

Final report

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

Report No. 25

**State Development, Infrastructure and Industry
Committee**

May 2013

State Development, Infrastructure and Industry Committee

Chair	Mr David Gibson MP, Member for Gympie
Deputy Chair	Mr Tim Mulherin MP, Member for Mackay
Members	Mr Michael Hart MP, Member for Burleigh Mr Seath Holswich MP, Member for Pine Rivers Mr Rob Katter MP, Member for Mount Isa Ms Kerry Millard MP, Member for Sandgate Mr Bruce Young MP, Member for Keppel
Staff	Dr Kathy Munro, Research Director Ms Margaret Telford, Principal Research Officer Ms Mary Westcott, Principal Research Officer Ms Rhia Campillo, Executive Assistant (to 15 February 2013) Ms Dianne Christian, Executive Assistant (commenced 18 February 2013) Ms Stacey Charker, Executive Assistant (commenced 22 May 2013)
Parliamentary Library	Mr Wayne Jarred, Team Leader Ms Lucy Manderson, Research Officer Ms Robyn Moore, Research Officer (Quality Control) Ms Nicolee Dixon, Research Officer
Contact details	State Development, Infrastructure and Industry Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7230
Fax	+61 7 3406 7500
Email	SDIIC@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/sdiic

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Abbreviations

ACT	Australian Capital Territory
ALA	Aboriginal Land Act 1991 (Qld)
AMPTO	Association of Marine Park Tourism Operators
ANZECC	Australian and New Zealand Environment and Conservation Council
CA	Conservation Agreement
CCC	Capricorn Conservation Council
CLD	New South Wales Crown Lands Division
committee	State Development, Infrastructure and Industry Committee
CYRO	Cape York Regional Organisations
CYSF	Cape York Sustainable Futures
department	Queensland Department of State Development, Infrastructure and Planning
DOGIT	Deed of Grant in Trust (tenure type)
DERM	Department of Environment and Resource Management (this department no longer exists and has been restructured)
DNRM	Department of Natural Resources and Mining
DPI	Former Department of Primary Industries
DSE	Victorian Department of Sustainability and Environment
EPA	Environmental Protection Agency
Gecko	Gecko - Gold Coast and Hinterland Environmental Council
HCSC	(Queensland Parliamentary) Health and Community Services Committee
HWM	High water mark
ILUA	Indigenous Land Use Agreement
IMA	Indigenous management agreement
KBR	Kingfisher Bay Resort
LIST	Land Information System Tasmania
NCA	Nature Conservation Act 1992
NPAQ	National Parks Association of Queensland
NSW	New South Wales
NT	Northern Territory
NTA	Native Title Act 1993 (Cth)
NZ	New Zealand
QCWA	Queensland Country Women's Association
QPWS	Queensland Parks and Wildlife Service
QTIC	Queensland Tourism Industry Council
QTON	Queensland Traditional Owners Network
RDA	Racial Discrimination Act 1975 (Cth)
ROS	Recreation Opportunity Spectrum
RTN	Right to negotiate
SA	South Australia

SEQRFA	South-East Queensland Regional Forests Agreement
SPA	Sustainable Planning Act 2009
SPR	State Planning Regulation 2009
SSPP	Single state planning policy
SSSI	Surveying and Spatial Sciences Institute
Strategy	State Rural Leasehold Land Strategy
TIPA	Tourism in Protected Areas (management framework for National Parks)
TMR	Department of Transport and Main Roads
UCV	Unimproved capital value
USL	Unallocated state land
UV	Unimproved value
VMA	Vegetation Management Act 1999
Vic	Victoria
WA	Western Australia
WPSQ	Wildlife Preservation Society of Queensland

Glossary

Cardinal principle	The cardinal principle for managing national parks is to provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values.
DestinationQ	DestinationQ is a partnership between the Queensland Government and the tourism industry aimed at making Queensland the number one tourism destination in Australia and doubling visitor expenditure by 2020.
Future act	Future acts are acts that affect native title, such as the grant of a new lease or the amendment of a lease to allow for new activities that occur, or occurred, after the commencement of the <i>Native Title Act 1993</i> .
Future Development Area	A proposal to address the needs and aspirations of Indigenous Queenslanders.
Indefeasibility of title	The description given to the immunity a registered proprietor of land enjoys from attack by a competing claim to the land by some other person.
Indigenous Land Use Agreement	An indigenous land use agreement means an indigenous land use agreement registered on the register of indigenous land use agreements under the Native Title Act 1993 (Cwlth), part 8.
Mabo decision	In 1992, the High Court recognised Indigenous people's right to native title, which must be treated equally with other titles.
Nature refuge	A nature refuge is a class of protected area under the <i>Nature Conservation Act 1992</i> .
Occupation licence	An occupation licence is an approval to occupy unallocated state land.
Permit to occupy	A permit to occupy is a permission to occupy or to use a specified parcel of unallocated state land, a reserve or road, including a stock route. It cannot be issued over freehold or leasehold land.
Right to roam	(United Kingdom) - Right to roam is the general public's right to access certain public or privately owned land for recreation and exercise.
Road licence	A road licence is a tenure granted for the use of a road that is temporarily closed. A road licence provides a right to exclusive occupation of the road within the conditions of the licence but only while the rent continues to be paid.
State Rural Leasehold Strategy	The State Rural Leasehold Strategy, previously known as a Delbessie Agreement, is a framework of legislation, policies and guidelines supporting the environmentally sustainable, productive use of rural leasehold land for agribusiness.
Strategic cropping land	Strategic cropping land is a scarce natural resource identified by soil, climatic and landscape features that make it highly suitable for crop production.
TIPA	Tourism in Protected Areas is a management framework that aims to balance conservation and tourism for commercial operations in key protected areas which attract high visitation.
Unimproved capital value	The value of a block of land if no structural improvements have been made.

Wik decision	In 1996, the High Court confirmed that native title may exist over land which is subject to pastoral lease or some other forms of statutory estates. The Court decided that pastoral leases issued prior to 1 January 1994 were valid grants and that the rights of pastoralists would prevail over native title rights to the extent of any inconsistency.
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Chair's foreword

On behalf of the State Development, Infrastructure and Industry Committee (the committee) of the 54th Parliament of Queensland, I am pleased to present the committee's report number 25 – Inquiry into the future and continued relevance of government land tenure across Queensland.

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

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

The committee was asked to take public submissions and consult with key industry groups, industry participants, Indigenous Queenslanders, and relevant experts.

The committee has consulted widely and gathered evidence from key groups, peak bodies, individual members of the public, relevant government agencies and experts in their fields.

The committee has taken its responsibility in conducting this inquiry very seriously and in order to do justice to the scope of the referral and in view of the committee's overall obligations to the Legislative Assembly, on 6 March 2013 the Committee of the Legislative Assembly granted the committee an extension on the reporting timeframe until 31 May 2013.

The committee would like to acknowledge and thank all those who briefed the Committee, provided written submissions, and others who informed the Committee's deliberations through their participation in the inquiry process.

The committee understands that the issues faced by lessees and other groups affected by current tenure arrangements sometimes provoked strong reactions from participants in this inquiry and the committee has greatly appreciated the generosity of time and effort made by those who contributed to the inquiry process.

The committee has received and considered the submissions and heard evidence from a large number of people. The committee wishes to acknowledge the contribution of everyone who participated in the Inquiry. I wish to thank the former chair, now the Assistant Minister for Emergency Volunteers and Member for Mirani, Mr Ted Malone, who led the inquiry during its initial stages. I would also like to thank the staff of the Parliamentary Library Services and the committee's secretariat for their support and assistance throughout the Inquiry process.

I commend the report to the House.



David Gibson MP
Chair
May 2013

Executive Summary

The current administration of land tenure in Queensland Government

One of the important issues which became apparent during the Inquiry was the currently fragmented division of responsibility between departments administering the tenure of various forms of state land. Current best practice suggests that there is a need for reform to develop a more coordinated approach to address and overcome the tensions which arise in circumstances where there is competition for the finite land resources of the state.

The committee notes, and is pleased to support the recent decision by the Queensland Government, to establish a Land and Asset Management Group to develop a whole of government approach to land tenure and management.

The needs and aspirations of Indigenous Queenslanders and developing an effective model for negotiating native title

As the committee undertook its work for this Inquiry it became apparent that addressing the needs and aspirations of Indigenous Queenslanders and complying with the future act regime under native title law lay at the heart of ensuring a sustainable and viable future for all Queenslanders. The committee supports the development of Indigenous Land Use Agreements (ILUAs) in Future Development Areas. Adopting this concept would facilitate tenure reform and provide a cost effective and more efficient means of compliance with native title. It would also enable the state to undertake research to determine focus areas for economic development which will be the subject of the Future Development Area ILUAs. Such a framework would go some way to addressing key issues such as home ownership for Indigenous Queenslanders as well as enabling Indigenous Queenslanders to participate on a more equitable basis in the economic development of their homelands.

Future viability of the pastoral industry

The committee identified that one of the most important issues affecting the viability of the pastoral industry in Queensland is certainty. The committee has identified the need to support pastoralists seeking to enter into, extend or roll over lease agreements by establishing advisory and mediation services to facilitate the streamlined development of Future Development Area ILUAs. The committee would also like to see the Government make provision for landholders with leases caught in transition during the reform process granted short term extensions to enable them to enjoy the benefits of reformed tenure frameworks. The committee wishes to see such reforms include a program of incentives to support lessees wishing to convert from term leases to more secure forms of tenure or fee simple. Another key reform supported by the committee is for the Government to review the existing restrictions with regard to corporations and trusteeships and their managing of leasehold tenure. Finally the committee is keen to see the Government consider alternatives to the current methods of rent calculation and for the Government to incorporate additional capacity within existing legislation to respond in a more timely and flexible manner to the calculation of rent during periods of hardship. In the interim the committee would encourage the Government to retain the existing rental cap until the review of the current rental calculation methods is completed.

Future viability of the tourism industry

The need for business certainty was also identified to be critical to the tourism sector and in response to this issue the committee has urged the Government to consider providing leases of up to 50 years subject to the requirements of the *Native Title Act 1993*. Furthermore, in order to increase investor confidence, the committee is eager for the Government to review the trigger point for the renewal of leases, particularly in circumstances where a proponent is contemplating capital investment for a future development. As with the issues affecting the pastoral industry, the committee would like to see the Queensland Government retain the current capping of annual rental arrangements. The committee would like to see the Government review the current methods of rent calculation for tourism based

industries, particularly in their ability to respond in a more timely and flexible manner to the calculation of rent during periods of hardship.

During the course of this Inquiry, it became apparent to the committee that there are significant and complex issues adversely impacting on marina and foreshore developments in numerous places along the Queensland coast and islands. The complexity of these issues is such that they are beyond the scope and capacity of the committee to deal effectively with the concerns raised by the various stakeholders and the committee encourages the Queensland Government to undertake a separate, detailed and independent review of the current matters affecting foreshore developments.

Balancing the protection of Queensland's ecological values

The committee recognises the importance of Queensland's environment as a source of potential natural and economic wealth for the state. The committee is keen to see the Government use the data gathered during the identification and mapping of bioregions in Queensland for the purposes of biodiversity planning and to use this information collected in biodiversity management plans when approving any development in the protected area estate. The committee is also keen to consider proposals for the development of ecotourism facilities by private operators in areas adjacent to National Parks. The committee encourages the Government to review the existing tenure categories in areas adjacent to National Parks to meet the escalating demand for new high and medium impact tourism activities while maintaining the integrity of the protected area estate. The committee supports the extension of the existing walking trail networks across Queensland as one means to increase the existing recreational options.

Ongoing and sustainable resource development

The committee recognises the need to manage the demand and production of finite and non-renewable resources as well as establishing a greater range of incentives for proponents of major renewable energy projects wishing to lease or purchase unallocated state land. The committee is particularly aware of the need to ensure that all tenure data sets and maps are aligned to record surface and subsurface activities and tenure issues as a priority. The committee also recommends that the Government identifies a preferred approach to address the existing tenure barriers to investment security for corporations investing in rail infrastructure projects.

Recommendations

- Recommendation 1 50
The committee recommends the presentation of the proposal for Future Development Area Indigenous Land Use Agreements (ILUAs) to all stakeholders for consideration to facilitate Queensland tenure reform and a more efficient and cost effective means of compliance with native title requirements.
- Recommendation 2 50
The committee recommends the Future Development Area ILUAs as a useful means to address identified barriers for Indigenous people wishing to develop land affected by native title, as well as limiting the current associated time and high cost of establishing an ILUA in having matters dealt with individually for each tenure.
- Recommendation 3 50
The committee recommends the introduction of a new type of lease – a General Purpose Lease – in conjunction with Recommendation 2 to deliver a framework for providing rights to a lessee to engage in a range of activities, not restricted to a particular purpose, such as a pastoral purpose. This new type of lease will allow activities not currently permitted under pastoral and agricultural leases, such as the development of a business unrelated to a pastoral operation.
- Recommendation 4 50
The committee recommends that the proposed Future Development Area ILUAs also cover the amendment of current pastoral leases to allow other activities. The process for granting or amending leases, granting other tenures and notification of native title holders, as well as establishment of a compensation process and scope, resulting from new leases granted or current leases amended, include guidelines to the extent of any compensation, time of payment and negotiation procedures.
- Recommendation 5 51
The committee recommends that the State undertakes research to determine focus areas for economic development and, subject to Future Development Area ILUAs, taking into consideration areas where ILUAs are unnecessary because of extinguishing tenures or areas where native title may exist but are not suitable for future economic development.
- Recommendation 6 51
The committee recommends that Future Development Area ILUAs should be considered as an option to reduce the transaction costs of negotiating an ILUA and that the issue of compensation should remain on an individual basis between the landholder and the traditional owner.
- Recommendation 7 51
The committee recommends further extension of the model of Future Development Area ILUAs to other areas in Queensland to provide native title holders inclusion and involvement in the management of such areas as well as develop regional Indigenous recruitment and training, cultural and natural resource management, visitor and commercial opportunities, and community partnerships.
- Recommendation 8 56
The committee recommends that the Queensland Government investigates the provision of rolling pastoral leases of up to 50 years that provide security of tenure to pastoralists subject to the caveat that any lease renewal is in compliance with the requirements of the *Native Title Act 1993*.
- Recommendation 9 56
The committee recommends that the Queensland Government reviews the trigger point for determining the lease renewal process for pastoralists and whether this should best occur when the

lease has reached a certain percentage of its term or at the point of receiving a significant capital investment proposal from pastoralists.

Recommendation 10 59

The committee recommends that the Queensland Government establishes an advisory service to support proponents seeking to enter into a lease agreement or undertake activities on Crown land affected by native title, or in some instances, to streamline a proponent's development to facilitate Future Development Area ILUAs.

Recommendation 11 59

The committee recommends that the Queensland Government provides support for mediation services to expedite the development of compensation agreements between parties negotiating compensation under the *Native Title Act 1993* in order to resolve land tenure issues in the pastoral industry in a more efficient manner.

Recommendation 12 59

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

Recommendation 13 61

The committee recommends that the Queensland Government ensures that, if converting leasehold land to freehold title, the applicant should have the option of engaging a valuation professional from a regional panel of government-approved valuers.

Recommendation 14 61

The committee recommends that the Queensland Government considers a program of incentives to support lessees wishing to convert from term leases to fee simple.

Recommendation 15 73

The committee recommends that the Queensland Government reviews the current restrictions with regard to corporations and trusteeships and their managing of leasehold tenure.

Recommendation 16 78

The committee recommends that the Land Regulation 2009 be amended to incorporate additional capacity for the Queensland Government to respond to the needs of pastoralists in a more timely and flexible manner in its methods of rental calculation employed during periods of hardship, resulting from natural disasters and market failure.

Recommendation 17 80

The committee recommends that the Queensland Government considers alternatives to the current method of rent calculation which is based on unimproved capital value.

Recommendation 18 82

The committee recommends that the Queensland Government retains the current cap on annual rent arrangements due to expire at the end of 2017 until the completion of the Queensland Government review, as proposed in Recommendation 17, considering alternatives to the current method of rent calculation which is based on unimproved capital value.

Recommendation 19 84

The committee recommends that the Queensland Government explores the development and establishment of a program of incentives to encourage local government to convert community reserve land held in trust which hosts operational facilities to freehold tenure.

Recommendation 20	84
The committee recommends that the current bank of community reserves occupied by organisations such as the QCWA and Showgrounds continues to be held as State leasehold land in trust.	
Recommendation 21	84
The committee recommends that the Queensland Government notes the concerns raised regarding leases of community reserves held in trust, including those by local and state government, and investigates the provision of a template lease with agreeable terms and conditions including Ministerial discretion to provide a lease period of up to 100 years for security of tenure and significant capital investments purposes.	
Recommendation 22	84
The committee recommends that the Queensland Government explores the means by which ongoing commercial activities can occur on tenures which are presently restricted, including community reserves.	
Recommendation 23	85
The committee recommends that the current definition of community purpose listed in Schedule 1 of the <i>Land Act 1994</i> be extended to include a specific category of educational and research purposes and that upon renewal all such leases are extended to the maximum tenure of 100 years.	
Recommendation 24	89
The committee recommends that the Queensland Government investigates the provision of rolling leases of up to 50 years that provide security of tenure to tourism proponents subject to the caveat that any lease renewal is in compliance with the requirements of the <i>Native Title Act 1993</i> .	
Recommendation 25	89
The committee recommends that the Queensland Government reviews the trigger point for determining the renewal process for tourism leases and whether this should best occur when the lease has reached a certain percentage of its term or at the point of receiving a significant capital investment proposal from a tourism operator/developer proponent.	
Recommendation 26	90
The committee recommends that the Queensland Government considers a mechanism to provide for a reduction in lease rents and payments for tourism operators and developers immediately after natural disaster events that impact upon their operations to encourage investment and recognise their importance to the Queensland economy.	
Recommendation 27	94
The committee recommends that the Queensland Government engages with local councils to investigate alternatives to the current inequity of local government rate calculation for tourism-based industries.	
Recommendation 28	98
The committee recommends that the Queensland Government retains the current cap on annual rent arrangements due to expire in June 2015 until the completion of the review into rental calculations for tourism businesses, which is recommended in Recommendation 29.	
Recommendation 29	98
The committee recommends that the Queensland Government undertakes an urgent review into rental calculations for tourism businesses.	
Recommendation 30	99
The committee recommends that the Land Regulation 2009 be amended to incorporate additional capacity for the Queensland Government to respond in a more timely and flexible manner in its	

methods of rental calculation employed during periods of hardship, resulting from natural disasters or market failure, for tourism proponents.

Recommendation 31 106

The committee recommends that the issues raised in relation to foreshore development are fully reviewed by the Queensland Government in a separate and specific independent inquiry.

Recommendation 32 118

In the context of proposals for the development of ecotourism facilities in the protected area estate, the committee recommends that the Queensland Government uses the data gathered during the identification and mapping of bioregions in Queensland to:

- further investigate and address gaps in biodiversity planning
- determine the potential benefits of including compulsory biodiversity management plans as part of major developments within the protected area estate.

Recommendation 33 119

The committee recommends that the annual reports for the Department of Environment and Heritage Protection and the Department of National Parks, Recreation, Sport and Racing incorporate uniform information outlining the ways in which the management plans for each of the 13 bioregions influence and improve the implementation of the Tourism in Protected Areas framework.

Recommendation 34 122

The committee recommends that the Queensland Government continues to actively develop relationships with private tourism enterprises adjacent to national parks in order to support management of infrastructure within the protected area estate.

Recommendation 35 122

The committee recommends that the Queensland Government reviews the adequacy of existing tenure categories to determine whether they provide sufficient scope to accommodate new, high and medium impact tourism activities adjacent to national parks to meet the escalating demand for such facilities in Queensland.

