.[75]

Approximately 40 % of NSW is under Western Lands leases in the Western Regions (described as 32 million hectares in the west of the state).[76] Approximately 29% of the Western Lands area is unincorporated and has no local government.[77] Of the over 6,400 leases in the Western Lands area, there are:

- 4,264 for grazing;
- 525 for agriculture;
- 1,358 for residence; and
- 180 for businesses.[78]

The eastern boundary of the Western Division runs from Mungindi on the Queensland border to the Murray River near Balranald.

In 2010 Crown land generated $60.579 million in revenue through 65,000 tenures.[79]

6.1.9.12 What industry says

The tenure process review has taken many years. The timelines were extended three times to ensure that people who had submitted to purchase leases were not charged the market rent because government still has not assessed them.

Most of the tenure conversions were small leases created for easements and water (bores), for which it cost more to administer than was returned.

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[75] NSW Department of Primary Industries, Catchments and Lands. (2011). *NSW lands.* Sydney: Retrieved from website: http://www.lpma.nsw.gov.au/crown_lands/about_crown_land

[76] Department of Lands. (2008). *Issues paper: Review of the Western Lands Act 1901*. Sydney: Retrieved from website: http://www.lands.nsw.gov.au/about_us/publications/exhibition/issues_papers/?a=69691

[77] *Ibid*.

[78] *Ibid*.

[79] NSW Land and Property Management Authority. (2010). *Annual report*. Sydney: Retrieved from website: http://lpma2010.annual-report.com.au/cldop.php

6.1.10 South Australia

6.1.10.1 Relevant legislation

The relevant legislation is the *Pastoral Land Management and Conservation Act 1989* (SA) and associated regulation. Similar to NT legislation, s 7 of the *Pastoral Land Management and Conservation Act 1989* (SA) sets the following duty of care for lessees of pastoral land:

(a) to carry out the enterprise under the lease in accordance with good land management practices;
(b) to prevent degradation of the land; and
(c) to endeavour, within the limits of financial resources, to improve the condition of the land.

6.1.10.2 Administration

A Pastoral Land Board is appointed under the *Pastoral Land Management and Conservation Act 1989* (SA). The role of the Board includes:

- administer the pastoral lease tenure system and impose penalties for breach of condition;
- set the term of a lease and oversee the process to extend leases to a maximum 42-year term;
- set the land-management conditions including the number and type of stock to be run;
- regularly inspect, monitor, and report on land condition (not less than every 14 years) and take any actions necessary to prevent degradation, including requesting property plans;
- support the Valuer-General to determine pastoral rents; and
- administer the *Native Vegetation Act 1991* (SA) regarding clearing native vegetation on leases.

There are five members on the Pastoral Board (appointed by the Minister), and under s 12 of the *Pastoral Land Management and Conservation Act 1989* (SA), they are comprised of:

- one with wide experience in administration of pastoral leases;
- one with a wide knowledge of the ecology, and experience in the management, of the pastoral land of this State;
- one with wide experience in the field of land and soil conservation of pastoral land;
- one from a list of three persons who produce beef cattle on pastoral land outside the dog fence, submitted by the South Australian Farmers' Federation;
- one from a list of three persons who produce sheep on pastoral land inside the dog fence, submitted by the South Australian Farmers' Federation; and
- one from a list of three persons submitted by the Conservation Council of South Australia Inc.

6.1.10.3 Lease purpose

Pastoral leases are granted for the purpose of pasturing of stock and other ancillary purposes.

6.1.10.4 Lease terms and renewals

Under s 24, leases are granted for 42 years. There is provision under s 26 to 'top-up' the lease to 42 years from the latest notice of assessment where land condition meets conditions.

6.1.10.5 Lease transferability

Under s 28 a lease can be transferred, assigned, mortgaged, sublet, or other with the prior consent of the Minister.

6.1.10.6 Tenure reviews, reform & conversion opportunities

From the time that perpetual leases were introduced in South Australia, until 1982, the cost of freeholding was 100 % of the UV of the lease. Post-1982 a range of incentives were implemented to reduce this – initially starting at a cost of 30 % UV, then down to 15 % of the UV. In 1996, that amount was further reduced to $1,500, but with the survey costs borne by lessees.

