

**ENQUIRY INTO THE FUTURE AND CONTINUED RELEVANCE OF  
GOVERNMENT LAND TENURE ACROSS QUEENSLAND**

***PRIVATE SUBMISSION BY PETER TANNOCK***

## **1.0 ENQUIRY - TERMS OF REFERENCE**

The State Development, Infrastructure and Industry Committee are required to consider the following issues in undertaking the enquiry:

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

These matters have been considered as part of this submission.

## **2.0 PERSONAL DETAILS AND EXPERIENCE**

### **2.1 Personal Details**

Peter Robert Tannock

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### **2.2 Experience**

Experience in relation to rural tenure includes:

- 23 years employed in former Lands Department/DNR including 9 years as Land Commissioner and District Manager located at Cunnamulla.
- Managed Lands component of SW Strategy (tenure reconfiguration and carrying capacity assessments)
- Managed Lands Department role in Carrying Capacity Project (Mulga Lands)
- 5 years employed with Devine Agribusiness. Roles include assisting landholders with vegetation mapping, rural lease renewals and mining compensation assessments.

## **3.0 FOCUS OF SUBMISSION**

Based on experience, this submission will focus on the principle rural leasehold tenures existing in Queensland. These include the following leases:

- Pastoral Holdings (PH),
- Term Leases (TL); and
- Grazing Homestead Perpetual Leases (GHPL)

The submission aims to simplify / rationalise the following processes:

- Ø Lease Renewals of PH and TL
- Ø Upgrade of tenure security of PH & TL
- Ø Freeholding of GHPL

The submissions will also discuss

- Ø Lease Rentals
- Ø Ownership Restrictions
- Ø Subdivision/ Amalgamation Policy
- Ø DNRM Staffing

At this point the following observation is made:

- Experience demonstrates that tenure type is not a contributing factor to land degradation/sustainable management issues. These are driven by totally separate factors such as financial pressure, property size and/or management style.

#### **4.0 HISTORY OF LEASEHOLD SYSTEM**

The evolution of the leasehold system in Queensland can be summed up as follows:

- The leasehold system facilitated the closer settlement and development of the State. This commenced from initial settlement, through the closer settlement and soldier settlement schemes to the brigalow scheme of the 1960's.
- The freeholding of leases commenced on a broader scale in the 1960's and mainly focused on the more developed areas of the state usually in the better land types and higher rainfall areas.
- The blanket freeholding of Perpetual Lease Selections (PLS) commenced in 1981 whereby the existing rent determined the final rental period after which freehold title was issued. These leases were located in the highly developed agricultural areas.
- In the 1980's Grazing Farm (GF) and Grazing Homestead (GH) leases (30 year terms) were automatically converted to Perpetual leases (GHPL).
- In 1987 the term of most Pastoral Holdings was automatically extended by 20 years which effectively made them 50 or 53 year leases.
- Based on the Wolfe Report, the *Land Act 1994* broadly changed the focus of state land administration to include sustainable resource use, and environmental and cultural protection.
- Since 2008 rural Term Leases (mostly Pastoral Holdings) are being renewed under the Delbessie Agreement framework involving land condition assessments and Land Management Agreements (LMA). Lease terms are determined by the condition assessment.

#### **4.1 Future Relevance of State Leasehold Rural Tenures**

By the conversion of GF and GH leases to perpetuity plus significant freeholding of leases since 1965, the state has acknowledged they wish to retain a diminishing interest in those titles. The question is - does the state wish to retain continued control and interest in the remaining Term Leases being mainly Pastoral Holdings? These leases are located primarily in the western and northern section of the state. There is an argument the state should retain these leases for possible future development particularly in remote areas with limited infrastructure. In reality most leases are developed to their potential bearing in mind location, rainfall, country type and restrictions imposed by the vegetation laws.

If it is decided that the state should still retain control then a solution could be to designate a '*Special Pastoral Zone*' to contain those larger more remote leases. Leases outside this zone could be encouraged to convert to freehold subject to addressing Native Title and suitable protection of ecological values. If the state does not wish to retain control then the policy should be to encourage all leases to convert to freehold subject to the matters just mentioned. In reality Native Title implications will mean that most leases will not be able to upgrade tenure security under existing arrangements (see 5.0).