Recommendation 36 123

The committee recommends that the Queensland Government investigates enhanced management options to respond to increased activities within the protected area estate.

Recommendation 37 123

The committee recommends that the Queensland Government considers investigating the implementation of an education program to highlight to visitors to national parks the benefits to themselves and conservation of the park when paying a fee for entry into, or engaging in a particular activity within, a national park.

Recommendation 38 129

The committee recommends that the Queensland Government tables a whole-of-government report annually in Parliament consolidating its reporting on the management of weeds, pests, fences and other infrastructure as part of its responsibility under the good neighbour policy.

Recommendation 39 129

The committee recommends that the Queensland Government considers incentives for lessees to maintain areas of national parks that are located adjacent to their properties and any tourism-related infrastructure.

Recommendation 40 131

The committee recommends that the Queensland Government notes the previous committee report into the *Stock Route Management Bill 2011* and that it reintroduces the Bill in accordance with the

recommendations of the report on the Bill by the Transport and Local Government Committee at its earliest convenience.

- Recommendation 41 136
The committee recommends that the Queensland Government coordinates the development of a whole-of-government management framework that addresses the opportunities available and the risks associated with establishing and managing walking trails.
- Recommendation 42 143
The committee recommends that the Queensland Government introduces incentives for proponents of major renewable energy projects applying to lease or purchase unallocated state land.
- Recommendation 43 150
The committee recommends that the Queensland Government integrates all tenure data sets and maps to address surface and subsurface tenure issues as a priority.
- Recommendation 44 151
The committee recommends that the Queensland Government identifies its preferred approach to addressing the present tenure barriers to investment security for corporations investing in rail infrastructure projects.

1 Introduction

1.1 Role of the committee

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

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

In relation to its areas of responsibility, the committee:

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

The committee may deal with these matters making recommendations about them to the Assembly.⁴

1.2 Inquiry process

1.2.1 The referral

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

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

The committee was instructed to take public submissions and consult with key industry groups, industry participants, Indigenous Queenslanders and relevant experts.

It should be noted that, whilst the committee received informal guidance from the Deputy Premier in relation to the inquiry's terms of reference, the formal terms of reference were particularly broad and allowed some latitude with the range of issues the committee investigated.

1.2.2 Reporting timeframes

On 14 September 2012 the House agreed to amend the terms of reference, providing that the State Development, Infrastructure and Industry Committee table an interim report to the Assembly by

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194, Standing Rules and Orders of the Legislative Assembly as amended 14 September 2012.

² Schedule 6 – Portfolio Committees, Standing Rules and Orders of the Legislative Assembly as amended 14 September 2012.

³ Section 92(2) *Parliament of Queensland Act 2001*.

⁴ Section 92(3) *Parliament of Queensland Act 2001*.

30 November 2012, and a final report by 30 March 2013. As requested by the Parliament, the committee prepared and tabled an interim report on the issue of Government Land Tenure on 30 November 2012.

A copy of this document is available from the committee's website at <http://www.parliament.qld.gov.au/documents/committees/SDIIC/2012/01-Government-land-tenure/Final-InterimReport.pdf>. On 6 March 2013, at the request of the committee, the Speaker of the Legislative Assembly approved a further extension on the tabling of the final report until 31 May 2013.

1.2.3 Public briefings

On 11 July 2012, a detailed briefing was provided to the committee by officers of:

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

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

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

1.2.4 Further evidence received

Following the announcement of the extension of the period of the Inquiry, the Committee received two additional submissions via the Deputy Chair, Mr Tim Mulherin MP.

The first was from the Keswick Island Progress Association outlining current difficulties the Association is facing as a result of the leasehold tenure structure on the Island. The second submission was from the Country Women's Association who raised concerns about the impacts wind farms are having on local residents and called for a 2 km exclusion zone.

The Country Women's Association also approached the committee in January 2013 in relation to the issues associated with the leases they hold on a number of properties currently located on Crown Land but which are administered by the local authority.

The committee also wrote to and received advice from the Australian Bankers Association in relation to agribusiness issues and in particular any issues specific to finance associated with Crown Leases.

The committee also invited Mr Chris Boge and Mr Brian Noble of Clayton Utz to provide advice on a range of land tenure matters. Mr Phillip Toyne and Mr Dominic McGann were also approached by the committee to provide authoritative advice on the relationship between native title and land tenure matters.

1.2.5 Changes from Interim Report

This Final Report builds on the Interim Report tabled in November 2012 but in some cases the committee has had to amend recommendations as further evidence became available or as the

Queensland Government undertook a number of significant legislative and policy changes relating to land tenure in response to evidence heard during the public hearings.

The committee has attempted to incorporate these changes within the Final Report and provide the reasons for the changes from the Interim Report. The committee has noted throughout the report where policy and legislative changes have occurred relating to specific land tenure issues which impacted upon the report.

2 Land tenure arrangements in Queensland and other Australian jurisdictions

2.1 Historical overview of land tenure arrangements in Australia

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

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

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

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

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

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

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

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

⁷ Ibid.

⁸ Ibid 6-4.

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

¹⁰ Ibid, pp. 317-318.

¹¹ Ibid, p. 311.

available to the land and stock it. All of these factors therefore contributed to the dominance of the leasehold system for pastoral production during the 19th and 20th centuries.¹²

2.2 Overview of current tenure arrangements on Queensland state lands

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

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

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

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

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

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

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

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

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

- Guarantees ownership and security of tenure
- Provides the basis for land and property taxation
- Provide security for credit
- Guarantees the result of judicial procedures relating to land rights including rights of repossession of land

¹² Pastoral Leases and the implications of the Wik decision at <http://users.hunterlink.net.au/ddhrg/econ/TheWikdecision.html>, p. 2.

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

- Reduces land disputes
- Develops and monitors land and mortgage markets
- Protects State lands
- Facilitates land reform
- Promotes improvement of land and buildings
- Facilitates reliable land use records
- Improves urban planning and infrastructure development
- Supports environmental management
- Produces statistical data as a base for social and economic development

2.3 Land tenure distribution and forms in Queensland¹⁴

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

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

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

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

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

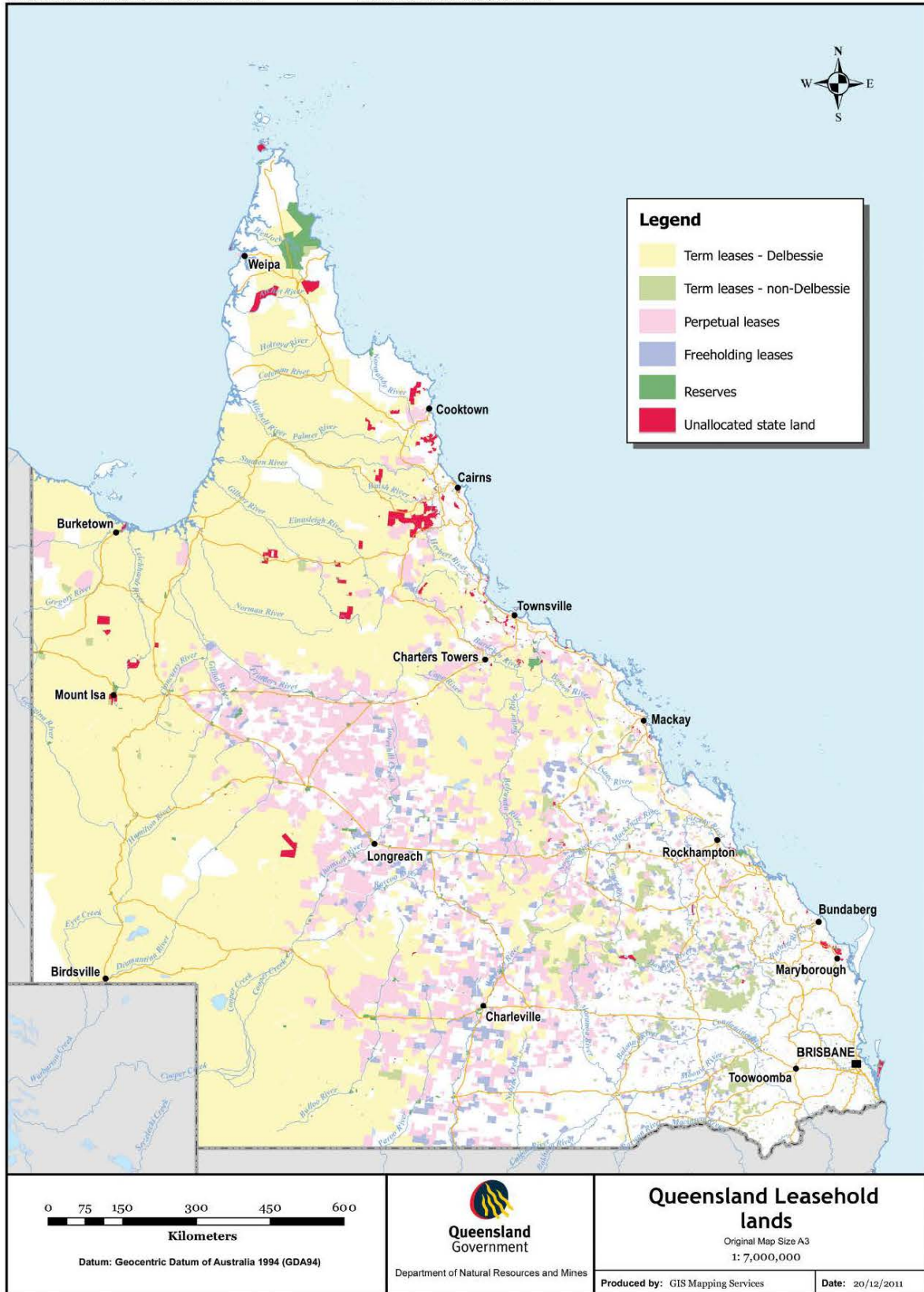
Figure 1: Queensland leasehold lands

Department of Natural Resources and Mines

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

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

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

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

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

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

2.4 Indefeasibility of title

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

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

AgForce goes on to note that:

[w]hile the Torrens title system is a national framework, due to the delegation of constitutional powers, each state has their own laws with respect to land interests and

their protection of relevant rights. In Queensland, unlike the Land Title Act 1994 (Qld) which regulates freehold land, the Land Act 1994 (Qld) does not create an equitable interest or the success of a claim under all circumstances". In other words Queensland lessees do not have indefeasible title or the subsequent access to compensation available in other Australian jurisdictions.¹⁵

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

Unlike the common law position, if the parties to a Crown lease do not comply with the requirement to obtain Ministerial consent to a proposed transfer, there is no passing at either law or equity of any estate in the leasehold interest. However, it is not unusual in a commercial context for a business to either lease or sub-lease part of its premises to another entity and to finalise their arrangements prior to the landlord's formal consent being sought. The authors' professional experience shows that, particularly in non-metropolitan areas, many tenants (and agents) are reluctant to spend money on either the cost of undertaking searches of the underlying tenure to establish ownership or to check for existing encumbrances; or to engage a lawyer to provide appropriate advice.¹⁶

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

When we bought one of our blocks at Mulgildie and paid our money for it and we went and started farming, about 18 months into it we got a letter from the bank saying, 'There has been an issue. Your legal firm shut down and the owner of your country is not you; it is the previous vendors. The whole conveyancing process did not occur. It is no problem- it is our fault –but we need to get the signatures from the vendors onto the conveyancing and get it put onto the register so that you have title.' I just went into panic mode wondering whether these people were going to sign the documents. So it does happen. It happened to us and it happens regularly but not often. Had I known that it was freehold land and it was indefeasible land, I would have been compensated, I would not have got the block but I would have been compensated through the fund. But if I had leasehold land, I would have got nothing. I would have had to walk away. That is why it is so important.¹⁷

In the words of AgForce:

The absence of indefeasibility of title leaves lessees open to deprivation of their interests in land through fraud, mistake, and a range of other instances, leaving them without the ability to gain access to the assurance scheme afforded to other freehold titleholders. This inequity is one faced only by Queensland lessees as all other state lessees in other jurisdictions have been granted indefeasibility of title.¹⁸

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

¹⁵ AgForce, Submission No 41, p.46.

¹⁶ Craddock, L. M., & Blake, A. (2011). State of origin: Queensland Crown leasehold – lessons from New South Wales. *Journal of New Business Ideas and Trends*, 9(2), p.6.

¹⁷ Mr S Leahy, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Alpha on 30 August 2012, p.11.

¹⁸ AgForce, Submission No 41, p.47.

I guess my take-home message is that, for some reason over the years, every state in Australia has brought across all leasehold titles in the Torrens, have given them security of tenure and have given them access to that fund—except it has not happened in Queensland and I do not know why. If you were a leaseholder and you were looking to convert over to freehold, you would be asking yourself the old buyer beware question,

‘What’s in it for me, because I’m going to have to pay a lot of money for this?’ Would indefeasibility of title be one of those things? Probably not. I can almost guarantee that everyone I run into does not know anything about it, and I doubt there would be many people in this room who are aware of it. One of the reasons that they would change and convert to freehold—from my experience and the people that I deal with—is the crippling rents.¹⁹

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

What extra rights do we have as freeholders? Historically, and if you look at Central Queensland as an example, if the leaseholders and permit holders of land abided by their lease and they did the right things—they built their fences, they built their dams, they built their yards and they cleared the scrub, or the fragile ecosystem as it is now called—they were given the opportunity to then purchase the property, purchase the leasehold, and they could also purchase the trees of value on that property and convert over to freehold. The children and the grandchildren of those original leaseholders who converted to freehold have seen a gradual decline in the rights of freeholders. Way back then, if you had freehold land, you could do pretty much what you wanted. But with government planning and government development schemes, many of the rights have been taken away until you get to an eventual stage where all the statutory acts start coming in on top of freehold land—such as the conservation management act, the Integrated Planning Act, the Water Act, the state forestry planning act, the Wild Rivers Act and the Environmental Protection Act. Then eventually in 1999—and you might have been ear bashed by Property Rights Australia over this one yesterday if you were in Rockhampton—the Vegetation Management Act was introduced and it stripped away the rights to natural justice that all leaseholders and freeholders had, and it took away our trees that we bought. In 2009 the regrowth clearing moratorium act came into play very, very quickly and they invented a classification of vegetation that did not previously exist and they called it endangered regrowth—it did not exist. Without any compensation, without any consultation and without any notification, they took away the capacity of leaseholders and freeholders to increase the productivity of our land. That last act, that regrowth clearing moratorium act, should be totally repealed—in total. Section 50 of the Vegetation Management Act that deals with compliance officers, or that section that deals with authorised officers, really does need to be changed. So I sit here before you as a freeholder wondering what it is that I own on my property. I think I own the soil, but the soil is made up of minerals and the minerals are vested in the state. On our particular property, Peabody, which is an American company, owns the soil. I think I own the water. Back in 2001 in our district, 30 farming families got together and applied to access water from the Mulgildie aquifer for livestock. We were told that the allocations for that water had been completely taken up by two mining companies that at that stage did not exist and that there were no more allocations for us. We have been fighting, but we have given up fighting, basically. We cannot get access to that aquifer. As I said, we thought we owned the trees but the big ones were taken away in 1999 and the little ones were taken away in 2009. Perhaps I own the

¹⁹ Mr S Leahy, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Alpha on 30 August 2012, p. 9.

buffel grass, but in 2009 I phoned a bloke from the WWF, because I was pretty hot under the collar about what he was doing, and in the process of telling him that if we did not control this regrowth there would be no grass there to hold the soil together and the soil would flow out to the Barrier Reef, he told me that buffel grass was one of the most noxious weeds there is in Queensland today and that it needed to be banned and eradicated. So I do not know if we are going to own the grass down the track.²⁰

Despite the limitations of freeholding (and the necessity to address any extant native title claims to the land), the Goondiwindi, Barcaldine, Cook and Fraser Coast Regional Councils all supported the option of converting long term grazing and pastoral leases to either perpetual leases or freehold title. The question of tenure certainty is seen to be essential to the promotion of improvement, maintenance and long term investment, particularly in a climate of increasing cost pressures and declining margins for agricultural production.²¹ It was also raised by local government in the context of their own vulnerable position with respect to their substantial investment in infrastructure on land belonging to the State.²²

Land tenure security was also raised as an issue by both environmental and pastoral stakeholders concerned about food security issues and the long term sustainable protection of food and fibre production.²³

Committee comment:

These views suggest that there may be a prevalent misconception that if there was a Torrens system in place for leasehold it would afford protections that are in fact not applicable. For example, in the example cited above, the nature of the tenure system is largely irrelevant because the title was not registered. Therefore regardless of the land title framework, in such circumstances, compensation is only available via contract law litigation.

While the committee heard strong views on this issue there was an absence of evidence to suggest Queensland leases are particularly vulnerable. Some of the views seemed to be based on a misunderstanding of what indefeasibility actually entails and its limiting legally defined circumstances of avoidability. There was no evidence of incidents of fraud involving leasehold land presented to the committee and the committee therefore considers that this issue does not warrant the Queensland Government bearing the risk of fraud instead of the individual or the financial institution. Furthermore to implement this proposal as a default policy position would increase the costs to lessees in meeting the requirements for increases in transfer fees.

2.5 Types of leases

This section provides information relating to the different types of leases available in Queensland and some examples of their size, location and rentals. The committee received this evidence from the Department of Natural Resources and Mines. The committee notes the differences between rents on different leases and on comparable size properties and understands that a number of factors are used to calculate rents, including the type of lease, location, size of land, purpose of lease, conditions placed on lease and when the lease was taken up. Refer to Table 2 for a snapshot of lease types and total areas of land in hectares.

²⁰ Mr S Leahy, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Alpha on 30 August 2012, pp. 9-10.

²¹ Goondiwindi Regional Council, Submission No 9, p. 1; Cook Regional Council, Submission No 7, p. 2; Fraser Coast Regional Council, Submission No 18, p. 1.

²² Barcaldine Regional Council, Submission No 46, pp. 1-2.

²³ Wildlife Preservation Society of Queensland, Submission No 39, p. 2; Gold Coast and Hinterland Environmental Council, Submission No 51, p.2; Colin Jackson, Submission No 58, p. 3.

2.5.1 *Grazing term lease*

Grazing term leases are used for grazing and agriculture and there are approximately 4,800 in Queensland. Most leases are for a period of 30 - 40 years but they can be as long as 75 years. The average size of a grazing term lease is 20,000 hectares but some of the largest leases are larger than 500,000 hectares. These leases are bought and sold on the open market at values approximately equivalent to the value of freehold property. Rent is paid annually and calculated on 5 year unimproved value of land multiplied by a prescribed rate of 1.5% which is set down in the *Land Regulation 2009*. The regulation caps rents until 2017. Examples of the range of current grazing term lease rentals are a 19,400 hectare property in Hughenden at \$91 per week and 295,000 hectares near Charleville at \$218 per week.²⁴ Lessees can apply for renewal after 80% of a lease has expired. Some leasehold land rents have increased dramatically due to the property boom and there is concern about potential rent increases at the end of the rent cap in 2017. The Government has indicated that it will be reviewing the situation prior to this date.

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

2.5.2 *Perpetual leases for grazing and agriculture*

Currently in Queensland there are 2,750 perpetual leases which are usually grazing homestead perpetual leases held in perpetuity. These leases are frequently located on better grazing lands. The average size of these leases is approximately 750,000 hectares. As part of the government's commitment to protecting the family farm and family companies, there are statutory restrictions in the *Land Act 1994* to ensure that these types of leases can only be held by individuals. The restrictions prevent individuals from holding two or more perpetual leases if the total area of the lease is much bigger than the usual size of two living areas.²⁵

The rent for perpetual leases and grazing homestead perpetual leases is calculated on same basis as term leases. Examples of the current range of perpetual lease rents are a 7,500 hectare lease near Hughenden at \$25 per week, 10,000 hectares near Emerald is \$482 per week and 800 hectares near Roma is \$60 per week.²⁶

2.5.3 *Freehold leases*

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

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

²⁴ L Dann, General Manager, Land and Indigenous Services, Department of Natural Resources and Mines, Public briefing transcript, Brisbane, 11 July 2012, p. 4.