Crown-lands review 2002

In 2002, the South Australian Government established a Select Committee to consider the state's interest in crown land. Following an inquiry into the issue, an interim report was tabled at the House of Assembly and resulted in the establishment of the Perpetual Lease Accelerated Freeholding Program (also known as PLAFP). This program commenced in 2003 and resulted in offers to freehold being sent to over 7,600 lessees.

The offers raised concerns from many lessees and stakeholders which arose from inequities resultingfrom the vast number and diversity of leases. This resulted in the Committee reconsidering the Interim Report recommendations to reflect the identified concerns of:

- survey costs associated in freeholding;
- multiple but non-contiguous lease held by a single farming enterprise;
- hardship criteria for drought-affected lessees;
- the fact that lessees had already paid close to freehold values for their leases, thus it being unfair to require lessees to pay high fees to maintain their perpetual lease or convert to freehold; and
- high freehold prices of leases subject to the '20 times the rent' clause.

One of the key components of the PLAFP was the introduction of a key disincentive for lessees who did not convert through the introduction of increased rentals.

In considering these issues, the Select Committee amended the freeholding program to provide:

- A hardship exception where lessees were offered additional time.
- Freeholding purchase price was a flat fee of $2,000 or 20 times the current annual rent, whichever is the greater amount. Leases which cost more than $2,000 to freehold, based on the 20 times rule, could be considered by a Review Panel.
- Lessees holding contiguous leases in the same ownerships, with the same registered interests, were able to include as many leases in the one application as they chose. For these lessees, the freehold purchase price was calculated at $2,000 for up to four leases, plus $400 for each additional lease in the application up to 10; $300 for each above 10 up to 20; and $200 for each above 20. A price equivalent to 20 times the aggregated rent of all leases in the application applied if that was greater.

  Alternatively, lessees with multiple contiguous leases, with the same ownership and registered interests, could choose to merge all allotments into one where possible and receive one freehold title.
- Lessees with multiple leases operated as a Single Enterprise could submit a single application (with one application fee only).

Under the PLAFP, from 12 March 2003 to 31 January 2005, the government received 9,223 applications for freeholding 13,249 perpetual leases.[80]

Currently

The only provision in the *Pastoral Land Management and Conservation Act 1989* (SA) to convert or upgrade tenure is where the land is used for a purpose other than pastoral purposes (s 8).

[80] Westcott, M. (2005). *Conversion of remaining perpetual town leases to freehold title – Housing Legislation Amendment Bill 2005* (Research Brief No 2005/18). Brisbane: Retrieved from Queensland Parliamentary Library website: http://www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2005/200518.pdf

6.1.10.7 Lease conditions

South Australia has an integrated program combining range monitoring and lease inspection with pastoral properties monitored for compliance with lease conditions every two to five years. .

Land-management conditions on leases can include (s 22):

- obligations not to run particular stock;
- stocking rates;
- obligation to maintain watering points; and
- obligation to close off specified areas of land, or close or move specified access points on the land, for the purposes of rehabilitation of degraded land.

6.1.10.8 Native title

South Australian leases are non-exclusive leases and are therefore subject to native title

6.1.10.9 Rental basis

This is determined periodically by the Valuer General on % of UV (currently 2.7 % for 10 years), taking into account the inherent capacity of the land, the purpose for which the land is used, the prevailing climatic conditions affecting productivity, the proximity and accessibility to markets, and any views as to land condition factors as expressed by the relevant regional NRM board or consultative committee (s 23). The Valuer-General is guided by 'what is an appropriate rate of return for the land'. The Valuer-General must determine rent at least every five years. Rent is payable annually in arrears.

On completing a determination of the annual rent, the Valuer-General must give to the Pastoral Board a notice of the determination. On the recommendation of the Board, the Minister may reduce the rent payable if some factor exists affecting the profitability of the enterprise under a pastoral lease that has arisen since the Valuer General last determined the annual rent for the lease, or if the lessee has carried out agreed work on the land on behalf of the Minister, or that the lessee has undertaken special measures to remedy or prevent degradation of the land. There are also hardship provisions for the Minister to waive or defer rent payments.