## **5.0 LEASE RENEWAL – PASTORAL HOLDINGS AND TERM LEASES**

Upgrade in tenure security of rural Term Leases or Pastoral Holdings is very difficult due to the need to address Native Title usually through an Indigenous Land Use Agreement (ILUA). Therefore the renewal process remains critically important for the vast majority of leases. Section 159 of the *Land Act 1994* sets out the issues that must be considered when a lease is being renewed.

### **5.1 Delbessie Agreement**

The Delbessie Agreement established the policy framework for the renewal of rural term leases and became effective from 1 January 2008. This framework extended the earlier provisions of S159. Renewal of leases can only occur in the last 20% of the lease term except where special circumstances exist.

The program represented a major shift in the process for renewal of rural leasehold land with lease term linked to land condition assessment, indigenous use and access agreements, and conservation agreements/covenants. Land Management Agreements are required for all renewed or upgraded leases.

Based on experience the following observations are made on the primary aspects of Delbessie:

#### **5.1.1 Land Condition Assessments**

- Few landholder complaints on the actual data collection process other than it is lengthy.
- Some GLM land type sheets have over expectation of preferred pasture species (e.g. hard mulga, residuals and gidgee) – this is a significant issue.
- Very detailed inspection – can take 3 to 4 days – owners usually only stay for a few hours
- Most leases are assessed in good condition.
- The few leases that fail tend to be lumbered with the ‘stigma’ of not being on good condition even though they only just fail.

#### **5.1.2 Land Management Agreement (LMA)**

- LMAs are required for all renewed leases and are registered on the new lease title.
- Main source of complaint by lessees.
- Vast majority of lessees see this as a bureaucratic imposition with little benefit – they have little respect for the document and feel they know how to manage their land.
- Schedule 4 (Management Outcomes & Strategies) is critical. This has increasingly become more detailed and complicated – LMAs can now involve over 70 pages.
- The more detailed and lengthy the LMA becomes the less respect is given to the document by lessees.
- Significant Natural Environmental Value (SNEV) areas are being identified in most cases – these are considered a “blot on title” and are adequately protected by Veg Management Act anyway.
- Lessees are concerned that identified SNEV areas could be further controlled through legislation in the future

#### **5.1.3 Future Conservation Areas (FCA)**

Delbessie identified the following actions available for acquiring land for National Park in the lease renewal process:

- (a) Prior to expiration, negotiate to purchase required area at full market value for the land and improvements.

- (b) At renewal, the area is designated FCA as a reservation within the new lease. Lessee required to manage the area according to certain management principles. When the new lease expires, a further lease is not issued over the FCA with compensation paid for the improvements only.
- (c) During new lease, negotiate purchase price guided by residual value of expiring lease and improvements

FCAs are a definite 'Blot on Title' and should be abandoned. If the state wishes to secure an area as national park then it should negotiate to purchase the area at full market value or acquire the area under the Acquisition of Land Act 1967.

In summary the Delbessie Agreement attempts to drive sustainable management through the tenure system. The result is an overregulation of the vast majority of Pastoral Holdings and Term Leases that are already sustainably managed. Bearing in mind tenure type is not a contributing factor to land degradation, it is strongly felt the requirements of the current policy should be wound back for the vast majority of leases. The focus should be on the small number of cases where there are real sustainable management issues.

## 5.2 General Tenure Issues

General tenure issues are not adequately addressed in Delbessie renewal process – for example:

- Rationalisation of roads and access e.g. a lease was recently renewed however it did not have any dedicated access. The lessee is currently attempting to secure an easement through an adjoining reserve at his own cost. The Crown should ensure all its leases have dedicated access as a basic policy.
- Restructuring/build-up of small non-viable leases. There are cases where small leases could be amalgamated or rearranged to underpin sustainable management. Incentives should be provided where lessees are willing to restructure leases. Costs such as survey and fees are currently a disincentive.
- Survey requirements. Titles office survey standards currently require many new leases to upgrade the old PH plans – these are usually compiled plans but can cost lessees \$2,000 to \$4,000.