²⁵ A living area is the area on which a land-holder can make a living. From Department of Natural Resources and Mines, http://www.nrm.qld.gov.au/land/state/pdf/land_tenure_qld.pdf.

²⁶ L Dann, General Manager, Land and Indigenous Services, Department of Natural Resources and Mines, Public briefing transcript, Brisbane, 11 July 2012, p. 5.

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

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

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

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

2.5.4 Tourism leases

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

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

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

2.5.5 Other lease types

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

2.5.6 Occupation rights to state land

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

2.5.7 *Permit to occupy*

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

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

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

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

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

There are general provisions which apply to permits which include:

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

2.5.8 *Road licence*

A road licence is a tenure granted for the use of a road that is temporarily closed. A road licence provides a right to exclusive occupation of the road within the conditions of the licence but only while the rent continues to be paid. However it is possible for the State to give the licensee notice and cancel the licence anytime without compensation. The Minister may issue a road licence over a temporarily closed road to an adjoining owner but only if it is necessary to make structural improvements to irrigation pipes under the road or irrigation water channels that cross the road.

All road licences are subject to the following conditions:

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

2.5.9 *Occupation licence*

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

There are general conditions which apply to these licences including:

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

Table 1: Schedule of *Land Act 1994* tenure types

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

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

Table 2: Land tenure statistical information for Queensland as at August 2012

Department of Natural Resources and Mines

Land tenure statistical information

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

TOTAL AREA OF QUEENSLAND
173,380,000

(Data as at 1 August 2012)

* Total tenures includes land tenures issued for land below high water mark comprising of about 600 hectares

** Of the total road network 2.1m hectares is declared stock route

*** The State Land Total value excludes Permits to Occupy, Occupation Licences and Road Licences as this data is accounted for in the Reserves, Unallocated State Land and dedicated roads data.



Produced by: State Land Asset Management

2.6 Current rental categories under the Land Regulation 2009

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

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

2.6.1 Land-use categories

The categories are:

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

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

- Category 14.2 is \$106
- Categories 11, 12, 13 and 16 is \$214.²⁷

2.6.2 Billing arrangements

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

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

If a landholder does not pay the rent within the time prescribed on the invoice, they must pay, as well as the rent, penalty interest on the rent outstanding until the day the rent is paid. The penalty interest rate, accruing daily and compounding monthly, is two per cent above the Suncorp-Metway business banking variable lending base rate as at 1 July of the annual billing period. In 2012 the variable lending base rate was 8.94 per cent. Current rental arrangements are summarised in Table 3 below.

²⁷ Rental Arrangements and Land Use Categories, DERM,
http://www.derm.qld.gov.au/land/state/land_regulation_2009.html accessed on 15 November 2012.

Table 3: Rental categories under the Land Regulation 2009

Rental Categories under the Land Regulation 2009

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

If a lease is held exclusively for residential use by the leaseholder, and the leaseholder is experiencing hardship, application can be made for a residential hardship concession. If the application is assessed as eligible, the rent on the lease may be reduced. For any other lease, an application for deferral of rent may be made if the lessee is suffering hardship due to the effects of drought, flood, fire or other disaster; or economic recession; or a severe downturn in the level of markets related to the purpose of the lease. If approved, deferral of the rent is for 12 months and the deferred rent is subject to a reduced interest rate of two per cent.²⁸

2.6.3 Primary production leases

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

- aquaculture
- viticulture
- agriculture, including the growing of:
 - cane
 - coffee
 - tea
 - tobacco
 - fruit
 - vegetables
 - flowers and other horticultural products
 - farming of cattle, pigs and poultry.

The annual rent for a Category 11 lease, licence or permit is calculated at 1.5 per cent of the five-year average of the land value for rental purposes. In addition, until 2017 the annual rent will be capped at

²⁸ Rental Arrangements and Land Use Categories, DERM, http://www.derm.qld.gov.au/land/state/land_regulation_2009.html accessed on 15 November 2012.

no more than 20 per cent above the previous year's annual rent.²⁹ It is primarily Category 11 leases that are affected by the issues associated with Delbessie agreements, leaseholders' desire for enhanced tenure security and relaxations on lease conditions which currently act as a barrier to the diversification of how the land is used.

2.7 Inter-jurisdictional comparison

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

It should be noted that, despite requests for uniform information, each jurisdiction provided the information in different formats and often with varying sets of data. This made it difficult for the committee to provide clear comparisons between jurisdictions. The information provided below is given in the format as provided by each jurisdiction.

2.7.1 Victoria

The Victorian Department of Sustainability and Environment (DSE), *Managing Crown Land Factsheet* notes that Victoria has around 550,000 hectares of Crown land, with a further 7.4 million hectares of public land occupied by parks, forests and conservation reserves – about one-third of Victoria. The rest is 'freehold land' (i.e. privately owned land, which has been sold under a separate title).³⁰

Most Crown land in Victoria comprises national parks and state forests managed under the *National Parks Act 1975* and the *Forests Act 1958*. The remainder is reserved and unreserved land. Unreserved Crown land can be leased subject to Ministerial approval.

The DSE's [Leasing of Crown Land](#) Factsheet states that, in terms of rental of Crown land leases, if land is to be used for a commercial or private purpose, 'the rent will be based on market rates determined by a valuation having regard to comparable commercial rentals in the private sector. Rent is reviewed and adjusted to market rates every three years'. If the land is to be used for community purposes, a reduced rent will apply.³¹

The table below depicts Crown land tenure types and associated information.³² The table sets out information from a tool called Portal which is used by the DSE to record licences, leases, permits and consents issued by DSE. These cover private occupation of Crown land for purpose and because "Crown land can be occupied by other Victorian agencies, we don't become involved in the revenue collection for these. The tenures recorded in Portal provide information on the private use of Crown Land and facilitates the administration of these licences and leases (tenures) including an interface to Oracle Receivable for invoicing".

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

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

The tenure codes assigned to the tenure records are set into groupings of like type and rental calculation but are also used to identify what the purpose is and what Act the tenure is issued under.

²⁹ <http://www.derm.qld.gov.au/factsheets/pdf/land/l215.pdf> Accessed on 15 November 2012.

³⁰ Victorian Department of Sustainability and Environment (DSE), *Managing Crown Land, Factsheet*, last updated, 1 November 2012.

³¹ DSE, *Leasing of Crown Land, Factsheet*, last updated 17 July 2012.

³² DSE, *Annual Report 2012*, p 108

The table below is an overview of the groupings of tenure types/codes with the area and annual current rental making up the above Total Overall Financial Tenures. The annual current rental figure is not representative of annual revenue raised due to the long term nature of some invoice options.

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

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

2.7.2 Western Australia

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

Of the land in WA (comprising 2,527,620 km²), 7% is freehold land; and around 93% is State/Crown land.³³

The table below is derived from information provided by Landgate (a WA Government agency providing land information and geographic data). Landgate has also provided a map depicting the land tenure situation in WA.³⁴

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

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

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

³³ Western Australian Department of Regional Development and Lands, State Land Services Unit, State Land: Frequently Asked Questions.

³⁴ Spread sheet titled ‘Whole of State Land Area Statistics’ (18th October 2012) provided by Mr Lou Teeuwissen, Lead Consultant of Registrations Landgate. The committee would like to acknowledge the assistance of Mr Lou Teeuwissen in making this information available.

Table 6: Summary of tenure types for Western Australia

Tenure Type	No. of Parcels	Total Area of Land	% of State	Rental Values
1. Pastoral leases	506	869,517 km ²	34.33%	3,933,819.02
2. Perpetual leases (war service leases) ³⁵	413	3,767 km ²	0.15%	
3. Conditional purchase lease	55	547 km ²	0.02%	66,168.34
4. General lease ³⁶	1,321	64,485 km ²	2.55%	10,481,595.20
Total Crown Leases	2,295	938,316 km²	37.04%	
5. Crown Reserve A Class ³⁷ (comprising Conservation Estate, Aboriginal, Non-Aboriginal)	1,675	291,271 km ²	11.50%	
6. Crown Reserve B Class (comprising Conservation Estate, Aboriginal, Non-Aboriginal)	38	7,921 km ²	0.31%	
7. Crown Reserve C Class (comprising Conservation Estate, Aboriginal, Non-Aboriginal)	29,220	129,895 km ²	5.13%	
8. State forest	60	13,080 km ²	0.52%	
9. Timber reserves	77	1,232 km ²	0.05%	
10. Marine parks	15	22,722 km ²	-	
11. UCL - surveyed	29,580	94,556 km ²	3.73%	
12. UCL – unsurveyed	13,304	840,187 km ²	33.17%	
13. Water	797	9,336 km ²	0.37%	
14. Closed road	3,187	77 km ²	0%	
15. Drain reserve	17	1 km ²	0%	
16. Railway	2,078	214 km ²	0.01%	
17. Tramway	19	0.4 km ²	0%	
18. Road	160,544	5,784 km ²	0.23%	
19. Stock route	23	1,013 km ²	0.04%	
Total		1,324,296 km²		

³⁵ Landgate correspondence indicates that War Service leases were the only leases WA refers to as ‘perpetual’ and are identified as such.

³⁶ The General Lease category includes 99 year leases and special leases.

³⁷ Crown Reserve classes A, B & C are ‘reserve classifications that effectively have different levels of control. Class A is the highest order and is used to protect areas of high conservation or community value and require parliamentary approval to amend’. See also, the Department of Regional Development & Lands Crown Land Administration and Practice Manual, pp 4.12-4.14; and State leases.

2.7.3 Northern Territory

Table 7: Summary of tenure types for the Northern Territory

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

Tenure Type	Total Area of Land	% of Territory
1. Aboriginal Freehold	594 248 km ²	43.95%
2. Perpetual Pastoral Lease	567 219 km ²	41.95%
3. Pastoral Lease	39 006 km ²	2.9 %
4. Crown Lease Perpetual	42 698 km ²	3.16%
5. Crown Lease Term (9 471 km ² Land and 164 km ² Sea)	9 635 km ²	0.70% Land
6. Special Purpose Lease	627 km ²	0.05%
7. Freehold (Private/Govt)	22 826 km ²	1.69%
8. Government Usage land (1 154 km ² Land and 2 435 km ² Sea)	3 589 km ²	0.09% Land
9. Vacant Crown Land (Urban/Rural)	1 352 km ²	0.10%
10. Vacant Crown Land (Pastoral)	67 102 km ²	4.96%
11. Reserves	771 km ²	0.06%
12. Other Leases (BL, GL, MIN, ML, OL)	299 km ²	0.02%
13. Roads, River Esplanades etc.	5 227 km ²	0.39%
Total	1 352 000 km²	100%
Miscellaneous Holdings under above Tenures		
14. Crown Stock Routes (Tenure 10 and 11)	4 203 km ²	0.31%
15. Fish Farming/Pearl Culture (Tenure 5)	164 km ²	Sea
16. Parks & Conservation Reserves Territory (27 842 km ² Land and 2 435 km ² Sea)	30 277 km ²	2.06% Land
17. Parks & Conservation Reserves Commonwealth	20 439 km ²	1.51%
18. Defence Land (Tenures 4, 5 & 7)	12 082 km ²	0.89%
19. Water Catchments (Tenures 4, 7 & 8)	299 km ²	0.02%
20. Titled to Commonwealth (Tenures 4, 5, 7, 8, 11, 12 & 17)	15 941 km ²	1.18%
Total Area of Northern Territory (including islands)	1 352 000 km²	(100%)

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

Urban Land:- Generally, land rental value would equate to approximately. Five percent of the unimproved land value in most instances. Five percent is also the basis used for the land rentals in Aboriginal communities as part of the Federal Government intervention programme.

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

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

2.7.4 New South Wales

Table 8: Crown leasehold lands

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

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

Crown Leasehold Entity Valuation Extract 31-Mar-2012 - Run No 1016	Area Ha	2011 Ha	2011 Value
Parish Reserve / Unallocated Land	170,645.13	203,472.67	\$1,261,196,830.00
Roads	283,853.46	291,544.01	980,351,477.00
Waterways	1,302,144.00	1,297,069.69	1,745,637,682.00
Reserve	988,759.59	979,709.43	712,851,061.00
Permit to Occupy	273,125.29	248,398.00	328,195,217.00
Perpetual Lease	829,761.37	1,065,713.98	31,680,884.00
Term Lease	1,795.85	1,930.13	1,438,612.00
Special Lease	17,509.77	18,237.21	134,554,083.00
Leases transferred from Public Works	10.55	12.93	\$4,507,306.00
Community Leases	3,085.09	3,048.14	\$50,932,207.00
Commercial Leases	1,440.89	325.38	\$76,523,439.00
Western Perpetual	29,638,970.85	29,784,889.74	68,925,696.00
Western Term	20,505.42	23,393.36	1,344,926.00
Crown land recently sold or in the process of sale or transfer	713,317.91	1,229,026.05	627,527,983.00
Totals	34,244,925.17	35,146,770.72	\$6,025,667,403.00

2.7.5 South Australia

Table 9: Summary of tenure in South Australia



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

South Australia Crown Leases – Statistical Information

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

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2.76 Tasmania

Table 10: Land tenure statistics for Tasmania as at 1 January 2011

Classification	Land Area (ha)	Percentage (%) of Tasmania's Land Area
Reserves on Public Land (2,346,000ha total 34.5%)		
Conservation Area	530,000	7.8
Games Reserve	13,000	0.2
Historic Site	9,000	0.1
National Park	1,413,000	20.7
Nature Recreation Area	66,000	1
Nature Reserve including Macquarie Island	35,000	0.5
Regional Reserve	237,000	3.5
State Reserve	44,000	0.6
Forests (1,489,000ha total 21.9%)		
Forest Reserve	222,000	3.3
State Forest excluding forest reserves	1,267,000	18.6
Other land managed by State Government		
Wellington Park (including council, crown land and public reserve)	18,000	0.3
Crown Lands Act public Reserves	23,000	0.3
Crown Land (not reserved by may be partially leased or licenced)	99,000	1.5
Other State Government agency non reserved land	5,000	0.1
State Government GBE and company land (ex HEC land)	4,000	0.1
Unreserved Hydro Electric Corporation Land	74,000	1.1
Local Government Land (excluding Wellington Park and Cons Areas)	15,000	0.2
Commonwealth owned land (including 8,650ha of defence land)	10,000	0.1
Private Property	2,668,000	39.2
Road and Railway Corridors (may be owned by State or Local Gvmts)	37,000	0.5
Other land not categorised including lakes	21,000	0.3
Other Tenure and Reserve Statistic (these areas will overlap other areas in the table above and may include areas of water)		
Crown Leases	43,000	
Marine Leases	6,000	
Crown Licences	19,000	
Marine Nature Reserves (including Macquarie Island Marine Nature Reserve 74,700ha)	124,000	
Private Sanctuary (Nature Conservation Act)	5,000	
Conservation Covenants (can overlap private sanctuary or private nature reserve)	77,000	
World Heritage Areas (overlaps nature Conservation Act reserves)	1,421,000	

Note: These statistics relate to the terrestrial part (excluding estuarine waters and land below high water mark) of Tasman including offshore islands including Macquarie Island. Areas have been calculated from (Land Information System Tasmania) LIST data and have been rounded to the nearest 1,000ha. Note that Reserves are generally proclaimed to low water mark and may also include areas of State Waters there the given area may be less than the proclaimed area. There are approximately 42,000ha of reserves on public land (excluding marine nature reserves) below HWM.

Information derived from the LIST (www.thelist.tas.gov.au), © State of Tasmania
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2.7.7 Australian Capital Territory (ACT)

Table 11: Land tenure classification ACT

The ACT provided the following table from the Australian Capital Territory Surveyor General, Mr Bill Hurst regarding the approximate tenure breakdown for the ACT. All land in the ACT is Crown Land. In the case of residential land, the land is subject to a 99 year lease from the Territory rather than freehold title.

Land Tenure Classification	Polygons	Area (km2)	% of Territory
ACT Term Lease	117,645	630.58	26.73%
Conservation Reserve	892	1237.9	52.49%
Forestry Reserve	90	232.6	9.86%
Vacant, Unallocated, Unreserved or Other Crown Land	7845	154.65	6.56%
Road Reserve	40,967	102.51	4.35%
Australian Capital Territory – Total Area	167,439	2358.24	100.0%

3 The needs and aspirations of Indigenous Queenslanders

As Native Title is a complex area of law, the committee sought specialist advice during the inquiry in order to gain a comprehensive understanding of the issues and the implications for the needs and aspirations of Indigenous Queenslanders. For the committee's Interim report, the committee sought advice from Mr Chris Boge and Mr Brian Noble of Clayton Utz. However, as the committee examined Native Title and land tenure issues further, the committee realised that the Clayton Utz advice had a narrow application. The committee, therefore, sought further advice from Mr Phillip Toyne, Mr Dominic McGann and Mr Charles Gregory of McCullough Robertson. This chapter is based on discussions with McCullough Robertson and their advice.

Cape York is referred to often in this chapter in relation to native title application, as it is an area of the State with a high Indigenous population and where the predominant opportunities apply. However, the committee notes that the issues raised are not unique to Cape York and that the concepts and proposals outlined apply across the State.

3.1 Native title

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

The process of industry restructuring, changing technologies and skill requirements that commenced in the post-World War II era resulted in greatly reduced opportunities for the employment of Indigenous people on commercial pastoral stations. There are now large parts of traditional country where Indigenous traditional owners have no relationship with contemporary pastoralists.⁷⁹

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

In 1993 the Commonwealth enacted the Native Title Act 1993 (NTA) to provide for the recognition and protection of native title to the extent recognised by the common law in Australia.⁸⁰ The NTA did not create native title rights. Unlike land rights, native title rights do not flow from the Crown, and therefore can never be granted through legislation. The NTA makes provision for processes to facilitate native title recognition and ensure that it receives legal protection as do other titles.

In 1995 the right of the Commonwealth to enact the NTA was challenged by Western Australia but the High Court upheld the Commonwealth's constitutional competence to do so.⁸¹

The Wik⁸² decision in 1996 confirmed that native title may exist over land which is subject to a pastoral lease or some other forms of statutory estates. The Court decided that pastoral leases issued prior to 1 January 1994 were valid grants and that the rights of pastoralists would prevail over native title rights to the extent of any inconsistency.

As a result of the Mabo decision in 1992 and the Wik decision in 1996 and the passing of the NTA, governments now recognise the possible existence of native title issues when dealing with land.⁸³

⁷⁹ Parry Agius, Jocelyn Davies and Don Blesing. Innovative Ways to Resolution of Native Title in Australia: Promoting Secure Futures on Pastoral Country. Paper presented at the International Farm Management Congress 2003, p 3.
<http://www.ifmaonline.org/pdf/congress/Agius%20Davies%20Blesing.pdf>.

⁸⁰ Section 10 Native Title Act 1993.

⁸¹ *Western Australia v The Commonwealth* (1995) 183 CLR 373.

⁸² *Wik Peoples v State of Queensland and Others* (1996) 187 CLR 1.

