



Submission to the Queensland Government Land Tenure Inquiry

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About 60 per cent of the state is under tenure to the State Government.

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Summary

The Queensland Greens advocate that the scientific precautionary principles and the principles of inter-generational equity should be the foundation of land and resources use in Queensland.

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1. Introduction:

The first priority for the land tenure system legislated and administered by the Queensland Government should be to allow management of land and its resources in an **ecologically sustainable way**. The public interest must include the interests of future generations and will not be served by governments that allow overuse or degradation of natural assets, whether they be publicly or privately owned or controlled.

Governments through their legislation and through agreements reached with competing political representative groups are able to provide a reasonably representative and secure framework within which individuals and communities can plan future land use. *Only ultimate government ownership of land can provide such reasonable certainty.*

Outright private ownership of land provides little such certainty or protection of the public interest. Commercial land uses are by nature subject to market forces locally and internationally. They are subject to diverse pressures of competition and changes in management styles and objectives.

For these reasons, government land tenure should be maintained at current levels and be expanded wherever the public interest and stable land management can be better served by the resumption of private land from commercial land uses that degrade it.

The second priority for Government land tenure policies should be to meet basic human needs for food and shelter. This includes respecting and prioritising claims by individuals, families and communities on land that provides them with homes and sustenance where needed and according to their traditional cultural practices. Basic human needs include the prioritising of food security in future times of drought or other climatic, economic or political emergencies that threaten the nation's ability to feed itself or others who are dependent on Australian food supplies for their survival. The land tenure system needs to be capable of adapting to such emergencies.

After these initial priorities are addressed, present and future governments of Queensland will be better able to cater to the needs of economic development. Investor confidence across all industries will be built by the government providing:

1. Extensive consultation and as much agreement as possible with other political parties so as to provide future certainty about policies, regardless of which party wins government.
2. Administrative regulations that are clear, as simple and unobtrusive as possible and that have in their design the awareness that they will cost existing and potential businesses time and money to comply with and that these costs will affect the competitiveness of companies doing business in Australia.

Further points for consideration by the Committee:

- 1) The current land tenure system relating to extensive grazing leases i.e. Rural Leasehold Land, and the associated regulatory regime under the Delbessie Agreement is an essential mechanism for increasing the productivity and

profitability of the grazing industry while effectively managing for land degradation. This or a similar system must be retained and continually improved where necessary, in full consultation with stakeholders.

- 2) DNRM must be adequately resourced to provide the extension/assessment support to lessees under the Delbessie Agreement so that the 60% of the state held in grazing leases is maintained for the public good and the benefit of existing and future lessees.
- 3) The current land tenure system allows for diversification into farming on appropriate portions of a lease and low impact tourism, and does not require any significant change to allow for these activities.
- 4) The Nature Refuge system allows for the voluntary allocation of high nature conservation areas to become part of the protected area estate, while ensuring that there are 'private resources' (the lessees) available to ensure it is to be managed for these values while not significantly affecting the productivity of the majority of the lease. These Nature Refuges are critical parts of the mosaic of land types required to maintain biodiversity.
- 5) Regional NRM Groups, catchment and landcare groups should continue to be adequately funded for the role they play in supporting lessees in taking up carbon farming, weed and feral animal management and improving the condition of the lease.
- 6) Any proposed changes to the land tenure system should be assessed to ensure they support rather than impede these long term management activities. The cost to Queensland of reducing the capacity of graziers to manage their leases for multiple benefits should be included in any such assessments.
- 7) Licence conditions for all mineral exploration, experimentation and extraction activities, whether on private or government land, need to prioritize the values of ecological sustainability and basic human needs before commercial interests where the latter threaten or diminish these priority values.

2. Queensland Greens position:

The Queensland Greens' interest in the Queensland government land tenure Inquiry relate to the principles that inform the objectives of the Land Act 1994 (the Land Act http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=203963) which require land administered under the Act to be managed for the benefit of the people of Queensland by having regard to **“sustainability, evaluation, development, community purpose, protection, consultation and administration”**.

The Queensland Greens supports “effective stewardship of land” as the principal tenet behind the management of state land in Queensland. The Queensland Greens recognises that there is a growing body of law that has determined the most appropriate tenure for land by considering land/environmental management issues.

The Queensland Greens also argue that a comprehensive understanding of the projected impacts of either changing (e.g. by giving some of them less or more priority) or removing the principles of the Land Act should be considered in relation to

any adverse impacts that may occur on the region's natural resources and other assets as identified in the Regional NRM Plan.