6.1.10.10 Rental concessions

There has been provision for people living outside a local government area and receiving exceptional circumstances income support payment to receive a concession on lease costs of up to $190 a year and a concession of up to $150 a year for energy use.

On completing a rent determination, the Minister may upon recommendation of the Board reduce the rent if there had been:

- some factor affecting profitability of the enterprise that has arisen;
- the lessee has on their own initiative undertaken special measures to remedy or prevent degradation of the land; and/or
- the lessee has under an agreement with the Minister carried out work on the land on behalf of the Minister for which the lessee has not been recompensed.

6.1.10.11 Role and contribution of leases to state

There is approximately 409,000km^2 of land under pastoral lease in South Australia, equating to 328 pastoral leases configured into 222 pastoral properties. This area is approximately 42 % of the State.

6.1.10.12 Other

South Australia is recognised as having the most comprehensive and integrated program of resource inventory, resource condition assessment, range monitoring, and lease inspection of any of the Australian states and the Northern Territory. A pastoral program is responsible for facilitating public access to pastoral lands and currently has 21 Public Access Routes (in total some 650 km in length) established on pastoral leases for that purpose.

South Australia seems to have by far the simplest legislation and administrative system of dealing with rural leases.

6.1.11 Western Australia

6.1.11.1 Relevant legislation

The relevant legislation is the *Land Administration Act 1997* (WA) and associated regulation in conjunction with the *Valuation of Land Act 1978* (WA) - which contains the unimproved value definition.

6.1.11.2 Administration

The Act establishes the Pastoral Lands Board of Western Australia to:

- advise the Minister on policy relating to the pastoral industry and lease administration;
- administer pastoral leases and ensure they are managed sustainably (ecologically);
- develop policies to prevent the degradation of rangelands and to develop policies to rehabilitate degraded or eroded rangelands and to restore their pastoral potential;
- make recommendations on applications for the subdivision of pastoral land;
- establish and evaluate a system of pastoral land monitoring sites;
- monitor the numbers and the effect of stock and feral animals on pastoral land; and
- conduct or commission research into matters considered relevant to the pastoral industry.

The Pastoral Lands Board is appointed by the Minister and comprised of (s 97):

- three people who have held an interest in a pastoral lease or are, or have been, shareholders in a company with a beneficial interest in a pastoral lease;
- one is to be the chief executive officer of the department principally assisting in the administration of the *Biosecurity and Agriculture Management Act 2007* (WA);
- one is to be the chief executive officer of the department;
- one is to be a person with expertise in the field of flora, fauna. or land conservation management; and
- one is to be an Aboriginal person with experience in pastoral leases.

6.1.11.3 Lease purpose

Section 106 requires that pastoral leases are used only for pastoral permits and requires lessees to obtain permits where products are sold from a non-pastoral use of the land.

6.1.11.4 Lease terms and renewals

Lease terms and renewals are not to exceed 50 years (s 105). However, the majority of leases are perpetual.

All pastoral leases in Western Australia are due to expire on 30 June 2015. The Minister for Lands previously offered renewal for all but a few of the leases, with the new term to be the same as the current lease and in accordance with the provisions of the *Land Administration Act 1997* (WA). Holders of those leases affected by exclusion areas were advised in April 2005.

At any time during the period of 12 months before the date 10 years before the expiry of a pastoral lease, the lessee may apply in writing to the Minister requesting an offer of a renewal of the lease under this section (s 140).

6.1.11.5 Lease transferability

Under s 134 the Minister's approval is required to transfer or create a mortgage or charge over a pastoral lease. Under s 135 there is a requirement for leases held by companies where the working of the lease/s of which company is the holder constitutes the principal activities of the company to seek endorsement of the Minister prior to registering a transfer of any share in the company. Further, a person who holds a beneficial interest in the share of such a company must not transfer, mortgage, or charge, or otherwise dispose of the interest to any other person except with the consent in writing of the Minister (s 135).