⁸³ Ed Wensing & John Sheehan. "Native Title: Implications for land management" The Australia Institute. Discussion Paper. Number 11, April 1997, pp 2-3.
https://docs.google.com/viewer?a=v&q=cache:gxpKspXYpskJ:https://www.tai.org.au/file.php?file%3Ddiscussion_papers/DP11.pdf+Native+Title+implications+for+land+management&hl=en&gl=au&pid=bl&srcid=ADGEEShPpwetROk9r1ApbN

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

Native title rights and interests are reflective of the laws and customs⁸⁴ that have been traditionally observed and therefore they will vary between Indigenous groups. Native title does not confer exclusive rights to the land, nor do they provide commercial rights to the land.

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

Native title rights that are recognised and protected under s 223(1) NTA are the same rights as those recognised at common law and acknowledged in the Mabo case. The recognition of these prior existing rights at common law operated to prevent the Crown from obtaining an absolute beneficial ownership of land when it acquired sovereignty and continued as a 'caveat' on the Crown's radical title.

Native title became vulnerable to extinguishment on the acquisition of sovereignty by way of a valid exercise of sovereign power inconsistent with the continued right to enjoy the native title rights and interests. The grant of an inconsistent interest in the land as an executive act or a legislative Act or the statutory vesting of an estate in fee simple will provide extinguishment of native title.⁸⁵

3.2 Native title and statute law

3.2.1 Background

Native title was first acknowledged in Australia with the High Court's decision in Mabo.⁸⁶ In the wake of this decision the Commonwealth passed the NTA. The Act provided for the statutory recognition of a number of issues:

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

The Court's Wik⁸⁷ decision in 1996 resulted in the Act being amended to provide for a scheduled list of granted leases and other interests based on common law that conferred exclusive possession to the grantee and thereby extinguishing native title rights and interests.

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

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

Among these tenures are pastoral leases. By a majority of 5 judges to 2 the court found that such leases in Western Australia and the Northern Territory did not extinguish all native title rights. Only the native title rights to control the access to and use of the land

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⁸⁴ Stephanie Fryer-Smith. "Safe Backyards? Freehold Land and Native Title" The Real Estate Industry. Volume 2, 2000. p36. <http://www.austlii.edu.au/au/journals/LegIssBus/2000/5.pdf>.

⁸⁵ Tina Jowett & Kevin Williams. Native Title Research Unit. "Jango: Payment of Compensation for the Extinguishment of Native Title" Land, Rights, Laws: Issues of Native Title. Volume 3. Issues Paper No.8, May 2007. p 4. <http://www.aiatsis.gov.au/ntru/docs/publications/issues/ip07v3n8.pdf>

⁸⁶ Mabo v Queensland (No 2) [1992] HCA 23.

⁸⁷ Wik Peoples v Queensland [1996] HCA 40.

*were clearly extinguished; other rights may be able to co-exist with those of the graziers. In making these findings the majority purported to follow the Court's earlier judgment in Wik Peoples V Queensland.*⁸⁸

A further High Court decision in *Wilson*⁸⁹ determined that native title had been extinguished by perpetual grazing leases granted under the NSW Western Lands Act 1901.

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

Table 12: Native title claims and determinations in Queensland

	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

Source: AgForce submission to Inquiry⁹⁰

Approximately 50% of rural leases are term leases which do not extinguish native title. There are processes in place for Indigenous claimants and lessees to work together to provide access to leasehold land for traditional purposes. According to AgForce, this resolution of claims which facilitates Indigenous access to land has recently been spurred by the creation of a template Indigenous Land Use Agreement (ILUA) which reduces negotiation time between lessees and claimant groups.⁹¹

3.2.2 *The future act regime*

The NTA set out a regime for ensuring future acts are valid future acts. Future acts are, put simply, acts that affect native title, such as the grant of a new lease or the amendment of a lease to allow for new activities that occur, or occurred, after the commencement of the NTA.

Essentially, the validity of a future act comes down to whether or not the future act is inconsistent with native title, in the same way that the High Court found in *Wilson* that a perpetual pastoral lease was completely inconsistent with native title so as to extinguish it completely. Inconsistency arises where two sets of rights cannot coexist; for example, the grant of a pastoral lease cannot coexist with the native title right to exclude people from the land, such as a pastoral lessee, which would otherwise prevent the lessee from carrying out farming activities: the rights are necessarily inconsistent. As a result, many of the acts, such as amending pastoral leases to allow for activities not currently allowed under the lease, will probably be future acts under the NTA.

3.2.3 *Indigenous land use agreements*

The NTA's future act regime mandates processes that must be followed for each type of future act, and which if followed will ensure the act is valid to the extent it affects native title: one process that will ensure the validity for any future act is the registration of an Indigenous land use agreement (ILUA), that

⁸⁸ Gim Del Villar. 'Pastoral Leases and Native Title: A critique of Ward and Wik', Bond Law Review. Volume 16, Issue 1, January 2004. <http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1278&context=blr>

⁸⁹ *Wilson v Anderson* [2002] HCA 29.

⁹⁰ AgForce, Submission No 41, p 35.

⁹¹ AgForce, Submission No 41, p 34.

provides for the native title holders' or native title claimants' consent to the doing of the future act in question. There are three different ILUAs depending on whether the ILUA areas are completely covered by native title determinations, or the type of future act in question. The three are body corporate ILUA, area ILUA or alternative procedure ILUA.

If the parties propose to do an ILUA for an area wholly covered by a determination that native title exists and a native title body corporate exists for the native title holders in the area, the parties must do a body corporate ILUA. Otherwise, if only part of the area or none of the area is covered by a determination, the parties must do either an area agreement or an alternative procedure ILUA. Only the relevant State or Territory (and the Commonwealth if the area is outside the jurisdictional limits of the State or Territory) and the representative Aboriginal/Torres Strait Islander body needs to be a party to an alternative procedure ILUA, and the process for registration is different to an area agreement.

Alternative procedure ILUAs can relate to most of the same issues as an area or body corporate ILUA, except that as native title bodies corporate and native title claimants do not need to be parties (although they can be), the ILUA can never provide for the extinguishment of native title. Alternative procedure ILUAs also have lesser constraints regarding execution and authorisation. The Registrar has never registered an alternative procedure ILUA, and it may be that parties have never negotiated one, instead opting for area or body corporate ILUAs. It is for these reasons that it is suggested that dealing with the types of future acts necessary to allow economic development in Cape York could be made more efficient through the negotiation of an area based ILUA.

3.2.4 *Other future act processes*

Otherwise, the Future Act regime sets out processes necessary for particular activities. Some of these could apply to some of the acts necessary to promote economic development in Queensland. For example, subject to some limitations, amending a non-exclusive agricultural or pastoral lease to permit a primary production activity on the area of the lease or an activity associated with or incidental to the primary production activity, or a farm tourism activity, will be valid, as long as the State notifies any representative Aboriginal/Torres Strait Islander body or registered native title bodies corporate or registered native title claimants in the area of the lease and provides them the opportunity to comment.

As a further limitation, if a non-exclusive pastoral lease is greater than 5,000 hectares the majority of the area covered by the lease must not be required or permitted to be used for purposes other than pastoral purposes. The Queensland Government's diversification policy for agricultural purpose leases has similar limitations; in considering applications by lessees to use agricultural leases for additional purposes the State will consider whether the proposed activity is complementary to the main agricultural activity, including for unrelated activities as long as it contributes to the viability and ecological sustainability of the enterprise and allows the activity of agriculture to flourish where otherwise it may not have. The same principle applies to lessees that make application under section 154 of the *Land Act 1994* (Qld) to add a further purpose to their lease.

A second future act process applicable to all future acts necessary to ensure their validity is the non-claimant application process under section 24FA of the NTA; put simply, it affords future acts section 24FA protection and validity if, in response to a non-claimant application, no native title claim is filed within the notification period, the result being that any future act that takes place after the end of the notification period is valid. As a result of the extent of determinations and claims in Queensland and the live probability a claim would be filed within the relevant period, section 24FA protection is unlikely to be much use to any future acts relevant to the promotion of economic development in Queensland.

A third future act process relevant to some future acts applicable to economic development in Queensland is section 24LA relating to low impact future acts that do not otherwise involve the grant of freehold estates, the grant of leases, the conferral of rights of exclusive possession, the excavation or clearing of any land or waters, mining, the construction or placing on land of any buildings, structure or other things that are fixtures or the disposal or storing of any garbage or any poisonous, toxic or hazardous substance. Because of the limited acts applicable, it is also unlikely this provision will apply to the types of future acts necessary to promote economic development in Cape York.

3.2.5 *The extinguishment footprint*

In some circumstances the extinguishment footprint of past acts that extinguished native title, at least in part, in areas of current tenures, will enable certain acts (that would otherwise be future acts) to be done. For example, where a previous lease for pastoral purposes was for a period of 60 years, but the current lease over the same area, as a result of amendments made for certain, perhaps unknown historical reasons, is only 40 years, the extension of the term of the current lease to 60 years will not be considered a future act and the State of Queensland will be able to do it without recourse to the future act processes under the NTA.

In the same way, previous leasehold tenures that granted rights to lessees that were subsequently removed from current tenures, would enable the grant of similar rights now without affecting native title: that is, where an activity was previously allowed under leasehold tenure, but, for various historical reasons, was removed from the current leasehold tenure over the same area, the State could amend the current lease to afford the lessee that same right previously removed, without the act of amendment being considered a future act under the NTA.

So much is generally agreed; nevertheless, it is considered that despite some evidence to suggest extinguishment footprints over some Queensland leasehold tenures holds the potential to enable some lease amendments and create the potential for partial diversification, considers the scope of this potential too small to provide for the width and breadth of the tenure necessary to enable real and useful diversification that would in turn lead to fruitful economic development throughout Queensland.

3.2.6 *Negotiating ILUAs*

As a result of the limitation on the effectiveness of the future act processes under the NTA, other than via ILUAs, and the limited scope for extinguishing footprints to enable tenure diversification, the development of a new ILUA process in particular priority areas is supported as a means of promoting areas of development significance. In much the same way areas designated for development or otherwise under State and local planning laws, cover the various future acts required to promote economic development in Queensland to provide for native title consent to the doing of the act, a reformed ILUA process could offer similar benefits. ILUAs are inherently expensive to negotiate and execute; area agreements, as a result of needing the authorisation of the native title claimants and anyone who may hold native title in the area of the agreement, require considered consultation and large group meetings to ensure the authorisation process complies with section 251A of the NTA.

While alternative procedure ILUAs are, as a result of only requiring the representative Aboriginal/Torres Strait Islander body to be a party along with the State, potentially less complicated to execute, they are nevertheless likely to require as much – if not more – time and expense, as native title holders and claimants and anyone claiming to hold native title in the ILUA area can object to the ILUA's registration. As a result, the negotiations and agreement-making must be as thorough as the negotiations and authorisation of an area agreement to ensure registration of the ILUA.

The costs of negotiating an ILUA are generally prohibitive to land holders on Cape York: a pastoral lessee wishing to set up a road house or ecotourism business will need to factor in the costs associated with ILUA negotiations to any business plan. As such, the suggested model of umbrella ILUAs will provide an avenue through which tenure holders on Cape York can easily obtain the required consent of the native title holders without needing to obtain an ILUA themselves, the main area of negotiation left to the tenure holder and native title holders or claimants being the amount or type of compensation payable by the tenure holder for the doing of the act.

It is on this final point that it is suggested that the State be involved by way of assistance during negotiation, similar to recommendation 14 in the Committee's interim report dated November 2012.

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

Section 23B of the NTA provides for extinguishment of native title by the granting of freehold or certain leases on or before 23rd December 1996. In Queensland section 20 of the NTA ratifies or confirms the extinguishment of native title on these grounds.

The terminology used in s23B of the NTA to indicate an act which extinguishes native title is previous exclusive possession act. A previous exclusive possession act is the grant of a land tenure on or before 23 December 1996 under any of the following Queensland legislation that are provided for in s249C of the NTA and listed in the Schedule to the Act:

- a lease under section 12 *Alienation of Crown Lands Act 1860*;
- a lease under s51 *Crown Lands Alienation Act 1868*;
- a special lease under s69 *Crown Lands Alienation Act 1868*, s70 *Crown Lands Alienation Act 1876* or s188 *Land Act 1897*;
- a lease under *Gold Fields Town Lands Act 1869*;
- a lease under s28 *Crown Lands Alienation Act 1876*;
- a perpetual town allotment lease under the *Land Act 1897*;
- a perpetual suburban allotment lease under the *Land Act 1897*;
- a lease under s119A *Land Act 1910*;
- a lease under s185(2) *Land Act 1910*; s343 *Land Act 1962*; subsection 57(1) *Land Act 1994*; a special lease under *Land Act 1910* or *Land Act 1962*;
- a term lease or a perpetual lease under s22B *State Housing Act 1945*;
- a term lease or a perpetual lease that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the activities listed in s21(9) Schedule 1 NTA;
- a development lease under the *Crown Land Development Act 1959* or the *Land Act 1962* that permits the lessee to use the land or waters covered by the lease solely or primarily for manufacturing, business, industrial, residential or tourist and recreational purposes;
- a freeholding lease under the *State Housing Act 1945*;
- a grazing homestead freeholding lease under the *Land Act 1962* or the *Land Act 1994*;
- a freeholding lease as defined in Schedule 6 *Land Act 1994* or, a grazing homestead freeholding lease;
- a homestead lease under the *Gold Fields Homestead Act 1870*, the *Gold Fields Homestead Leases Act 1886* or the *Mineral Homesteads Leases Act 1891*;
- a homestead selection under the *Homestead Areas Act 1872* or the *Crown Lands Alienation Act 1876*;
- an agricultural homestead under the *Land Act 1897*, the *Special Agricultural Homesteads Act 1901* or the *Land Act 1910*;
- a free homestead under the *Land Act 1897* or the *Land Act 1910*;
- a miner's homestead perpetual lease under the *Miners' Homestead Leases Act 1913*;
- a miner's homestead lease under the *Miners' Homestead Leases Act 1913*, the *Mining Act 1898* or any Act repealed by this 1898 Act;
- a grazing homestead under the *Upper Burnett and Callide Land Settlement Act 1923*;
- a grazing homestead perpetual lease under the *Land Act 1962*;
- a settlement farm lease under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Brigalow and other Lands Development Act 1962*, the *Land Act 1962* or the *Irrigation Areas (Land Settlement) Act 1962*;
- a designated settlement farm lease under the *Land Act 1910*;
- an agricultural farm under the *Crown Lands Act 1884*, the *Agricultural Lands Purchase Act 1894*, the *Agricultural Lands Purchase Act 1897*, the *Land Act 1897*, the *Special Agricultural Selections Act 1901*, the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Brigalow and Other Lands Development Act 1962*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*;
- a perpetual lease selection under the *Land Act 1897*, the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Upper Burnett and Callide Land Settlement*

- Act 1923, the Sugar Workers' Perpetual Lease Selections Act 1923, the Tully Sugar Works Area Land Regulations Ratification Act 1924, the Irrigation Acts Amendment Act 1933, the Brigalow and Other Lands Development Act 1962, the Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962;*
- a perpetual town lease, including an auction perpetual lease that is a perpetual town lease, under the *Closer Settlement Act 1906, the Land Act 1910, the Discharged Soldiers' Settlement Act 1917, the Workers' Homes Act 1919, the Tully Sugar Works Area Land Regulations Ratification Act 1924, the Irrigation Acts Amendment Act 1933, the State Housing Act 1945, the Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962*. A perpetual town lease without competition under the *Land Act 1910, the Irrigation Areas (Land Settlement) Act 1962 or the City of Brisbane (Flood Mitigation Works Approval) Act 1952*. A perpetual town lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962;*
 - a perpetual suburban lease, including an auction perpetual lease that is a perpetual suburban lease, under the *Closer Settlement Act 1906, the Land Act 1910, the Discharged Soldiers' Settlement Act 1917, the Workers' Homes Act 1919, the Tully Sugar Works Area Land Regulations Ratification Act 1924, the State Housing Act 1945, the Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962;*
 - a perpetual suburban lease without competition under the *Land Act 1910, the Irrigation Areas (Land Settlement) Act 1962 or the City of Brisbane (Flood Mitigation Works Approval) Act 1952*. A perpetual suburban lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962;*
 - a perpetual country lease, including an auction perpetual lease that is a perpetual country lease, under the *Closer Settlement Act 1906, the Land Act 1910, the Tully Sugar Works Area Land Regulations Ratification Act 1924, the Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962*. A perpetual country lease without competition under the *Land Act 1910 or the City of Brisbane (Flood Mitigation Works Approval) Act 1952*. A perpetual country lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962;*
 - a prickly pear frontage selection under the *Land Act 1897*. A prickly pear infested selection under the *Land Act 1897*. A prickly-pear selection under the *Prickly Pear Selections Act 1901 or the Land Act 1910*. A perpetual lease prickly-pear development selection under the *Land Act 1910 or the Prickly-Pear Land Acts Amendment Act 1930*. A prickly-pear development selection under the *Land Act 1910 or the Prickly-Pear Land Acts Amendment Act 1930;*
 - any special lease granted to Amoco Australia Pty Limited under clause 3 of the Agreement that is given the force of law by section 3 of the *Amoco Australia Pty Limited Agreement Act 1961;*
 - the lease granted to Austral-Pacific Fertilizers Limited under clause 4(b) or 4(c) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilizers Limited Agreement Act 1967;*
 - any special lease granted to Austral-Pacific Fertilizers Limited under clause 4(d) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilizers Limited Agreement Act 1967;*
 - the special lease granted to the Gateway Bridge Company Limited under clause 1(5) of Part III of the Agreement that is given the force of law by section 4 of the *Gateway Bridge Agreement Act 1980;*
 - The special lease granted to the Sunshine Motorway Company Limited under clause 1(4) of Part III of the Agreement that is given the force of law by section 4 of the *Motorways Agreements Act 1987;*
 - a lease under the *Leasing Act 1866;*
 - a lease under the *Gold Fields Homestead Act Amendment Act 1880*. An unconditional selection under the *Crown Lands Act 1891, the Land Act 1897, the Closer Settlement Act 1906 or the Land Act 1910;*
 - a designated agricultural selection under the *Land Acts Amendment Act 1952;*
 - a perpetual lease under section 8 of the *Clermont Flood Relief Act 1917;*
 - a sugar workers' agricultural farm under *the Tully Sugar Works Area Land Regulations Ratification Act 1924;*
 - a lease under section 64A of the *Harbours Act 1955;*

- a purchase lease under the *Brigalow and Other Lands Development Act 1962*;
- an auction purchase freehold under the *Land Act 1962*, including a lease under section 176 of that Act;
- a special lease purchase freehold under the *Land Act 1962*, including a lease under subsection 207(7) of that Act;
- a sub-lease under subsection 6A(2) of the *Industrial Development Act 1963*;
- a lease under paragraph 24(b) of the *Industrial Development Act 1963*;
- a mining titles freeholding lease under the *Mining Titles Freeholding Act 1980*.