The Queensland Greens believes that the development of Crown land tenure in Queensland must take into account historical lessons related to the State's governance and the uniqueness of the state's geography and climatic features in order to find new and better legislative instruments to deal with new interests in land, for example, those arising out of trading in carbon sequestration rights.

Crown leasehold interests in Queensland are not protected through registration on the freehold land register and do not have the benefit of indefeasibility of title. The treatment of new property rights therefore may require a reconceptualization of property rights to guarantee that the interests of investors are adequately protected whilst ensuring land is managed effectively in Queensland. The Queensland Greens is concerned that the lack of indefeasibility of title for Crown land interests can have a significant effect on land uses such as carbon sequestration.¹

The Queensland Greens advocate that the scientific precautionary principles and the principles of inter-generational equity should be the foundation of land and resources use in Queensland.

3. Specific comments

3.1 Land tenure and carbon sequestration rights

Carbon sequestration rights over freehold land in Queensland are protected by indefeasibility of title through s184 of the *Land Title Act* 1994 where the carbon sequestration right is considered as an interest in land. The Queensland Greens notes that this is not duplicated where carbon sequestration rights exist over state land. Commentators on this difference are suggesting that the only options are to view carbon sequestration rights as a personal right enforced through the common law principles of contract law or as a *profit a prendre* but note the difficulties that poses, namely that the rights fall outside of the current legal understanding of what a *profit a prendre* entails, being a right to remove or harvest a resource from the land, be it flora or fauna. On the contrary the purpose of carbon sequestration rights is that the vegetation remains on the land to embody carbon dioxide.²

According to section 373G of the *Land Act* 1994 the Minister's approval of grant and registration are both required to create the interest in state land. The conceptualisation of carbon sequestration rights as *profit a prendre* is therefore difficult to bring to reality due to the complexities associated with each of the state leases granted in Queensland and the specificity that leases be used solely for the purpose granted. For a *profit a prendre* to be appropriate the Lessee must own the trees on the land and the lease must permit the land to be used for the purpose related to the profit, i.e. for timber plantation.

¹ "State of Origin: Queensland Crown Leasehold – lessons from New South Wales", Craddock & Blake, Journal of New Business Ideas & Trends, 2011, 9(2), pp. 1-10.
http://scholar.googleusercontent.com/scholar?q=cache:IWuuej3OQLkJ:scholar.google.com/&hl=en&as_sdt=0.5

² For example, see "Dealing with unique interests in Crown Land : a Queensland perspective", In Levy, Deborah (Ed.) *Proceedings of the 16th Annual Conference of the Pacific Rim Real Estate Society*, PRRES, InterContinental Hotel, Wellington, pp. 1-14. <http://eprints.qut.edu.au/39469/>

The current challenge to the State land tenure system is to decide what is necessary to ensure that the interests of investors and consumers are adequately protected while ensuring Queensland Crown land is managed effectively.

3.2 Land tenure and the resources industry

Land tenure challenges associated with the resources industry require in depth environmental and socio-economic analysis in relation to potential impacts on natural resources, social infrastructure and local economies.

The inherent rights to minerals and water under the *Mineral Resources Act* and *Petroleum and Gas Act*, in Queensland Greens' opinion, create anomalies in legislation and tenure that lead to economic priorities that undermine regional commitment to sustainable development. Resources that should be dedicated to sustainable development in the region are becoming the goods of foreign owners and corporate bodies that do not have the public good at the centre of their intentions.

The Queensland Greens asserts that economic theory informing State land tenure must highlight in greater detail the importance of ecosystems, community equity and governance of regional resources and have its roots in valuing natural and social capital in its economic analyses. Ecological economics that integrates natural and social capital into traditional economic theory will assist regional planning processes to develop the State's land tenure system in a more sustainable manner.

Social impacts caused by current and potential resource development for landholders raise concerns about, for example, the changing value placed on agricultural land and food security in relation to the drive of foreign markets and global demand for energy. The increasing alienation of farmers from land may mean there is no one around to farm, and therefore there will be no strategic cropping land.

The Queensland Greens submits that State land tenure must assess whether current State lands are providing adequate protection for agricultural land resources and are equally able to be committed in their current status as, for example, unallocated lands or leases as *Strategic Cropping Land*. Striking a balance for the region's communities is clearly associated with the increasing need to protect agricultural land resources and future food security against the rights held by the Crown to exploit the earth's mineral resources.

Queensland Greens submits that State land tenure should have a "specific" rather than a "general" aim to protect SCL from developments that lead to its permanent alienation or diminished productivity. The Queensland Greens believe that fifty years is too long a timeframe by which to measure diminished productivity because the average age of landholders is 59 years, however average length of land ownership (as per 2006 census) is 15 years.