6.1.11.6 Tenure reviews, reform, & conversion opportunities

Rangelands reform program

In response to a number of identified challenges and opportunities in the Western Australian pastoral industry the Rangelands Reform Program was initiated in 2010 as a three-year program to reform rural-tenure policy. Its aim is to grow sustainable, economically diverse, rangelands communities through:

- a contemporary vision for the rangelands;
- economic opportunities;
- institutional arrangements that reflect contemporary business conditions;
- market opportunities;
- a greatly improved understanding of sustainable land-use requirements; and
- options for restorative management and regeneration.

With respect to tenure, the West Australian Government has announced that it aims to promote multiple land uses and develop new forms of land tenure, including options of perpetual leasehold and 'rangelands leases' to replace or supplement existing pastoral tenure and provide current and future landholders with greater flexibility, security, and incentive to invest.

In 2011, the Western Australian Government prepared amendments to the *Land Administration Act 1997* (WA) to allow pastoral lease holders increased capacity to diversify their operations and considered new tenure options of:

- perpetual pastoral lease under existing pastoral framework;
- 'rangelands lease' allowing for a diverse range of permitted uses, including conservation and tourism; and
- broader diversification activities permitted for existing pastoral leases and/or perpetual pastoral leases described above in the first dot point.[81]

In April 2011, the Western Australian Government released a Land Tenure Options Discussion Paper which detailed how the new tenure options could work. Following a round of consultation with stakeholders on this, the government released a summary of responses which included their intention to prepare drafting instructions for the following changes to the *Land Administration Act 1997* (WA) (LAA):

a) The addition to the LAA of a rangelands lease, with proposals to be developed to assist potential applicants address the native title process (in the Rangelands Tenure Options Discussion Paper it was suggested that the legislation would have a specific provision providing that the perpetual pastoral lease does not extinguish native title).
b) The addition to the LAA of a pastoral lease for a perpetual term, with proposals to be developed to assist potential applicants address the native title process;
c) Changes to the renewal of pastoral-lease provisions to provide the right to the lessee to have a pastoral lease renewed for the same term provided no breach of lease, LAA, or rangeland condition monitoring requirements;
d) A new separate permit provision for some of the broader "primary production activities" specified in the *Native Title Act 1993* (Cth) (NTA);
e) Possible options to facilitate conversion of variable term leases post 2015 to a standard 50-year pastoral lease; and
f) To allow under the LAA the transfer of diversification permits to an incoming lessee.[82]

[81] WA Department of Regional Development and Lands. (2012). *Rangelands reform.* Perth: Retrieved from website: http://www.rdl.wa.gov.au/programsandprojects/pastoral/RangelandReform/Pages/default.aspx

The effect on native title of the proposed reform is to provide for a template ILUA to satisfy the future Act obligations under the rangelands lease and perpetual pastoral lease. This is consistent with legal advice received by the Western Australian Government and outlined in more detail in the information sheet entitled 'Land tenure options being progressed and the Implications of the *Native Title Act 1993*'[83]. This paper proposes that there are a number of avenues of support available and under consideration in relation to native title, including:

a) investigating the possibility of the Subdivision I process under the NTA;
b) developing a template ILUA; and
c) assisting in direct support of native-title negotiations.

Since the issue of the abovementioned papers in mid-2011, the Western Australian Government has not released additional material on its progress with the Rangelands Reform Program.

The Western Australian Government as part of the Rangelands Reform Program has agreed to look at alternative rental mechanisms. However, no detail on this has been released.

6.1.11.7 Lease conditions

This may include stocking rates (s 111); prohibition of sowing non-indigenous pastures (s 110); development and maintenance of improvements (s 107); and provision of an annual return which details information such as stock numbers, costs of all improvements, and land use (s 113).

6.1.11.8 Native title

Currently, Western Australian pastoral leases are non-exclusive leases and are therefore subject to native title.

6.1.11.9 Rental basis

This is determined by the Valuer-General as the amount of ground rent that the land might reasonably be expected to realise in good condition, for a long-term lease for pastoral purposes under which all normal outgoings are paid by the lessee. This is based on pastoral-lease sales considered to represent 'fair market' transactions.