The above list highlights how extensive the statutory regime in Queensland is in relation to leasehold interests that can be granted by the Crown. Various tenures granted under the *Land Act 1994* are said to account for 66% of the land still under the control of the State.⁹²

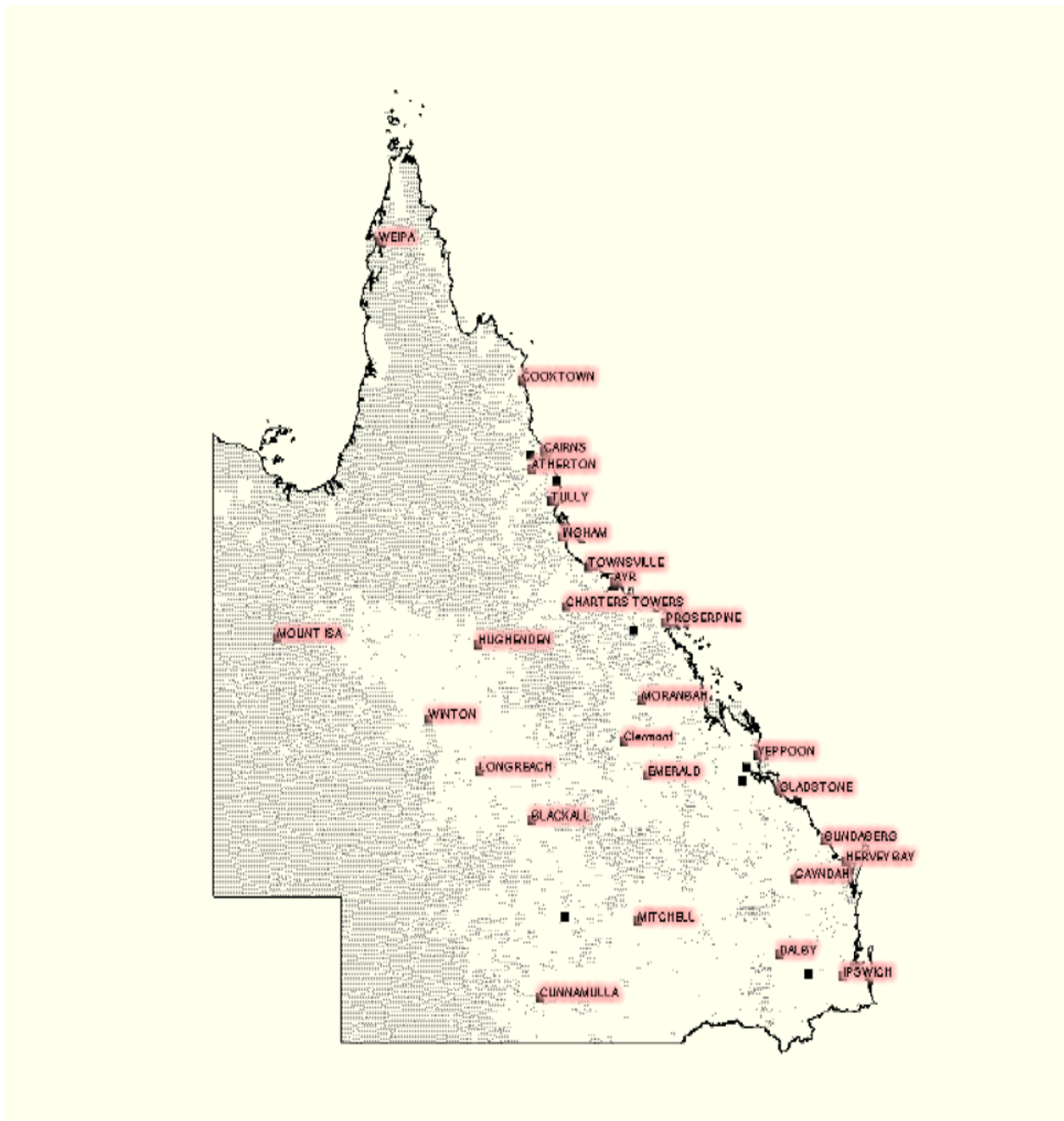
Despite the extensive scope of leasehold tenures granted under Queensland's statutory scheme, many of the submissions to the Committee highlight the need of land owners, lessees and residents for further land tenure security to enable access to funding and allow land owners to develop projects unrelated to the purposes for which the tenure was originally granted; that is, the ability to diversify where business necessitates, is currently restrained by restrictions on tenure use. With little freehold in Cape York, and the west and southwest of Queensland, it is suggested such economic opportunity should either be allowed on tenures where native title exists or through the grant of freehold and the extinguishment of native title, both outcomes which generally require native title consent.

Figure 2 is a map of Queensland indicating those areas where native title may exist. It indicates native title has been extinguished at law in large parts of south-eastern Queensland, and it indicates native title exists in large parts of north and west Queensland – much of this area is likely to be Crown land, or covered by pastoral leases or other tenures that never completely extinguished native title.

Additionally, it is important to recognise that the extent of the native title that exists may differ between pastoral leases and native title holders, as the inconsistency of the rights under the pastoral lease and the rights of the native title holder are only determinable and clear when an analysis is done of the exact rights relevant to each and the inconsistency between the two. Following the High Court's decision in *Wik*, it may be that the only native title rights extinguished by the grant of the pastoral leases is the right to exclusive possession in the areas of the pastoral lease, that is, the right to exclude people from the area.

⁹² Evidence given to the Parliamentary Committee's public briefing 11th July 2012. p 9.

Figure 2: Existence of native title – Shaded areas indicate where native title may exist



3.4 Compensation process after extinguishment of native title

The compensation regime under the NTA ensures compensation is payable to native title holders for most future acts. Proponents, such as mining companies, often pay compensation before the doing of a future act, such as the grant of a mining lease. As a cautionary step compensation is often paid in circumstances where there is only a possibility that native title exists in the area of the future act, even when the court has not yet made a determination that native title exists within the area being covered or perhaps not at all. The compensation is paid as an acknowledgment that to the extent native title is determined to exist in the area of the future act, native title holders would be eligible for compensation and have the right to claim compensation once native title is determined to exist.

As an overview, in most circumstances the NTA provides for compensation for actions that affect native title, although no compensation is payable for actions affecting native title that occurred before the commencement of the *Racial Discrimination Act 1975*. For certain past actions (that occurred after the commencement of the RDA and generally before 1 January 2004) compensation is payable, as it is for

intermediate period actions (occurring between 1 January 2004 and 23 December 1996 on land where there was previously a grant of freehold, a lease, or a public work).

For most compensation under the NTA, the compensation is payable in accordance with the compensation regime in Division 4 of Part 2. Generally, the compensation is payable to compensate native title holders for any loss, diminution, impairment, or other effect of the action on the native title rights and interests.

For certain past actions, and all intermediate or future actions, ILUAs provide an alternative method to determine an amount to be paid to native title holders for the effects of those actions on native title. ILUAs ensure that *where payment for compensation is provided under the ILUA*, generally people who hold or claim to hold native title and who are entitled to compensation under the ILUA will be denied any *subsequent* right to claim further compensation under Division 3 of Part 2 of the NTA.

One other method for negotiating compensation under the NTA is through the 'right to negotiate' (RTN) process under Subdivision P of Division 3 of Part 2 of the NTA, which, subject to certain exclusions, applies to the renewal of mining leases, the grant of mining leases, and the compulsory acquisition of native title rights and interests. The native title party and the party receiving the grant or renewal of the mining interest, or the party benefiting from the compulsory acquisition, must negotiate for at least a period of 6 months in good faith toward reaching agreement about the doing of the act.

The court has not yet resolved any claim by a native title holder for compensation, including those examples given above, albeit some claims are currently before the court. Nevertheless, agreements between native title holders or native title claimants and the Commonwealth, State and Territory governments and other proponents of Acts that will affect native title have entered into agreements about compensation for the doing of acts often either through right to negotiate agreements in relation to the grant of mining tenements under subdivision P of division 3 of part 2 of the NTA or through ILUAs.

Division 5 of the NTA regulates the determination of compensation for acts affecting native title. Compensation, under section 51(1), is an entitlement on just terms for the loss, diminution, impairment or other effect of an act on native title rights and interests.

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

In 1986, the Queensland government negotiated with the Hopevale Aboriginal Council regarding the granting of land to the Council to be held in trust for the benefit of the Aboriginal inhabitants. In 1997, after lengthy negotiations with the State government, the Gamaay Peoples applied to the Federal Court under section 87 NTA for a determination of permanent native title in relation to the lands and waters at Hopevale, north of Cairns.

This 1997 application came after negotiations between the State government and the legal representatives of the Gamaay Peoples which involved mediation by the National Native Title Tribunal. The application was not opposed by the State government and the court made a determination in December 1997 that native title existed over the land in question.⁹³

Subsequent to this native title recognition, the Walmbaar Aboriginal Corporation made application to the Federal Court in November 2006 for compensation payable under the NTA for loss suffered due to acts which were said to have either extinguished or significantly impaired or otherwise affected the native title rights and interests of the Dingall People⁹⁴ that the Federal Court had determined and recognised in December 1997.

⁹³ Erica Deeral (On behalf of herself & the Gamaay Peoples) & Ors. V Gordon Charlie & Ors [1997] FCA 1408 (8 December 1997) <http://www.austlii.edu.au/au/cases/cth/FCA/1997/1408.html>.

⁹⁴ In total the application was filed on behalf of 13 different clans of Aboriginal People including the Dingaal People.

The compensation application was made under ss 50(2) and 61(1) of the NTA. The Queensland government opposed the application.⁹⁵

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

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

The application asserted a right of compensation against the State of Queensland and the Commonwealth on just terms or, by the similar compensable interest test. Additionally, the application also sought non-monetary compensation.⁹⁶

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

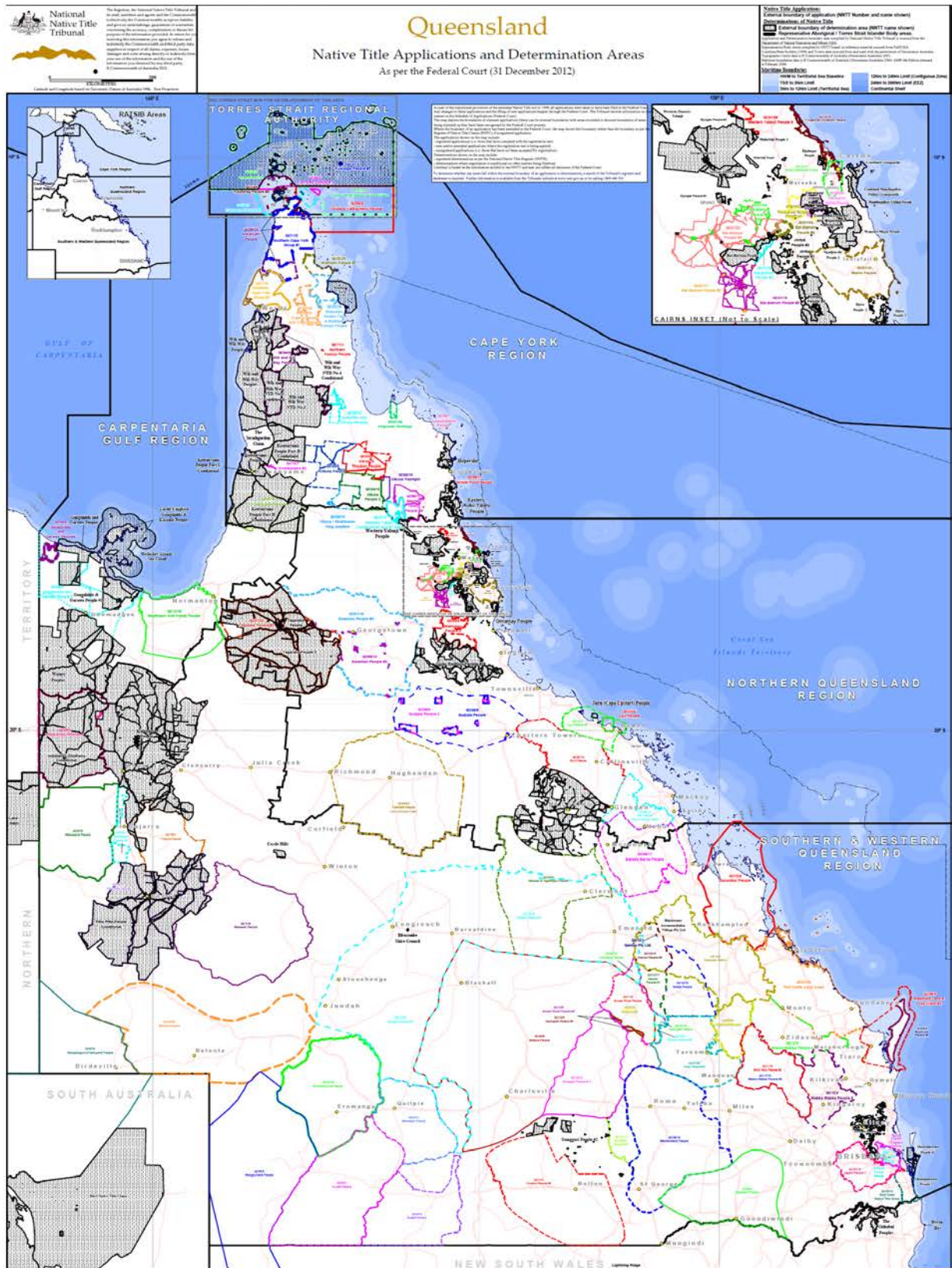
⁹⁵ Other respondents to the filed application were the Ports Corporation of Queensland, the Commonwealth of Australia, Hopevale Congress Aboriginal Corporation and Cape Flattery Silica Mines Pty Ltd.

⁹⁶ For acts affecting native title that are not a compulsory acquisition a court may adopt compensation principles from other laws if those laws equate the compensation rights of the native title holders with the rights of the holders of 'ordinary title' ie if the act passes the 'similar compensable interest test': see NTA s.51(3), s.240. For the application of the similar compensable interest test by the National Native Title Tribunal see *Re Koara People* (1996) 132 FLR 73 and *Western Australia v Thomas* (1996) 133 FLR 124.

3.5 Overview of the current tenure mix in Queensland and Cape York

3.5.1 Queensland

Figure 3: Native title determinations and the native title claims



The map above indicates the native title determinations (the areas shaded in grey) and the native title claims (the areas bounded by coloured lines) in Queensland. As is apparent, most of the determinations have been made in the north and west, to a certain extent conforming with the map above relating to

those areas in Queensland where native title may exist. Nevertheless, it is clear that the vast majority of Queensland is either covered by a native title determination or by a native title claim.

The tenure mix differs slightly in different areas of Queensland, which can be seen by the variation in tenures in Cape York as compared to the rest of Queensland, although the differences probably also carry across to areas in the far west and southwest of Queensland. Table 2 sets out the range and percentages of tenures in Queensland. As an overview about 7.9% of Queensland as a whole is freehold, with approximately 92% being Crown land, which includes reserves, State forests, timber reserves, marine parks and leases. Leases in turn make up approximately 37% of Queensland, while unallocated Crown land makes up approximately 36%.

3.5.2 Cape York

Cape York has a similar range of land tenure issues to other parts of Queensland but they are complex and difficult to resolve because of the extent of native title interests in the region, created by overriding Commonwealth legislation, which cannot be altered by State based regimes (see map above), the large areas of land under State based Aboriginal title of various sorts (23%), and the small percentage of freehold title (1%).

The large percentage of land under various forms of leasehold (53%), most of which is pastoral lease (34%) is restrictive in terms of limits on diversification. 'Other' activities which may be conducted on these leases are limited both as a result of state policy and because of the future acts regime under the NTA. There is also a high percentage of conservation land carrying its own particular land use limitations and the absence of a uniform and comprehensive planning regime for Cape York also restricts development, preventing the simplification of processes and reducing the cost of obtaining planning consent.

Native title exists or may exist in large areas of Cape York, with the majority of Cape York having determinations that native title exists in it or with claims to native title covering it. Few acts, such as the grant of inconsistent rights in the form of freehold or exclusive possession leases, have extinguished native title in Cape York. Over half of Cape York is covered by leasehold tenures, of which a significant majority are for pastoral purposes, the grant of which, has not extinguished all native title in the lease area.

Other Cape York land includes environmental and biodiversity-related tenures such as national parks, reserves, and nature refuges, all of which can in certain circumstances coexist with native title. Additionally, large areas of Cape York are Aboriginal tenures, such as the Aurukun Aboriginal shire lease, deeds of grant in trust administered by Aboriginal councils, Aboriginal freehold under the *Aboriginal Land Act 1991* (Qld) (ALA), Cape York Peninsula Aboriginal Land National Park (or, CYPAL National Park), and reserves for Aboriginal purposes.

A very low proportion of Cape York is freehold land, perhaps a significant factor in limiting economic opportunities in the region. This and native title ensure that advancing the capacity for economic development in Cape York through tenure changes must proceed in accordance with the NTA and the Racial Discrimination Act 1975 (Cth) (RDA) and, in most circumstances as we have observed, through the consent of and in participation with the native title holders or claimants in the area.

3.6 The processes involved in establishing an enterprise or modifying an existing tenure arrangement

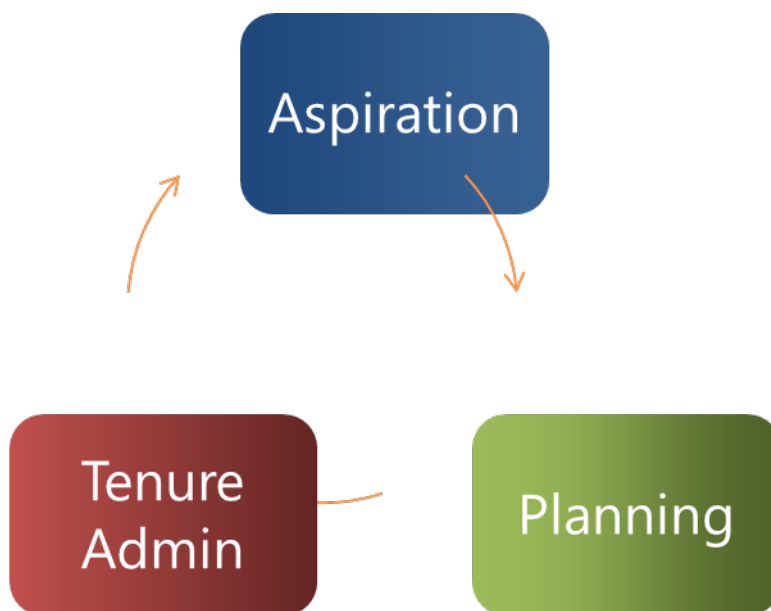
Business development considerations are situated on a unique foundation of business aspirations, planning, and land tenure requirements, including Native Title considerations. This unique relationship may be reflected in a sequential (as illustrated below) and contemporaneous nature (also illustrated below).

The first part in determining the viability of economic development throughout Queensland is to ensure the aspirations of individuals are cognisant of the restrictions on business particular to the circumstances. That is, if a business is economically viable in the area and under the circumstances

proposed? If it is not, there is no point in moving the proposal forward. The importance of developing regional centres for development in Queensland aligns with the importance in considering the aspirations of the individual's concerns: in some areas of Queensland, only certain development, and in some cases, no development will be economically viable.