## 5.3 Suggested Renewal Process

Based on the matters discussed the following renewal process is suggested:

- *Amend renewal application form – lessee provides a statement on duty of care obligations. Also identifies tenure restructuring, road issues, possible voluntary conservation and indigenous agreements.*
- *Conduct desktop land condition assessment using satellite imagery to identify obvious problem leases (poor condition). Assessment criteria set by Advisory Group. Focus on the few problem leases rather than making everyone jump through hoops.*
- *Problem leases are inspected and if appropriate are subject to a LMA including 5 year review (30 year lease term). Could apply for extra 10 years once lease is not in poor condition.*
- *Leases without tenure rearrangements or voluntary agreements are renewed (40 year term) and not subject to LMA. Any road issues could be addressed by SLAM.*
- *Lessees prepared to conduct tenure restructuring or enter into voluntary conservation or indigenous agreements could be offered a 50 year term – not subject to LMA.*
- *Funds saved in reduced inspections and LMA negotiations could be redirected to help reduce tenure restructuring costs such as survey and fees.*

- *Eliminate FCA areas – either negotiate purchase up front at market value or use Acquisition of Land Act when required. Full market value of the land and improvements should be paid.*
- *Review Duty of Care provisions of Land Act to ensure relevance with new process*
- *Cancel existing LMAs with approval of the lessee.*

This process is summarised as follows;

- *Focus on problem leases only*
- *No Land Condition inspection and Land Management Agreement (LMA) for vast majority of leases.*
- *Normal renewal - 40 year term*
- *Problem leases - 30 year term*
- *50 year lease where voluntary tenure restructuring, conservation or indigenous agreement (no LMA).*
- *Cost savings redirected to reduce costs such as survey and fees.*
- *Eliminate Future Conservation Areas*
- *Review Duty of Care provisions of Land Act.*
- *Cancel existing LMAs with approval of the lessee.*

## **6.0 LEASE SECURITY UPGRADE – PASTORAL HOLDINGS AND TERM LEASES**

Issues include:

- *Current provisions allow conversion only to Perpetual Lease (which are subject to a LMA under Delbessie).*
- *Native Title must be addressed.*
- *Provisions of Section 167 of the Land Act 1994 must be addressed.*
- *Can only apply in last 20% of term except for special circumstances.*
- *Prior to Delbessie - allowed to address Native Title (NT) after DNRM approved in principle (sensible)*
- *Delbessie requires NT be addressed first then application is assessed (not practical)*
- *Conversion applications not being accepted – have to now wait for last 20% of new lease to apply.*
- *In reality few leases will achieve upgrade due to NT requirements.*

### **6.1 Suggested Process:**

- *Amend application form - lessee provides statement on duty of care obligations. Also identify tenure restructuring, road issues, possible voluntary conservation and indigenous agreements.*
- *Conduct desktop land condition assessment – inspect if there appears to be a problem.*
- *Address requirements of S167 (1) of Land Act*
- *DNRM makes decision first - then address Native Title*
- *No LMA*
- *Allow applications outside of last 20% of term.*
- *Allow conversion direct to freehold (see 6.0).*
- *Many leases not surveyed – Review Titles Office survey standards*

## 7.0 FREEHOLDING OF PERPETUAL LEASES (GHPL)

Issues include:

- NT is already extinguished on GHPL.
- Assessed under S167 (1) - State Forest and environment/nature conservation requirements are considered.
- Commercial timber retained through State Forest or Forest Entitlement Area (FEA)
- FEA is considered a blot on title and requires physical survey.
- Purchased at UCV current at date of application – instalments include interest component (pre 1994 was 40 years interest free)
- Required to be fully surveyed to go to freehold (most are OK but some need to be surveyed).
- Not many applications now - less attractive now due to Veg Management Act and current instalment provisions.