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[82] WA Department of Regional Development and Lands. (2011). *Summary of response to the rangelands tenure options: Response paper*. Perth: Retrieved at website: http://www.rdl.wa.gov.au/publications/Documents/SummaryofResponsetotheRangelandsTenureOptions.pdf

[83] WA Department of Regional Development and Lands. (2011). *Information sheet: Land tenure options being progressed and the implications of the Native Title Act 1993.* Perth: Retrieved at website: http://www.rdl.wa.gov.au/publications/Documents/LandTenureOptionsInformationSheet.pdf

For the 2009 rent review, a rental return of 2 % was applied to the market unimproved value. The previous investment rate applied in 2004 was 3 %. It was considered by government that this reduction reflected an appropriate response to the current, global, economic downturn as well as economic factors within the industry.[84]

The Valuer-General determines rents every five years (s 123) with the last review becoming effective on 1 July, 2009.

The Valuer-General looks at market unimproved value, considering factors such as land system productivity, location, access, rainfall reliability, water supply, and size. The Valuer-General then consults with the Pastoral Lands Board (ss 123(2)) to ensure the economic state of the pastoral industry is accurately considered in the review.

Rent is paid in advance in two equal instalments due on 1 January and 1 July each year.

6.1.11.10 Rental concessions

The Pastoral Lands Board accepts requests from individuals affected by natural disaster to reduce or waive lease rent invoices (provided for under s 128).[85]

Section 124A of the *Land Administration Act 1997* (WA) also provides for a phasing in of annual rent where, as a result of a determination, the annual rent for a pastoral lease is greater than the annual rent for the lease that applied immediately before the determination.

6.1.11.11 Role and contribution of leases to state

There are approximately 460 pastoral stations in Western Australia consisting of 518 pastoral leases. This equates to approximately 185,000 ha.

6.1.11.12 Other

Structural adjustment - Pastoral Business Units (PBUs) can be created under s 142A of the *Land Administration Act 1997* (WA) to formalise the lease management arrangement of two or more pastoral leases into one station.

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[84] WA Department of Regional Development and Lands. (2009). *Fact Sheet: Pastoral rents and valuations - 2009*. Perth: Retrieved at website: http://www.rdl.wa.gov.au/publications/Documents/FactSheet-2009Pastoralrentsandvaluations.pdf

[85] WA Department of Regional Development and Lands. (2011*). Pastoral lease rent relief application: For reduction or waiver of lease rent payments due to disaster*. Perth: Retrieved at website: http://www.rdl.wa.gov.au/publications/Documents/PastoralLeaseDisasterRentReliefApplication.pdf

Agriculture Protection Rates (APR) apply to all land within Western Australia that are held under Crown Pastoral Lease and are imposed under sections 60 and 61 of the *Agriculture and Related Resources Protection Act 1976* (WA). This system allows contributions made by pastoralists via the APR to be "matched" dollar-for-dollar by the state government and the combined funding used to undertake a wide range of "on-ground" programs aimed at controlling pest (declared) plants and animals on, and in relation to, pastoral leases. The annual APR are based on the unimproved value of each pastoral lease. The unimproved value of each lease equates to 20 times the relevant Annual Pastoral Lease Rent, as determined by the Pastoral Lands Board.

6.1.11.13 What industry says

Over the last decade there have been significant problems with rental increases caused by rising UCVs and a high percentage applied for rental purposes. Under the Western Australian legislation there is no means for the Minister to alter the Valuer-General's determination of the percentage applicable for rental purposes. While the Valuer-General does consult the Pastoral Lands Board, legislation only says he *can.* not *must*: It is understood that he has not sought their advice in a number of years. Anecdotally, the last set of rent increases resulted in rental rises of over 1000 % on some leases, though these were phased in over a three-year period ending mid-2011.

Peak body, Pastoralists and Graziers Association (PGA), believes that most lessees are managing increasing rentals only through off-farm income.