- A generation is considered 25 years;
- Most State Government planning cycles are 5 years – some such as Water Plans are 10 -15 years at the most;
- Delbessie Lease renewals are done to 30 years.

A 50 year timeframe therefore does not mirror key factors that may impact on a range of related SCL and State land tenure matters e.g. lease agreements. The Queensland Greens considers 5 -10 years a more reliable timeframe.

3.3 Land tenure and state forests

Public ownership of State forest land offers opportunities not possible on privately owned land, especially in terms of the future. However these opportunities come with their own set of challenges. In the Queensland Greens' opinion, farm forestry should be subject to sustainable harvest rates and over-harvesting should not be permitted. This will ensure State forests are protected for future generations. Management of State forests however is an ongoing issue.

The Queensland Greens supports regulation as a necessary support mechanism to ensure compliance and participation in weed and pest management, especially when a voluntary and proactive approach is not capable of achieving full participation. The *Biosecurity Act* therefore must clearly enforce not only the responsibility of local governments but also the State's responsibilities as important functions in supporting the adoption and delivery of both mandatory and voluntary implementation of biosecurity activities on Crown land.

The Queensland Greens does not support the immunity for the State and Commonwealth from prosecution for biosecurity risk mismanagement on Crown land afforded by *section 6(2)* of the *Biosecurity Act*. The Queensland Greens would like to see strict measures implemented and resourced adequately to ensure the State land tenure system places an obligation on the landholder who benefits from freeholding to control biosecurity risks.

The Queensland Greens is concerned that private forest land is susceptible to being reduced to smaller parcels or holdings. If property tax structures help to successfully change forest land into increasingly smaller sub-divisions, this division leads to fragmentation of the forest into bits and pieces, which has significant negative environmental and economic implications.

The Queensland Greens argues that State owned forest land should maintain the continued presence of forest cover, especially relatively large blocks. These large blocks need to be sustainably harvested and managed so as to provide advantages economically, environmentally and socio-culturally. Although management of these large areas of forest lands is challenging, at least they remain as intact forest lands for future generations to enjoy and derive benefit.

The Queensland Greens argues that large forested blocks are easier to manage for a range of diverse uses including sustainable timber production. Large forested blocks often provide enough space for wildlife species with wide ranges or those with preferences for interior habitats. Larger forested blocks may be better protected from certain exotic species. Large blocks tend to be less fragmented, coming closer to providing the potential quality and quantity of ecological services associated with forested areas. Management of large forest areas also sequesters huge volumes of carbon, which will mitigate the effects of climate change. Large forested blocks offer recreation opportunities not otherwise available. Tourism, another vital rural industry in this region, depends in part upon vast and extensive forests as an attraction.

Public ownership of forest lands requires funding. The Queensland Greens argues that State forests are good investments for the public good. State owned forests have the potential to provide commercial timber that has positive roles in the rural economies and ecologies of the State's regions.

With the State's human population predicted to continue to increase, demands for timber and recreation will grow. The pressure to develop private forest land will continue to increase. The goods and services from much of this private land will continue to decline. The Queensland Greens believes States with large public forest ownership will be possibly insulated from these nationwide trends. The state of Queensland will be in a better position to accommodate the needs of future citizens if it retains public ownership. Public forest ownership is an asset that will become more important over time.

3.4 Land tenure and future land uses

The Queensland Greens does not support the sale of key State land assets, where it would be more strategic to keep for the following public benefit purposes:

- Future climate refugia;
- Recreation needs of an expanding population;
- Multi land usage to optimise environmental and economic benefits e.g. allowing non-grazing lease categories to encompass other low impact land uses such as eco-tourism. This allows eco-tourism to play a complimentary role in the rural sector;
- Future public benefit good not as yet identified e.g. solar energy plants;
- Food security;
- Rail and public transport networks;
- Nature conservation – using the land tenure system to promote obligations and/or incentives to maintain wildlife corridors, and listed species

The Queensland Greens asserts that any changes to current State land tenure should not permit the clearing of regional ecosystems mapped as 'endangered' or 'of concern', protected under the *Vegetation Management Act 1999*, or listed ecological communities under the federal *Environment Protection and Biodiversity Conservation Act*. An assessment of State land tenure must consider the cumulative impacts of small-patch clearing, even where such clearing is currently permitted under state or federal legislation, to avoid further fragmentation of the landscape.

The Queensland Greens also believes the State land tenure system needs to provide leadership in the ethical production of food which recognises that Australia needs to start paying for the privilege of having a clean, green, food supply to allow viable farmers to remain profitable. This includes placing a fair value on the price of water to ensure food security.