3.6.1 *The sequential nature of business development aspirations*

Figure 4: Sequential nature of business development

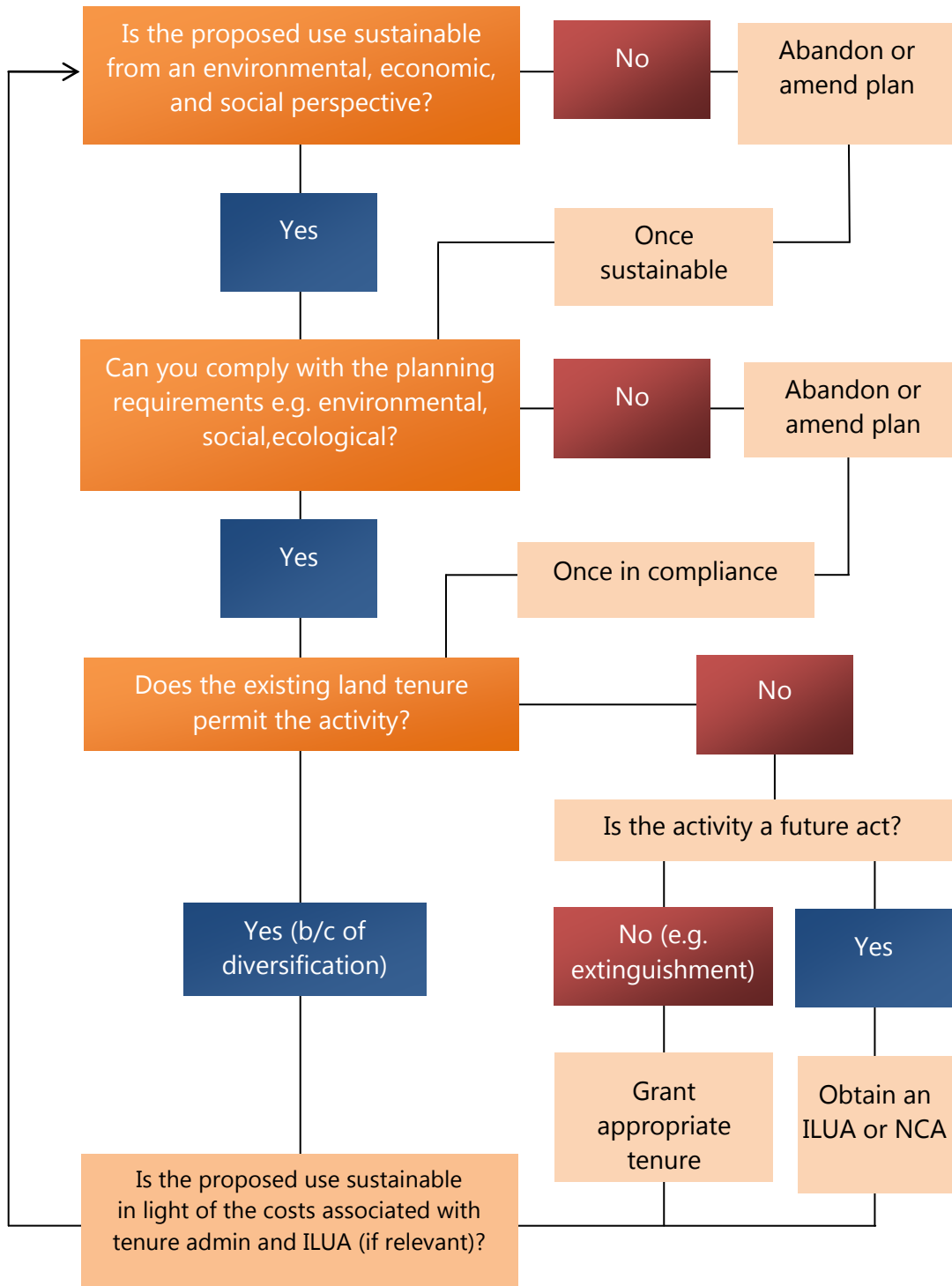


The next step is to determine whether the proposed development stemming from the aspiration aligns with and is approved under local planning laws. We have highlighted the applicable processes and some recommendations in relation to the same below.

The third and final step, which must nevertheless be considered contemporaneously with the other two, is whether the current land tenure in the area allows for the proposed development. If the proposed development does not align with the purpose or restrictions applicable to the tenure, such as a lease for pastoral purposes, the tenure must be amended accordingly, and as a result, to the extent necessary, native title dealt with.

3.6.2 The contemporaneous nature of business development

Figure 5: Contemporaneous nature of business development



3.7 A proposal for establishing the option of negotiating regional ILUAs

The development of regional ILUAs is potentially a critical step in limiting the costs and time associated with tenure reform and native title throughout Queensland. For all tenure reform, including pastoral lessees wishing to diversify on their lands, regional ILUAs provide the essential basis for genuine engagement with native title holders while limiting the time and cost associated with tenure reform which would be otherwise, and has until now, been carried out on a tenure-by-tenure basis.

It is also proposed that a new type of lease, a general purpose lease, be developed which would provide rights to the lessee to do a range of activities that are not otherwise restricted to a particular purpose, such as a pastoral purpose. Regional ILUAs will provide a framework for the granting of the new type of lease that will allow for activities not currently allowed under pastoral and agricultural leases. Such a lease would allow for the development of business unrelated to a pastoral operation. The regional ILUA would also cover the amendment to current pastoral leases to allow other activities, the amendments of which would otherwise trigger the future act regime under the NTA and necessitate negotiations between the pastoral lessee and native title holders or claimants.

The scope of compensation for the doing of such acts (being the grant of new leases, including the newly proposed general leases, the amendment of current leases or the upgrading of current tenures) is, to a certain extent, unknowable, both due to the inability to clarify with certainty how many and what future acts will occur in the future, or what kind of compensation will be relevant to each. In this way, it is envisaged that a regional ILUA will provide for the relevant native title consent to the doing of the future acts, while leaving the question of compensation to be dealt with between the relevant grantee or lessee and the native title party at the relevant time.

It is further suggested that a State Government service be established to provide a mediation service to allow the quick resolution of compensation claims between the parties. At recommendation 14 of its Interim Report, the Committee recommended that the State assist potential vendors negotiating ILUAs for land of particular significance to Indigenous people. In the case of regional ILUAs, once negotiated, would then only require the resolution of the extent of compensation. It is suggested that the State can play an important role in allowing the quick and efficient resolution of these negotiations.

It is also important that the State further research and categorise areas of Queensland as focus points for economic development, the areas of which will be the subject of the regional ILUAs. In many areas ILUAs are unnecessary, much of Queensland already being subject to extinguishing tenures. Similarly some areas where native title may exist may not be worthy of the focus for future economic development for various reasons. For these areas it will also be unnecessary to develop a regional ILUA. The State Government will need to consider the process necessary for developing regional ILUAs, noting the development of ILUAs, even ILUAs on a much smaller scale than the one proposed here, can demand significant periods of time to develop, negotiate and authorise.

Important issues for the Queensland Government to consider include:

- How to limit, to the largest extent possible, the areas the ILUA or ILUAs cover; to that extent they may need only concentrate on those areas in Queensland with large aggregations of pastoral leases, or where lessees and others indicate development is likely to occur in the future, such as road corridors and attractive tourist areas. Such an assessment prior to the commencement of negotiations over regional ILUAs will considerably narrow the ILUA's spatial scope and hence the number of native title holders to be involved over the constrained areas likely to be the subject of future development proposals;
- The type of activities or acts relevant to the Regional ILUA will need to cover the grant of the new general lease and the amendment of current pastoral and agricultural leases to allow certain development. An analysis is required to determine what development the regional ILUAs should cover. Too many developments could significantly broaden the scope of the negotiations for the ILUAs, making agreement unlikely. On the other hand, limiting the scale and activities within the

scope of an ILUA could leave lessees and others in the same restricted situation they find themselves in now.

- The processes for the grant of leases or the amendment of leases, or the grant of other tenures must be made clear. A notification regime will need to be in place for native title holders, and the ILUA will need to clearly delineate the process the State Government will follow in implementing the future acts covered by the ILUA.
- The ILUA will need to consider, broadly, the process for the negotiation of compensation. Questions the State Government and relevant stakeholders may need to consider include whether compensation should be settled prior to proceeding with the future acts in question, and whether the process for negotiating, mediating and declaring compensation be mandated in the ILUA, or whether it is better dealt with in legislation. As noted above, the government may wish to remain silent on the question of the extent of compensation in the regional ILUA. In this way it would be dealt with at the same time as the grant or amendment of the pastoral lease between the lessee and the relevant native title holder or native title claimant with assistance from the State Government through an advisory or mediation service.
- There are indications that native title holders and native title representative bodies and those representing them are adopting a pragmatic approach to compensation and are willing to look at flexible and cost effective outcomes such as joint ventures in developments and exchange of rights, such as residential rights on leases in return for agreement for other developments. Employment opportunities may also feature in compensation.⁵⁶

3.8 Impact of native title regime on Indigenous Queenslanders

It is important to understand that Aboriginal people are also caught in the restrictions flowing from the native title regime. For any individuals or groups seeking to create personal freehold title to, say, a house block in Hopevale, this will require entering into an ILUA with the traditional owners, agreeing to the extinguishment of their native title interest. They will certainly require compensation, which might be in money or in kind (they may accept some of the land held in freehold as part of the settlement). In the case of Hopevale, not all those wanting to obtain a freehold residential or commercial block will be traditional owners. Some may only have a historical association with the area, and they will also have to enter into an ILUA negotiation with traditional owners.

Whilst this is possible in the case of Hopevale, where there seems to be strong support for such an outcome, it is by no means a burning aspiration for all communities on the Cape. Any regime will need to take account of the limited application of the move to freehold and the costs and time needed to achieve it.

Beyond the possibility that a few Aboriginal communities may feel the need to go for tenure beyond the long term leases now available under the *Aboriginal and Torres Strait Islander Land Holding Act 2013*, many will not. A commitment to communal title held in perpetuity, is strongly supported in many communities and any regime suggested will need to take this into account.

The inquiry received a number of submissions from parties, both Indigenous and otherwise, relating to the ability for Indigenous people in Cape York to develop an economic basis for their livelihoods, and the difficulties associated with doing so stemming from tenure and planning. The abundance of Aboriginal tenures, such as Aboriginal freehold, DOGITs, and Aboriginal reserves in Cape York create a significant degree of complexity and confusion to the processes involved in obtaining appropriate tenure and planning approvals for business developments. The Cape York Sustainable Futures' (CYSF) submission highlighted in detail the difficulties in obtaining these approvals and tenures on Aboriginal freehold.

⁵⁶ The most recent example of such changes is apparent in the negotiated agreement between the Wik people via their wholly owned company Aboriginal Indigenous Resources and Aust Pac Capital which was short listed by the Deputy Premier for consideration for the development of the Arukun Bauxite Lode. P. McKenna, *The Wik Model: From Royalties to Mine Ownership*. *The Australian*, p. 1. 23 April 2013.

The CYSF submission describes prohibiting factors to Indigenous development in Cape York as things like administrative restrictions such as DERM’s diversification policy for leases for agricultural purposes. The restriction limits applications by lessees to use agricultural leases for additional purposes that are not considered complimentary or that fail to contribute to the viability and ecological sustainability of the agricultural enterprise. The ease with which a lessee may breach the policy as a result of a small but successful tourism venture on the lease is highlighted in the submission.

3.9 Possible opportunities for reform of planning regulations and frameworks to promote small business opportunities for Indigenous Queenslanders in remote areas

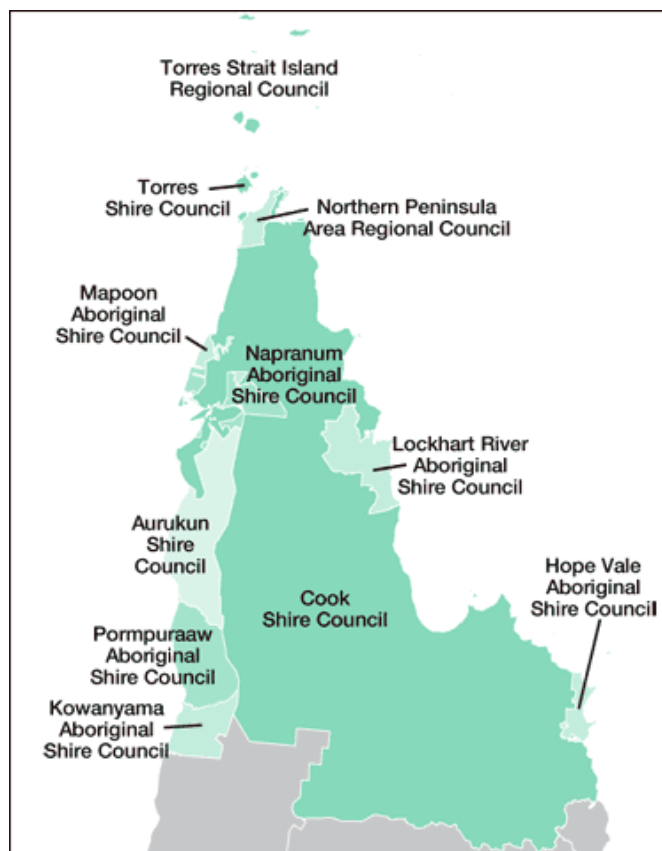
3.9.1 Regional planning

Cape York is currently comprised of 11 local government areas (see map below). Each of these local governments either has its own planning scheme under the *Sustainable Planning Act 2009 (SPA)*, or is in the process of preparing its planning scheme. A statutory regional plan for Cape York under the SPA is currently being prepared by the Department of State Development Infrastructure and Planning. This is to be based on the terms of reference set out in the scoping paper released in June 2012 and the public consultation process held late in 2012 for the Cape York Peninsula Bioregion Management Plan. The Cape York Regional Plan is expected to be finalised in October 2013.

Land use and the processes for obtaining approvals for development in the Cape are significantly constrained by the existing State and Federal legislative framework, stakeholder interests and rights from the perspectives of:

- native title and Aboriginal cultural heritage
- environmental and conservation issues
- Crown land tenure
- Indigenous land under trusteeship or control of Aboriginal shire councils or trustees of reserves.

Figure 6: Local government areas in Cape York



Opportunities exist for the review and reform of some but not all of these constraints, under the Regional Planning process. For instance, the Wild River area declarations under the *Wild Rivers Act 2005* are to be replaced for the Wenlock, Archer, Stewart and Lockhart Basins as part of the Cape regional planning process.

The effect of a Regional Plan under the SPA is to prescribe local government areas as being included in a designated Regional plan area. Local governments must give effect to a regional plan's provisions when preparing or amending their planning schemes and policies. Once the Regional Plan is made, a local government must amend its scheme to give effect to it. In the hierarchy of planning instruments, the Regional plan takes priority in the event of an inconsistency with the local planning scheme. This elevates the planning status of the Regional Plan to an instrument which must give effect to any State interests. A 'State interest' includes economic development.

A regional planning committee under the SPA is also formed to oversee the regional plan making process. The regional plan may even go further to prescribe regulatory provisions for land within the Plan's area to be observed by a local government in the assessment of land use applications, thereby overriding the planning policy intent of the local government for the area. The regional plan can do this for instance, for land use applications (material change of use), and subdivision (reconfiguration of a lot) applications under SPA.

3.9.2 Owner's consent

Development on Crown land tenures, under the SPA and the SPR, requires the 'owner's consent'. For instance a proponent generally is required to obtain the consent of the 'owner' to the making of a development application for material change of use or reconfiguration of a lot. 'Owner', for the purposes of SPA, is a person entitled to receive the rent or would be entitled to receive the rent for it if it were let to a tenant at a rent (schedule 3).

In the case of development on Crown land, the 'owner' whose consent is required is the Chief Executive, Department of Natural Resource and Mines by obtaining evidence of a resource entitlement. An applicant must apply to the chief executive for a certificate of evidence of allocation of a State resource. In many cases where development is proposed over Crown land tenures, that department also has the power under the SPA to assess and decide the application.

Any development requiring a subdivision of land (there is an extensive definition of what constitutes the 'reconfiguration of a lot') under the *Land Act 1994* is not assessed under the SPA (for instance subdivision of a lease or freehold lease, or a lease issued as trustee lease in a reserve). In addition, land under a deed of grant in trust in some circumstances requires a development application under the SPA. The rules are therefore not uniform in respect of development on land in Cape York, as the tenure type and statutory framework can dictate both the decision maker and codes or policies for assessment, at least in relation to land use and subdivision.

An application for evidence of resource entitlement is presently required to be made to DNRM (as stated above) only by or on behalf of the person who holds the appropriate tenure or interest, and if no tenure is required, the application must be made by the person who occupies the land. To be eligible for evidence of resource entitlement from DNRM the applicant must hold a tenure or interest in State land that supports the proposed development; or have accepted an offer of tenure from the Department that supports the proposed development or not require a tenure or interest (for instance public infrastructure).

Subject to the comments below, there exists the potential opportunity under the SPA, with legislative amendment, or with special enabling legislation, to prescribe a single State agency as the decision maker for all development applications (material change of use and reconfiguration of a lot), in the Cape, on the grounds of 'State interest'. This needs to be balanced against the competing stakeholder interests and rights. 'State interest' has been extensively defined (see Schedule 3 SPA; and *Emerald Developments (Aust) Pty Ltd v. Minister for Environment Local Government Planning and Women 2006 QSC 073*).

A 'State interest' means:

- a) an interest that the Minister considers affects an economic or environmental interest of the State or a part of the State, including sustainable development; or
- b) an interest that the Minister considers affects the interest of ensuring that there is an efficient, effective and accountable planning and development assessment system.

In addition, under the SPA, there is the power for the State to implement a regional plan through the making of State planning regulatory provisions under Chapter 2 of the SPA.

3.9.3 *Effect of native title*

Any proposed Cape York regional plan is subject to native title interests and the provisions of any registered Indigenous Land Use Agreement that prescribes conditions as to the use of the land is presumed to have been addressed. Native title claimants are not 'owners' for the purposes of SPA and their consent is not required to a development application over freehold land. A proprietary interest in the land is required (*Queensland Construction Materials v. Redland City Council* 2010 QCA 182). Native title holders do not have the right to receive rent (*Western Australia v Ward* 2002 213 CLR (1)).

However, a planning scheme is required to protect 'valuable features' of a local government area, which includes provisions protecting areas or places of cultural heritage significance, including areas or places of Indigenous cultural significance. In addition, a land user is required to observe the cultural heritage duty of care under the *Aboriginal Cultural Heritage Act 2003* when undertaking a land use activity. These areas or places are reflected in planning schemes. The State maintains a register and enforces the offence provisions under that Act.

3.9.4 *SPR triggers*

SPA regulates the proposed activity on the land and requires an applicant to identify which triggers potentially apply to a proposal. Does the application require the clearing of native vegetation under the *Vegetation Management Act 1999*; is the land in a declared Wild River area; is there proposed to be excavation and filling of the land (operational works); is the land in an environmentally sensitive area under the *Nature Conservation Act 1992* ?

Most of these activities have been rolled in to the Integrated Development Assessment System (IDAS) under the SPA and the SPR, however, many types of tenure over Crown land require Ministerial approval under the *Land Act 1994*, or particular approvals under the *Aboriginal Land Act 1991*.

3.9.5 *Future development*

Specific examples of typical future development in the Cape could be:

- a commercial development in a national park – this requires approval from the State under the *Nature Conservation Act 1992* and the *Environmental Protection Act 1994* as it constitutes development in an environmentally sensitive area
- commercial development on a pastoral lease – requires the approval of the State under the *Land Act 1994* (Qld) in relation to a change of use conditions of a State issued lease
- commercial development on Aboriginal land requires the consent and approval of the State in consultation with the trustee, under the *Aboriginal Land Act 1991* and other Acts. In some cases the trustee themselves may grant a lease, subject to conditions.

3.9.6 *Opportunities that exist in the planning process*

Opportunities exist to review and reform planning in the Cape by:

- designating the region of Cape York to be included in the Cape York Regional Plan
- preparing State planning regulatory provisions to give effect to the State's planning intent for the region

- understanding that there is no single solution – respective and consequential legislative amendments are required to give effect to a holistic policy approach to unifying land tenure and land use in the Cape
- acknowledging that native title interests are paramount
- considering implications for landholder compensation rights under the SPA when altering existing use rights on freehold land
- preparing special enabling legislation for key nodes in the Cape identified as being zones of special State interest, to resolve competing tenure, planning and native title issues. The State, under a process, would be the decision maker, for applications, in consultation with stakeholders
- seeking to achieve a balance between economic, environmental, conservation and traditional owner interests through identification of key nodes of special value or significance to the State to achieve policy aims.

3.10 Creating employment and economic opportunities for traditional owners, which also preserves important nature conservation areas

Having noted the impediments brought about by the application of native title to some Aboriginal aspirations, it is also important to point to other new economic opportunities, which may be afforded to native title holders. A good example is activity under the Carbon Farming Initiative of the Commonwealth Clean Energy Futures legislation. Here, there is the prospect of traditional owners being able to undertake early dry season burning of the vast savannahs of northern Australia with a significant carbon saving over the more usual late dry season wildfire scenario.