6.2 Summary Table of Jurisdictions

	QLD	NSW		NT	SA	WA
Legislation	*Land Act 1994* and regulation *Land Valuation Act 2010* and regulation	*Crown Land Act 1989* and associated regulation (applies to Eastern and Central divisions)	*Western Lands Act 1901* and associated regulation (applies to Western Districts)	*Pastoral Land Act 1992* and associated regulation	*Pastoral Land Management and Conservation Act 1989* and associated regulation	*Land Administration Act 1997* and associated regulation
Objects of Legislation/ **Leasehold Land**	Sustainability Evaluation Development Community Purpose Protection Consultation Administration		(a) to establish an appropriate system of land tenure for the Western Division, and to facilitate new land uses and development opportunities for land in the Western Division, (b) to regulate the manner in which land in the Western Division may be dealt with, (c) to provide for the establishment of a formal access network, by means of roads and rights of way, in the Western Division, (d) to establish the rights and responsibilities of lessees and other persons with respect to the use of land in the Western Division, (e) to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development referred to in sections 6(2) of the *Protection of the Environment Administration Act 1991* , (f) to promote the social, economic and environmental interests of the Western Division, having regard to both the indigenous and non-indigenous cultural heritage of the Western Division, (g) to make other provision for the effective integration of land administration and natural resource management in the Western Division	It is a fundamental duty of pastoral lessees (s 6) under the *Pastoral Land Act 1992* to: (a) to carry out the pastoral enterprise under the lease so as to prevent degradation of the land; (b) to participate to a reasonable extent in the monitoring of the environmental and sustained productive health of the land; and (c) within the limits of the lessee's financial resources and available technical knowledge, to improve the condition of the land.	Section 7 of the *Pastoral Land Management and Conservation Act 1989* sets the following duty of care for lessees of pastoral land: (a) to carry out the enterprise under the lease in accordance with good land management practices; (b) to prevent degradation of the land; and (c) to endeavour, within the limits of financial resources, to improve the condition of the land.	
Consultation/ Pastoral Board	SRLLMAC advises on SOME issues (TBD)	N	Y	Y	Y	Y (but according to WAPGA they don't use it)
Lease Purpose	Primary production	Most leases can only be used for designated purposes (i.e. only	Most leases can only be used for designated purposes	The pasturing of stock for the sustainable commercial use of the land;	Pasturing of stock and other	Pastoral purposes only

	QLD	NSW		NT	SA	WA
		grazing)	(i.e. only grazing	or agricultural, or other non-dominant uses.	ancillary purposes.	
Lease Types, Terms, & Renewal Process	Terms: 30-50 year leases dependent on whether lease in 'good condition' and if conservation agreement and/or indigenous agreement obtained Perpetuals: approx. 12 % of state	Max 100 years	Most are perpetual. Terms don't exceed 40 years.	Max 25 year terms (< 1% state) + perpetual leases (42 % of state)	42 years	Most are perpetual Terns max 50 years. ALL PASTORAL LEASES DUE TO EXPIRE 2015 – NO FRAMEWORK FOR RENEWAL IN PLACE
Lease Transferability	Y	Y	Y	Y	Y	y
Tenure Conversion	Yes (under conditions)	Y	N	N	N	Technically yes, but does not occur
Rental Basis	1.5 % of UCV but capped to not rise more than 20 % per year off 2004 valuations until 2017	Base (market) rent + CPI	Rent = (base rent + cultivation + intensive agriculture – rehabilitation) x index Where: index = 50 % CPI; base rent = according to scale set by regulation	Set % of UCV set annually. Currently 0.248 % from 1.22 % in 2009.	Determined periodically by VG on % of UV (currently 2.7 % set for 10 years	Set % of UCV. Set by VG every 5 years. Currently 2 %
Rental Concessions	Yes – Minister can intervene where 'undue hardship' caused.	Y	Y	Y – hardship	Y	Y but only by V-G (not Minister)
Role & Contribution of Leases to State	66 % of state leasehold (63 % term or perpetual)	>65,000 leases (inc non-ag)	40 % of State	217 pastoral leases = 46 % of state.	328 leases = 42 % of State	460 leases
Other	Limited uptake on SRLLRS Incentives for additional term upgrades to date.	Conducted Kerin review resulting in sale of small tenures at 3 % lease UCV.		Restrictions on holding an aggregate >13,000 square kilometres	Historical	Significant tenure reform package underway.