### 7.1 Suggested Options

#### *Option 1*

- *Blanket conversion to freehold as per PLS legislation in 1981.*
- *Instalments/term based on set % of UCV*
- *Address S167 requirements (e.g. forestry areas, NP areas) – possibly through desktop assessment.*
- *Have registered agreements over forestry rather than FEA*
- *Some GHPLs not fully surveyed – Review Titles Office survey standards.*

#### *Option 2*

- *Retain current process but make instalments more attractive*
- *As per Option 1 make instalments/term based on set % of UCV or the old system of 40 years interest free.*
- *Have registered agreements over forestry areas rather than FEA*
- *Review Titles Office survey standard*

## 8.0 RENTALS

Applicable rental - Category 11 (Primary Production) is now 1.5% of UCV (5 year rolling average) capped at 20% increase until 2017.

Below are actual examples of lease rentals including carrying capacities:

Lease X: (Blackwater) 2750ha (982 cattle) – UCV - \$1,250,000 @ 1.5% = \$18,750pa (\$19.09/beast). *Current Rent = \$14,091pa (1.1%)*

Lease Y: (North of Clermont) – 90,100ha (13,250 cattle) – UCV - \$22,000,000 @ 1.5% = \$330,000 (\$24.90/beast). *Current Rent = \$128,991pa (0.6%)*

Lease Z: (Eromanga) – 436,100ha (8722 cattle) – UCV - \$3,400,000 @ 1.5% = \$51,000pa (\$5.85/beast). *Current Rent = \$14,091pa (0.4%)*

The UCV system has problems associated with relativity of values between leases plus the disconnect between land values and farm income particularly during upturns in the property market. Ideally there is need for a productivity based system (e.g. based on carrying capacity and linked to commodity indicators or farm income) however departmental expertise in this area is now lost and would be very difficult to get back. In 1996 a rental review was undertaken which aimed to address these issues.

### **8.1 Suggestions:**

- *Review current system under the principle that rentals remain moderate (e.g. 1.0% of UCV) and be linked to productivity*
- *Consider review undertaken in 1996*

## **9.0 OWNERSHIP/AREA RESTRICTIONS**

Corporations cannot hold the following leases which can only be held by individuals:

- (a) perpetual leases issued for grazing or agriculture purposes; and
- (b) GHPL; and
- (c) GHFL; and
- (d) subleases of leases above.
- (e) former GHFL now freehold title that is greater than 2,500ha (S174)

However an individual may hold these leases as trustee for a family arrangement involving a partnership or corporation. An individual cannot hold 2 or more of the above leases at the same time if the aggregation would be substantially in excess of 2 living areas.

Corporations can hold term leases including:

- pastoral holdings (PH)
- pastoral development holdings (PDH)
- preferential pastoral holdings (PPH)
- stud holdings (SH)
- and special leases (SL)

### **9.1 Issues**

- S174 covenants on freehold > 2,500ha are being given exemption by DERM
- Living Area requirement is not being checked by DERM (no expertise there now)
- Now a piecemeal situation
- Concern over foreign ownership of land

### **9.2 Suggested Options**

- *Repeal ownership and living area restrictions*
- *Consider foreign ownership restrictions*

## **10.0 SUBDIVISION AND AMALGAMATION**

DNRM Policy PUX901/528 (V2) is relevant. Broadly the subdivision of leases is not permitted. In the case of rural leases subdivision is allowed where build-up is occurring or where contiguous lots are rearranged to provide for improved cadastre or natural resource management. This policy is sound and would underpin any tenure restructuring undertaken in the suggested renewal process.



## 11.0 DNRM STAFFING

Tenure matters are complex and therefore require decision makers to have a detailed technical knowledge of legislation and policy, plus provide sound advice to the public. It is also important to have an understanding of the issues impacting on rural industries. Much of this knowledge has been lost from the department since restructuring occurred in the early 1990's. These were the people who had significant experience in either the field and tenure administration matters.

The limited number of staff who still have these skills are critical to the effective management of rural tenures. Ways should be looked at to ensure this knowledge is best placed not only for operational matters but for mentoring and training of junior staff. It is vital that these people are not lost in the current staff reductions in the public service.

A handwritten signature in black ink, appearing to read 'P. Tannock', written in a cursive style.

Peter Tannock  
2<sup>nd</sup> August 2012