The credits thus generated are able to be traded and at the very least, have the potential to provide much needed, multi-generational employment for Aboriginal people in areas across northern Australia with few employment prospects. The Clean Energy Regulator, responsible for allocating the entitlement to the credits has taken the view that native title holders ‘own’ the credits on lands over where there is parallel non-extinguishing tenure, such as a pastoral or mining lease.

Whilst this is yet to be tested, there is every reason to believe that the Carbon Farming Initiative will provide important economic opportunities to traditional owners in future, especially as both the Labor and Coalition Parties have pledged their support for its continuation.

3.11 Opportunities for joint management of national parks with traditional owners

3.11.1 Current joint management laws

The *Cape York Peninsula Heritage Act 2007* (Qld) amended the *Nature Conservation Act 1992* (Qld) (NCA) to provide for a variety of new tenures on Aboriginal and Torres Strait Islander land in Queensland, including National Parks (Cape York Peninsula Aboriginal land), National Parks (Aboriginal land) and National Parks (Torres Strait Islander land), and Indigenous joint management areas. Nature refuges also provide capacity for joint management of conservation tenures with traditional owners.

In dedicating areas in this way the State must enter into agreements with Aboriginal landholders in relation to the management of these lands. National parks (Aboriginal Land) and National Parks (Torres Strait Islander Land) must be managed in accordance with the management principles for a National Park and in a way that is consistent with any Aboriginal or Torres Strait Islander tradition applicable to the area, and the Minister will prepare a management plan that will apply to the land. The NCA provides for the creation of a National Park (Aboriginal land) and National Park (Torres Strait Islander Land) where:

- a National Park exists in an area that becomes Aboriginal land or Torres Strait Islander land
- Aboriginal or Torres Strait Islander land exists and the land’s trustee and the Minister agree on a lease from the trustee to the State for the purpose of a National Park (Aboriginal Land) or National Park (Torres Strait Islander Land) (and in this case the Minister must prepare the management plan for the National Park in cooperation with the trustee)
- a lessee of land under the Land Act 1994 (Qld) and the Minister agree on a proposal for sublease of the land to the State for the purposes of the land being managed as a National Park (Aboriginal

Land) or National Park (Torres Strait Islander Land) (and in this case the Minister must prepare the management plan for the National Park in cooperation with the lessee of the land).

The Minister can create National Parks (Cape York Peninsula Aboriginal land) and Indigenous joint management areas in similar ways to National Parks (Aboriginal land) and National Parks (Torres Strait Islander land), but National Parks (Cape York Peninsula Aboriginal land) and Indigenous joint management areas must be managed in accordance with an ILUA and an Indigenous management agreement (IMA). Under section 169 of the *Aboriginal Land Act 1991* (Qld) (ALA) an entity holding land in the Cape York Peninsula region or North Stradbroke Island region as Aboriginal land must enter into an IMA with the State about the proposed management of the land if that land or part of the land is, through an agreement between the entity and the State, to become land that is National Park (Cape York Peninsula Aboriginal land), or, for land in the North Stradbroke Island region, an Indigenous joint management area.

3.11.2 Indigenous management agreements

Section 170 of the ALA sets out requirements for IMAs: amongst other things the IMA must state that the land must be managed in perpetuity as a national park or Indigenous joint management area, state the responsibilities of the environment Minister, the chief executive under the NCA, and the trustee, include details of the process for developing management plans for the land, include details about those areas where public access may be restricted, and state how infrastructure will be managed. The IMA can also look at how existing interests in the land will be managed and how future interests in the land will be created and managed.

3.11.3 Examples of joint management national parks in Cape York

The first National Park (Cape York Peninsula Aboriginal land) was dedicated in 2008 following the authorisation of the Lilyvale ILUA between the Queensland Government and the Lama Lama traditional owners in the central-eastern part of Cape York. The Lilyvale ILUA provided for native title consent for:

- the declaration by regulation of certain land as transferrable land under the ALA (being the land in the area of the proposed national park)
- the issuing of a deed of grant to the Lama Lama Land Trust to be held as Aboriginal land under the ALA
- the declaration, use and management of an area of the land as a nature refuge under the NCA
- the dedication, use and management of an area as National Park (Cape York Peninsula Aboriginal Land)
- the entry into and compliance with a conservation agreement in relation to the nature refuge
- the entry into and compliance with the IMA in relation to the National Park.

The Lama Lama IMA was signed on 10 July 2008 by the Lama Lama Land Trust and the State of Queensland, and provides for the joint management of the Lama Lama National Park (Cape York Peninsula Aboriginal Land) by the Lama Lama Land Trust and the Environmental Protection Agency (EPA). A media release by the then Natural Resources and Water Minister, Craig Wallace, released on 10 July 2008 noted the IMA also provided for the employment and training of Indigenous rangers with the support of the State of Queensland and the provision of assistance by the State of Queensland to the Lama Lama Land Trust for the protection of Indigenous cultural heritage.

In the IMA the parties agreed that the Lama Lama Land Trust's responsibilities included the protection and maintenance of Aboriginal cultural resources and sites, the presentation of Aboriginal cultural information to the public, and the making of decisions about activities defined as significant. The National Park was to be managed in accordance with an approved management plan that would be prepared following consultation with the public, the Aboriginal beneficiaries of the IMA, and the Cape York Land Council. The plan could deal with matters such as strategic directions, joint management, cultural and natural resource management, visitor and commercial opportunities, and community partnerships.

The IMA provides for camping in the National Park by Indigenous beneficiaries of the IMA. It includes provision relating to the EPA's commitment to Indigenous employment targets in the Cape York Peninsula region being 30% within three years of the dedication of the national park and 50% within 10 years. The EPA also agreed to use best endeavours to create new positions for Indigenous rangers and to provide training for Indigenous rangers employed by the Lama Lama Land Trust. The Lama Lama Land Trust and the EPA also agreed to become involved in the development of a regional Indigenous recruitment, retention, training and development strategy, as well as in the provision of secondary and post secondary education scholarships for Indigenous beneficiaries.

3.11.4 Extension of joint management areas to the rest of Queensland

Joint management of National Parks only exists in Cape York at present, but it is suggested that further research be done regarding the possible extension of joint management principles to other areas of Queensland.

3.11.5 Existing barriers to Indigenous home ownership in Queensland

The Inquiry into the *Aboriginal and Torres Strait Islander Land Holding Bill 2012* highlighted the relevance of the issue of creating individual freehold tenure for Indigenous Queenslanders with aspirations for home ownership on Aboriginal land in Queensland. It must be noted, from the work undertaken during this Inquiry and the submissions received and evidence presented during hearings, that the existence of Native Title on Aboriginal land in Queensland necessitates the requirement for Native Title consent to be sought and received before developments of this kind can occur.

Therefore there appears to be little to prevent the development of regional ILUAs in similar terms to the ILUAs recommended elsewhere in this chapter for the purposes of providing Native Title consent to the extinguishment of Native Title to enable land to be converted to freehold within existing Aboriginal tenures for commercial or domestic use. Furthermore it is suggested that the Queensland Government develop and implement a planning scheme that allows for such tenure changes to occur, while also acknowledging that the decision to create new tenures within Aboriginal land is a decision for the particular Indigenous community in question, and will require the community's support.

It is acknowledged that there are varying degrees of support and concern amongst Indigenous communities in Cape York, Queensland, and the rest of Australia around this idea. It is therefore suggested that further research and consultation be conducted on this issue prior to broad scale implementation of any such proposal.

Committee comment:

The committee has considered the constraints presented by the future acts regime in the NTA and acknowledges that:

- Diversification of primary agricultural purpose of lease is likely to trigger the "future act regime" requirement to undertake an ILUA under the NTA.
- Very few applications for conversion or diversification of existing agricultural or pastoral lease arrangements would not be subject to a claim under the NTA.
- The number and nature of low impact activities which would not trigger a claim under the NTA would be expected to be extremely limited and therefore do little to contribute to the economic development of Cape York.
- Extinguishment footprints over some Queensland leasehold tenures hold the potential to enable some lease amendments and create the potential for partial diversification, but the scope of this potential is too small to provide for the width and breadth of the tenure necessary to enable real and useful diversification that would in turn lead to fruitful economic development throughout Queensland.
- The current costs of negotiating ILUAs on an individual basis are generally prohibitive to land holders in Cape York.

- There are many areas within Cape York where ILUAs are unnecessary, much of Queensland already being subject to extinguishing tenures. Similarly some areas where native title may exist may not be worthy of the focus for future economic development for various reasons.
- For all of the above reasons there is merit in considering a new conceptual approach to achieve a more efficient and responsive method of negotiating ILUAs.

The committee notes the views presented regarding expansion of joint management opportunities between Indigenous people and the State Government in prospective National Park areas where land of high conservation value is proposed for conservation status.

The committee notes that currently National Parks with Joint Management principles only exist in Cape York – the Lama Lama Land Trust, which defines responsibilities and the management plan.

Recommendation 1

The committee recommends the presentation of the proposal for Future Development Area Indigenous Land Use Agreements (ILUAs) to all stakeholders for consideration to facilitate Queensland tenure reform and a more efficient and cost effective means of compliance with native title requirements.

Recommendation 2

The committee recommends the Future Development Area ILUAs as a useful means to address identified barriers for Indigenous people wishing to develop land affected by native title, as well as limiting the current associated time and high cost of establishing an ILUA in having matters dealt with individually for each tenure.

Recommendation 3

The committee recommends the introduction of a new type of lease – a General Purpose Lease – in conjunction with Recommendation 2 to deliver a framework for providing rights to a lessee to engage in a range of activities, not restricted to a particular purpose, such as a pastoral purpose. This new type of lease will allow activities not currently permitted under pastoral and agricultural leases, such as the development of a business unrelated to a pastoral operation.

Recommendation 4

The committee recommends that the proposed Future Development Area ILUAs also cover the amendment of current pastoral leases to allow other activities. The process for granting or amending leases, granting other tenures and notification of native title holders, as well as establishment of a compensation process and scope, resulting from new leases granted or current leases amended, include guidelines to the extent of any compensation, time of payment and negotiation procedures.

Recommendation 5

The committee recommends that the State undertakes research to determine focus areas for economic development and, subject to Future Development Area ILUAs, taking into consideration areas where ILUAs are unnecessary because of extinguishing tenures or areas where native title may exist but are not suitable for future economic development.

Recommendation 6

The committee recommends that Future Development Area ILUAs should be considered as an option to reduce the transaction costs of negotiating an ILUA and that the issue of compensation should remain on an individual basis between the landholder and the traditional owner.

Recommendation 7

The committee recommends further extension of the model of Future Development Area ILUAs to other areas in Queensland to provide native title holders inclusion and involvement in the management of such areas as well as develop regional Indigenous recruitment and training, cultural and natural resource management, visitor and commercial opportunities, and community partnerships.

4 Factors currently affecting the viability of the pastoral industry in Queensland

The committee notes that the Queensland Government implemented a number of legislative and policy changes during the period of the Inquiry, which impacted on matters relating to the Inquiry's terms of reference. These include policy and legislative changes to the management of state forests, national parks, wild rivers and vegetation. These legislative and policy changes have been noted as much as possible where relevant.

4.1 Factors affecting tenure security for pastoralists

The committee heard a variety of evidence from pastoralists and tourism operators outlined in detail in this Chapter and in Chapter 5 that the question of tenure security was the principal driver determining the viability of these industries. The committee acknowledges the importance of tenure security for creating future certainty for an investment, particularly in terms of the bankability of the asset. For this reason the committee sought advice from the Australian Bankers Association to ascertain the weight banks attribute to issues such as the nature of tenure and length of leases when undertaking a loan assessment. In their correspondence to the committee:⁵⁷

The ability to meet financial obligations when they are due is the primary consideration in assessing a loan. Hence a loan assessment focusses on the individual customer's ability to generate cash flow. Adequate and appropriate security is required to support the loan in case unforeseen circumstances result in financial obligations not being able to be met. Due to the small margins banks operate on relative to the size of the loan, the overall financial outcome for the bank of providing the loan is typically a loss if a bank has to enforce its security to recover the loan. It is therefore very important that the cost of managing loans that are in default and the cost of enforcing security are as low as possible.

The nature of title and length of tenure of title are important considerations in evaluating the appropriateness of the security available to support the loan. Security of title needs to be robust and the interests of the mortgagee protected by statute. The title of the security needs to be easily transferable so that it can be liquidated in a reasonable time frame, at a reasonable market rate and at a reasonable cost if necessary.

The length of tenure and terms and conditions of renewal or transfer are also important considerations. If a bank's security interests are extinguished at times of renewal of tenure, then this may impact on access to finance before the date of renewal. New loan documentation will be required on renewal which may prompt a review of previous loan terms and conditions. This is costly and creates uncertainty in the lead up to the renewal.

The appropriateness of an asset as security will generally be reflected in its value. The value of the asset should reflect uncertainty about the robustness of its title. If the asset can be, and is likely to be, subject to varying terms and conditions, it is expected that this uncertainty will be reflected in its value. The banking industry relies on professional valuers to advise it on such matters, including fair market value, when consideration is given to appropriateness of an asset as a security for a loan.

Whether native title or some other condition of tenure affects the appropriateness of the security in supporting a loan will depend on whether it directly or indirectly (through creating uncertainty) affects the ability to produce cash flow, impacts on the value of the security or ability of the mortgagee to deal with the security if the loan is in default.

⁵⁷ Correspondence from Mr Steven Munchenberg, Chief Executive Officer of the Australian Bankers Association to the Committee on 12 March 2013, p. 1.

The relative merit of one form of title over another depends on how they manage these issues.

In a private briefing to the committee, Mr McGann and Mr Toyne of McCullough Robertson supported the view of the Australian Bankers Association that the most important factor for an applicant when securing finance is being able to demonstrate their ability to repay the financing. Mr McGann and Mr Toyne stated that whether the land is freehold or leasehold is not as important a factor as a 'business plan' that demonstrates bankability.⁵⁸

It should be noted that not all committee members agreed with the views of the Australian Bankers Association and Mr McGann and Mr Toyne.

The committee received an extensive submission from AgForce indicating that it would like to see comprehensive reform of the tenure system. AgForce is the peak body of Queensland's sheep, cattle and grain industries. These industries cover almost 80 per cent of Queensland and, by area, are the largest group of stakeholders affected by this review. AgForce members manage over 50 per cent of the state of Queensland.⁵⁹ AgForce expressed the view that the current tenure system is '*ill suited to modern agriculture*' and is based on an historic role that is not relevant today.⁶⁰

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

- Rather than being poor land managers, lessees are generally good land managers with 85% of the land assessed under the Land Condition Assessment processes found to be in good condition. AgForce maintains that this highlights the improvements in sustainable grazing practices and they cite, as an example, the Wambiana Grazing Trial at Charters Towers.⁶¹
- Leasehold does not give the State greater control over lands management as most legislation is 'tenure blind'.⁴⁹
- The State does not derive a windfall return from leasehold rental.⁶²
- Conversion of leases to freehold does not necessarily mean that more subdivision will occur.
- Other land controls and /or planning policy can be used to control subdivision.⁶³
- Conversion of leases to freehold would not transfer significant wealth to lessees. Most lessees have not obtained their lease for free; leases have historically sold for the same amounts as freehold.⁶⁴

AgForce notes that:

- Lessees already hold most of the equity in leasehold land due to significant capital investment.⁶⁵
- There is generally a low return on land even under its highest value use (usually grazing).⁶⁶
- Converting leasehold land to freehold would increase productivity and improve the long term resilience of rural communities.⁶⁷
- Rural lessees deliver wider returns (environmental, cultural and economic) than simply rental returns.⁶⁸

On this last point Ms Lauren Hewitt of AgForce stated:

⁵⁸ D McGann and P Toyne, Private meeting transcript, Brisbane, 20 February 2013, p. 9.

⁵⁹ Mr Brent Finlay, General President, AgForce Queensland, Hansard Transcript Public Hearing in Roma – Inquiry into the Relevance of Government Land Tenure Across Queensland, 24 August 2012, p. 2.

⁶⁰ AgForce, Submission No 41, p 37.

⁶¹ Ibid, pp. 21-22.

⁶² Ibid, p. 25.

⁶³ Ibid, p. 26.

⁶⁴ Ibid, p. 26.

⁶⁵ Ibid, p. 27 – see Table 5.

⁶⁶ Ibid, p. 28.

⁶⁷ Ibid, p. 31.

⁶⁸ Ibid, p. 32.

*Graziers provide land management for over 80 per cent of the protected vegetation communities in Queensland at no cost. Some 35 per cent of Queensland is covered in wild rivers declarations because of a recognition that this land is in pristine condition. In addition, in 8.16 per cent of the state graziers in those areas are required to put in environmental returns on an annual basis just so that they can preserve their right to graze in a reef catchment.*⁶⁹

Table 13: Environmental contributions of Queensland

Area of Queensland	Description
79 %	Percentage of Queensland's protected vegetation ²⁴ which producers manage for the following outcomes: <ul style="list-style-type: none"> - 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

Source: AgForce, Submission No 41⁷⁰

In its submission to the Inquiry, AgForce presents evidence drawn from the experience of the NSW and SA leasehold conversion processes to estimate possible revenue likely to flow to the State from tenure conversions. (See Table 14).

⁶⁹ Ms Lauren Hewitt, Policy Manager, AgForce Queensland, Hansard Transcript of Public Hearing in Roma – Inquiry into the Relevance of Government Land Tenure Across Queensland, 24 August p.2.

⁷⁰ AgForce, Submission No 41, p. 33.

Table 14 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

Source: AgForce Submission to Inquiry⁷¹

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

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

My name is Jim Struss. I represent my family today. Together with my wife, we own and manage Havelock, 50 kilometres north of Mitchell. I would like to paint you a picture. I stand before you as a basic farmer on a moderately sized cattle property. I am a fourth generation farmer. Our kids are the fifth and our grandsons are the sixth. I have immersed myself in the local community, representing the executive on a number of committees including the show committee. As chairman I proudly represent the AgForce Southern Inland Queensland division on the Cattle Board and the Cattle Council Australia. I also chair the leasehold and tenure review committees for AgForce. My wife and I are passionate about our land. We adopt husbandry practices with our breeders to ensure they have a calf every year. Our pasture management is controlled to deliver maximum kilograms of beef from each paddock. Any profits are poured back into the property renovating and developing watering points and building new fences. We respect and look after the development of the land with little impact to our ecosystems. We are devoted environmental managers. We see ourselves as custodians for our future generations. We have absolutely no intention to sell our property, a feeling shared by my kids and, with the upbringing, I suspect our grandsons will be the same. We would prefer to expand our enterprise and offer the same opportunity to our sixth generation. To expand we need certainty; we need security.⁷²

⁷¹ Ibid, p. 32.

⁷² Mr Anthony Struss, Chair, AgForce Leasehold Land Committee and Grazier.

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

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

Committee comment:

The committee wishes to thank AgForce and acknowledges its assistance in arranging extensive consultations with their members and other Queensland primary producers.

The committee believes that pastoralists need certainty of tenure in order to make long-term commercial decisions. The committee is of the view that rolling leases of up to 50 years help provide that certainty for pastoralists, as these rolling leases allow for longer-term investment decisions and planning and easier access to finance. Long-term leases provide pastoralists with the opportunity to demonstrate to investors that they will have a commercial return on investment.

The committee is also of the view that the Queensland Government needs to undertake a review of current pastoral leases to identify the appropriate point to make a determination about the renewal or rollover of these leases and whether this might be best based on a percentage of the term of the lease or at the point of receiving a significant capital investment proposal.