3.5 Foreign investment versus foreign ownership

The Queensland Greens asserts that there needs to be tight controls to ensure large tracts of State land are not sold to foreign governments and large corporate bodies. The Queensland Greens acknowledges that Australia has relied on foreign ownership to fund development in the rural sector, however any future transfers of title to foreign companies must safeguard key land assets for future generations and

the needs of residents and communities of Queensland for food security and protecting our land's unique ecosystems and biodiversity.

3.6 Native Title and access rights

The Queensland Greens asserts widespread and real time consultation is required with Traditional Owners and Aboriginal communities to fully consider Aboriginal views on State government land tenure and ongoing access and legal rights to Country.

The State government and Aboriginal custodians need to agree what key areas, cultural sites or Country exist in Queensland that should be safeguarded for current and future use and access for traditional cultural practices, customs and heritage purposes.

3.7 Sizes of parcels or blocks of land

The Queensland Greens believe careful consideration needs to be given to land suitability and future land use. Blocks or parcels of land, depending on their specific purpose, need to be kept as viable living areas and not carved up into unproductive smaller blocks.

The reverse is true also where parcels/blocks are already too small or unviable. Where it is proven the smaller farms are better managed and more productive, there should not be the capacity to depopulate communities because more and more neighbours are merged into larger amalgamated blocks.

The Queensland Greens also recognises that consideration must be given to succession planning that may involve small parcels of land being subdivided off the main title for retirement purposes.

3.8 NRM body co-investment

Successful drafting of new land tenure policy and legislation relies on the need for meaningful consultation with regional communities. The Queensland Greens have worked with representatives in the regions, consulting groups who have experience in consultation with key stakeholders from State and local government, industry, business and from the community e.g. landholders, Landcare groups etc. Queensland Greens recognises there are key elements that assist the implementation of policy and law from a property to a landscape scale.

The suggestion that NRM bodies could play a key role in the governance of state land must be qualified. There needs to be clarity on 'what regional bodies are responsible for' and how regional bodies can ensure state agencies are delivering against their own policies and strategies.

Key concerns and directions include developing appropriate ways of 'ensuring' state agencies deliver on policy or components of policy within the regional planning framework. Underlying questions associated with this include clarifying reliance on existing statutory arrangements and compliance. State government agencies which are in a position to be 'reaping the advantages of regional delivery partnerships' will need to ensure there is a high level of commitment from their agencies. Co-

evaluation of project progress involving state agencies, industry and regional bodies and other key stakeholders is important, especially where parties share responsibilities in public good provision, including collaborations between different government agencies (eg: at the local and state levels).

The Queensland Greens believes it is possible that a collaborative model of State land management between the government and NGOs who represent Queenslanders' interests is optimal. This will enable investments in a project to increase the value of its service, which is a public good to the two parties and the communities each serves. However, the usual problem that occurs is an under-investment in the project. The question then arises who therefore should own the property rights to the asset to optimize the net surplus generated by the investments?

3.9 Other comments

Key matters a State land tenure system and associated regional plans need to consider are:

- Conservation values and natural resource use including recognition that there are areas that should be considered as “no go zones” for new development and infrastructure because of their inherent conservation values and because the impacts on those natural resources are unacceptable even if a development is deemed a project of state significance;
- Economic growth which facilitates diverse industries and businesses and is not solely dependent on the mining and energy industry;
- Regional planning must develop a quadruple bottomline to economic growth so that local communities, for example:
 - ~ retain skilled labour across a number of sectors
 - ~ enjoy improved community and health services
 - ~ have access to safe, well established multi-mode transport infrastructure
 - ~ have both the capacity to change and the resilience to sustain change
 - ~ can provide opportunity and incentives for local youth to live and work in the region
- That within the Queensland Murray Darling Basin region there are highly productive cropping areas to the East and highly productive grazing lands to the West, which both need recognition and relevant protection;
- Making a determination where protection must be afforded to existing land use where proposed development is incompatible to that land use;
- Strategies and initiatives must be consistent with one another to enable their successful implementation;
- State land tenure should encourage multi use planning and focus on mixed development that takes into account rural, urban and mixed development needs;
- That maintenance of current infrastructure on State land is considered a priority.

A resolution of the issues identified will require real time public consultation to ensure appropriate input from all stakeholders. As a starting point, government will need to review existing policy to ensure that an appropriate framework is developed for the future both of new property rights such as carbon sequestration rights and the management of Crown land. Only once the appropriate policy is determined should amendments to the existing statutory regime be contemplated.



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