Recommendation 8

The committee recommends that the Queensland Government investigates the provision of rolling pastoral leases of up to 50 years that provide security of tenure to pastoralists subject to the caveat that any lease renewal is in compliance with the requirements of the *Native Title Act 1993*.

Recommendation 9

The committee recommends that the Queensland Government reviews the trigger point for determining the lease renewal process for pastoralists and whether this should best occur when the lease has reached a certain percentage of its term or at the point of receiving a significant capital investment proposal from pastoralists.

4.2 State Rural Leasehold Land Strategy

The State Rural Leasehold Land Strategy (previously known as a Delbessie Agreement) is a framework of legislation, policies and guidelines supporting the environmentally sustainable, productive use of rural leasehold land for agribusiness. The Delbessie agreement was signed in December 2007 by the Queensland Government, AgForce Queensland and the Australian Rainforest Conservation Society at Delbessie, a property near Hughenden. In collaboration with key stakeholders, the department developed a suite of practical measures to assist landholders to achieve sustainable land management, including guidelines for assessing rural leasehold land condition that built on the principles of the *Land Act 1994*, including the statutory duty of care and provisions relating to land degradation.⁷³

⁷³ State Rural Leasehold Land Strategy http://www.derm.qld.gov.au/land/state/rural_leasehold/strategy.html, accessed on 22 November 2012.

While there are many leaseholders who were sympathetic to the goals of the Delbessie Agreements, this support in principle appeared to be far outweighed by widespread frustration with the complex and time consuming nature of what are seen to be unduly onerous compliance requirements associated with the process. For example Mr Rick Whitton, a grazier who appeared at the committee's hearing in Roma said:⁷⁴

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

This view was echoed by, Mr Tim Ecroyd, another grazier who appeared at the Roma hearing:⁷⁵

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

Ms Lauren Hewitt, the Policy Manager at AgForce also raised this issue at the Roma hearing, highlighting the unquantified but likely high cost of compliance with the Delbessie assessment process:⁷⁶

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

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

Mr Guy Chester, a consultant engaged by Cape York Sustainable Futures raised a related concern of proportionality:⁷⁷

⁷⁴ Mr R Whitton, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Roma on 24 August 2012, p. 7.

⁷⁵ Mr T Ecroyd,, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Roma on 24 August 2012, pp. 2-3

⁷⁶ Ms L Hewitt, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Roma on 24 August 2012, p. 11.

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

Other leaseholders raised the point that the entire process of renewing leases was generally just unnecessarily complicated and expensive.⁷⁸

In view of all of the evidence outlined to this point in the report it is therefore not unexpected that on 22 November 2012 the Hon Andrew Cripps, the Minister for Natural Resources and Mines announced that under a scaled-back agreement process, graziers will be still be assessed for their property's stewardship and eligible for renewals of leases for up to 50 years, but applying for extensions of time will now not include incentives like creating nature refuges. Minister Cripps says it will save money and will not damage the environment and he makes the following points:⁷⁹

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

Committee comment:

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

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

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

The committee is concerned that the State Rural Leasehold Land Strategy should offer adequate incentives to leaseholders to gain their cooperation in the development of agreements with native

⁷⁷ Mr G. Chester, Transcript of Public Hearing for the Inquiry into the Future and continued relevance of Government Land Tenure across Queensland, held in Cairns on 28 August 2012, p. 11.

⁷⁸ Ms J Carter, Submission No 44. p. 2.

⁷⁹ A Phillips, Delbessie Agreements out the Door in Leasehold Review, <http://www.abc.net.au/rural/qld/content/2012/11/s3638258.htm> Accessed on 22 November 2012.

title holders. Along with lessee entitlements, these agreements should ensure and protect the rights and interests of traditional owners, including access to homelands, natural resource use (e.g. water holes), cultural activities and heritage protection.

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

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

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

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

Recommendation 10

The committee recommends that the Queensland Government establishes an advisory service to support proponents seeking to enter into a lease agreement or undertake activities on Crown land affected by native title, or in some instances, to streamline a proponent's development to facilitate Future Development Area ILUAs.

Recommendation 11

The committee recommends that the Queensland Government provides support for mediation services to expedite the development of compensation agreements between parties negotiating compensation under the *Native Title Act 1993* in order to resolve land tenure issues in the pastoral industry in a more efficient manner.

Recommendation 12

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

4.3 Potential implication for lease renewals and conversions

Of all the issues the committee has considered, the desire of most leaseholders to convert their leases upon renewal to the most secure form of tenure available has been the most challenging issue to address. The prevailing view among the majority of stakeholders is that leases

adjudged to be in good condition should be given the maximum tenure available without further requirements. A number of regional councils suggested in their submissions to the Inquiry that there was an urgent need to create certainty of tenure and Goondiwindi Regional Council argued that long-term grazing and pastoral leases should be converted to freehold to reward the efforts of those investing in the improvement and maintenance of the land and overcome a lack of certainty.⁸⁰

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

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

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

For these reasons AgForce support the Inquiry investigating the conversion of all leases to freehold tenure.⁸¹

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

For example, Mrs Eunice Turner of Chinchilla in her submission to the Inquiry asserts that there should be no transfer of tenure without a valuation and that leaseholders' properties should be valued by a registered and independent valuer of the lessee's choice and that the Land Court should be the last resort. Mrs Turner also submitted that the transfer of leasehold tenure to freehold should be paid for over 50 years and without interest.⁸²

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

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

⁸⁰ Goondiwindi Regional Council, Submission No 9, p. 1.

⁸¹ Agforce Submission No 41, p. 2.

⁸² E Turner. Submission No 2, p. 1.

*Title, but being a small to average family operation and the high valuations this is not possible*⁸³.

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

Committee comment:

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

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

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

Recommendation 13

The committee recommends that the Queensland Government ensures that, if converting leasehold land to freehold title, the applicant should have the option of engaging a valuation professional from a regional panel of government-approved valuers.

Recommendation 14

The committee recommends that the Queensland Government considers a program of incentives to support lessees wishing to convert from term leases to fee simple.

4.4 Vegetation management

A number of stakeholders have expressed concern with the conflict that exists between policies guided by the *Vegetation Management Act 1999* (VMA) and the prescribed primary purpose of a lease.⁸⁴ For example, grazing might be determined as the primary purpose of a particular lease with the lessee required to comply with their lease conditions under the *Land Act 1994*; however, the provisions under the VMA may often restrict lessees from grazing on particular sections of the land and/or impose compliance with a number of conditions that is time-consuming for

⁸³ J & J Hain, Submission No 29, p. 2.

⁸⁴ A and V Bambling, Submission No 65, p 2; Property Rights Australia, Submission No 30, p 3; C Campbell, Submission No 62, ; B and J Angus, Submission No 90, p 4; B Hoare, Submission No 97, pp 2-3; M Jubow, Submission No 100, p 2; R Whitton, Grazier, Public hearing transcript, Roma, 24 August 2012, p 6.

leaseholders. Stakeholders have stated that this often leads to adverse outcomes, such as loss of biodiversity and weeds, which are detrimental to their grazing business.

Under the *Land Act*, the lessee is required to 'maintain native grassland free of encroachment from wood vegetation'.⁸⁵ However, the Delbessie agreement states that the land should be free of 'encroachment', which has led to 'multiple interpretations by inspectors and department.'⁸⁶ Queensland's vegetation management framework comprises the VMA and the *Sustainable Planning Act 2009* and their regulations. As a result of recent changes to the VMA,⁸⁷ different regulatory regimes for clearing of high value regrowth apply to leasehold land for agriculture and grazing purposes, as opposed to freehold and Indigenous land.⁸⁸ Freehold and Indigenous landholders are now permitted to clear regrowth that has not been cleared since 31 December 1989 whereas lessees holding leases issued under the *Land Act 1994* for agriculture or grazing purposes do not have this entitlement.

The Department of Natural Resources and Mines informed the committee that the controls remain on leasehold land because '[t]he clearing of native vegetation on leasehold land for agriculture and grazing has been regulated for over a century under the VMA ... and previously to this under the *Land Acts 1910, 1962 and 1994*'.⁸⁹ All regrowth vegetation within 50 metres of a watercourse in the Great Barrier Reef catchments of the Burdekin, Mackay Whitsunday and Wet Tropics is regulated independently of tenure. Remnant vegetation clearing is also unaffected by tenure.

Other submitters went further suggesting that where leases are terminated or where forestry is now limited or prohibited under the VMA for land managed under the *Land Act 1994*, the State should provide the landholder with compensation.⁹⁰

Committee comment:

The committee notes the recent changes to the *Vegetation Management Act 1999*, introduced in the *Vegetation Management Framework Amendment Act 2013*. The committee considers that many of the issues raised during the public hearings and submissions presented to the land tenure inquiry on vegetation related matters have now been addressed to the satisfaction of the majority of landholders.

4.5 Strategic cropping

Longreach Regional Council indicated it was concerned about the conflicts arising from competing tenures from mineral exploration and extraction and agriculture.⁹¹ Similarly in discussions about any widespread move to freehold existing State Leasehold Land, the Gold Coast and Hinterland Environmental Council Association Inc. (Gecko) expressed concern about the issue of food security in their submission to the Inquiry when they stated:

Uncertainty also remains over whether foreign investors will be allowed purchase of leasehold land, at what proportion, or cost. At present, across Australia, foreign ownership of valuable food production land is a matter of considerable concern; the proportion and location of foreign land ownership lacks transparency since only large land area parcels are registered. With global food shortages already arising, and the

⁸⁵ *Land Act 1994*, section 199(2)(f).

⁸⁶ Property Rights Australia, Submission No 30, p 3. B Lord, Submission No 54, p 2.

⁸⁷ See *Vegetation Management Framework Amendment Act 2013*.

⁸⁸ Tenures other than freehold, indigenous land or leasehold land for agriculture and grazing are unaffected by the regrowth clearing laws: Queensland Government, Regulations for clearing regrowth vegetation, http://www.nrm.qld.gov.au/vegetation/regrowth_vegetation_regulations.html, at 13 May 2013.

⁸⁹ DNRM, *Vegetation Management Framework Amendment Bill 2013*, Information Briefing, p 7.

⁹⁰ D Kempton, 'How Secure is Leasehold Tenure', HTW Rural Lease Tenure Renewal Seminar, 22 May 2008, downloaded on 7 November 2012 from http://www.htw.com.au/Industry_Presentations/townsville%20rural%20lease%20tenure%20renewal%20seminar%20-%20may%202008%20-%20david%20kempton%20presentation.pdf, p 4.

⁹¹ Longreach Regional Council, Submission No 1, p 1.

*very low proportion of suitable agricultural quality Australian land, Gecko emphasizes the need to limit foreign purchase of Queensland pastoral land. Land use of on-sold leasehold land needs to be articulated. As already pointed out, Australian agricultural quality land is extremely limited, requiring that all effort be made by authorities to ensure that existing and potential farming land be preserved as such. In recognition of dire predictions for global food security attributable to multiple factors such as over-population and climate change, priority should be given by authorities to protecting Queensland's agricultural capacity over other development interests such as mining which appears so lucrative in the short term*⁹².

Gecko then goes on to suggest that carbon sequestration as income potential of present leasehold arrangements should be acknowledged and prioritised in recognition of its potential as a valuable source of immediate and ongoing income for leaseholders as well as the State Government.⁹³

Agriculture is central to Queensland Government policy – it is stated to be one of the four pillars of the economy⁹⁴ and the Government's plan is to double food production by 2040.⁹⁵ Strategic cropping land is a finite resource and is subject to competing demands. The committee notes that the key threats to strategic cropping land come from urban development and mining.⁹⁶ The Government has enshrined its commitment to the protection of strategic cropping land via the *Strategic Cropping Land Act 2011* and bolstered its security through instruments such as land use planning and the development assessment framework.⁹⁷ The aim is to conserve and manage the best cropping land so that Queensland can grow crops now and in the future.⁹⁸

Other stakeholders were less concerned about such issues, for instance Mr Colin Jackson a pastoralist from Injune, suggested there should be more advantages associated with freeholding such as increasing rights to mining and gas.⁹⁹ A similar view was expressed by Mr Charlton Doblo who wants to see a cheaper, more simplified method of tenure change and a percentage of ownership of all resources on the land for the landholder (including forestry, mining and quarries) because it would bring with it a far more sustainable future for all parties involved.¹⁰⁰

Committee comment:

Given the breadth of the protections available under the *Strategic Cropping Land Act 2011* and their tenure blind nature,¹⁰¹ the committee is not convinced that land tenure reform of State owned land is the most effective mechanism for the Government to achieve its goals with respect to increasing food production.

⁹² Gecko, Submission No 51, p 3.

⁹³ Ibid, p 3.

⁹⁴ The other pillars are construction, resources and tourism.

⁹⁵ Queensland Government, Department of Agriculture, Fisheries and Forestry, *Queensland's Agriculture Strategy: A 2040 vision to double the value of production*, Discussion paper for consultation, p 10. See also, Vegetation Management Framework Amendment Bill 2013, Explanatory Notes, p 1.

⁹⁶ Queensland Government, Department of Environment and Resource Management, *Protecting Queensland's Strategic Cropping Land: A policy framework*, August 2010, p 5.

⁹⁷ See for example, Strategic Cropping Land Act 2011; State Planning Policy 1/12: Protection of Queensland's strategic cropping land.

⁹⁸ Queensland Government, Department of Environment and Resource Management, State Planning Policy 1/12: Protection of Queensland's strategic cropping land, p 1. See also, Queensland Government, Department of Agriculture, Fisheries and Forestry, *Queensland's Agriculture Strategy: A 2040 vision to double the value of production*, Discussion paper for consultation, p 10.

⁹⁹ C Jackson, Submission No 58, p 3.

¹⁰⁰ C Doblo, Submission No 68, p 2.

¹⁰¹ Except as related to resource activities (see Strategic Cropping Land Act 2011, s 78).

The committee is conscious that the competing demands for strategic cropping land is a contentious issue in the rural sector and the broader community but considers that it was recently addressed in the *Strategic Cropping Land Act 2011* and the *Vegetation Management Framework Amendment Act 2013* and is beyond the scope of this Inquiry.

4.6 Tenure classification and the limits on diversification

A number of stakeholders provided evidence that current tenure conditions were too restrictive, impacting on the viability of their enterprises and resulting in a lack of certainty.¹⁰² This impacts on the incentive for leaseholders to invest in long-term improvements on the land.¹⁰³ Suggested solutions would see a relaxation of current tenure restrictions and a simplification of tenure types that would allow diversification and multiple uses of the land to increase economic opportunities in a range of areas, while also maintaining the land in an environmentally sustainable way.

The committee heard from many stakeholders that land tenure needs to be simplified and allow for the diversification of land uses if leaseholders are to maintain viable enterprises.¹⁰⁴

4.6.1 Agricultural leases

Under the *Land Act 1994* lessees of agricultural leases are able to undertake all forms of primary production.¹⁰⁵ However, AgForce advised the committee that it had received a number of complaints from its members regarding the current diversification policy as it stands under the *Land Act 1994* (Qld). The policy restricts holders of agricultural leases from undertaking any additional activity that does not complement or fit the purpose for which the lease was originally issued.

The complaints have mainly been from leaseholders who have applied for activities of a non-primary production nature or 'sought to jointly conduct grazing and aquaculture on their lease.'¹⁰⁶ The government's current policy is that:

*When considering applications by lessees to use agricultural leases for additional purposes a proposed activity may be considered to be complementary even if it is not related to agriculture, if the activity contributes to the viability and ecological sustainability of the enterprise, and allows the activity of agriculture to flourish where otherwise it may not have. For this to occur, the activity must be of sufficiently small scale to ensure that it does not become the dominant or principal activity.*¹⁰⁷

According to the policy, aquaculture would not fit this definition. AgForce sees little argument for not allowing agriculture and aquaculture under a diversification policy.¹⁰⁸ The current policy also states that if the new activity becomes the dominant activity on the land, "options such as freeholding of the lease or excision of an area for the new activity should be considered."

¹⁰² A Struss, AgForce Leasehold Land Committee and Grazier, Public hearing transcript, Roma, 24 August 2012, p 5; M Finger, Submission No 43, p 1; R Whitton, Grazier, Public hearing transcript, Roma, 24 August 2012, p 6; E Robinson, leaseholder, Public hearing transcript, Alpha, p 15; Plant family, Submission No 27, p 1.

¹⁰³ E Robinson, leaseholder, Public hearing transcript, Alpha, p 15

¹⁰⁴ AgForce Queensland, Submission No 41, pp 44-45; Cook Shire Council, Submission No 7, pp 1-2; Alliance for Sustainable Tourism, Submission No. 13, p 4; Sunshine Coast Regional Council, Submission No 14, p 2; Queensland Traditional Owners Network, Submission No 22, pp 3-4; M Finger, Submission No 43, p 1; J Carter, Submission No 44, p 1; G McGown, Submission No 50, p 1; R Pedracini, Submission No 56, p 1; C Campbell, Submission No 62, p 2; A and V Bambling, Submission No 65, p 2; Queensland Tourism Industry Council, Submission No 86, p 4; B and J Angus, submission No 90, p 3.

¹⁰⁵ Queensland Department of Environment and Resource Management. (2007). Diversification of leases for agricultural purposes PUX/901/337 Version 2 (SLM/205/1926 – Version 2). Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3337/slm_2005_1926.pdf.

¹⁰⁶ AgForce Queensland, Submission No. 41, pp 44-45.

¹⁰⁷ Queensland Department of Environment and Resource Management. (2007). Diversification of leases for agricultural purposes PUX/901/337 Version 2 (SLM/205/1926 – Version 2). Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3337/slm_2005_1926.pdf.

¹⁰⁸ AgForce Queensland, Submission No 41, p 45.

However, the department's decision is guided by its consideration of the most appropriate tenure and use of the land. Often this has resulted in the department putting lease conditions on the land under section 210 of the *Land Act 1994* (Qld) "to preclude future subleasing of parts of leases to avoid additional uses becoming entities in their own right."¹⁰⁹

AgForce argues that diversification is essential for rural enterprises because it creates a more viable and resilient environment. Longreach Regional Council supports this by stating that "*occupation and use rights are integral to economic activity originating from the land.*"¹¹⁰ AgForce proposes that the simplest way to remove restrictions that prevent diversification of activities is to move to less restrictive tenure type, including freehold.¹¹¹ The tenure type should support managed multiple uses, including grazing, selective native harvesting, beekeeping, recreation and ecotourism, as legitimate and sustainable uses of the land that co-exist with conservation values. This would bring environmental, economic and social benefits to all Queenslanders. Queensland Tourism Industry Council in particular states that tourism and agriculture are perfectly suited to co-exist on the same parcel of land.¹¹²

4.6.2 Pastoral leases

Holders of pastoral leases can use a range of mechanisms to undertake additional economic activity. These include the diversification policy, "*add purpose*", excise area (a small lease excised for a purpose) and sub-leases.¹¹³

A number of stakeholders indicated that there needs to be less onerous and restrictive conditions attached to leases so that land managers can have access to a full range of options of uses to remain viable.¹¹⁴ Cook Shire Council also argued that current pastoral leasehold tenure needs to allow for business diversification to create "*opportunities for leaseholders to implement the types of business strategies normally available to other businesses, including other primary industry entities.*"¹¹⁵ This is particularly important, according to Cook Shire Council, because pastoral leaseholding businesses are subject to seasonal land and market forces.¹¹⁶

Goondiwindi Regional Council is in favour of converting long-term grazing and pastoral leases to freehold to not only reward the efforts of those investing the time and money in the improvements and maintenance of the land, but also to allow diversification of land uses to improve the productivity of these areas.¹¹⁷ Most submitters concerned with the lack of diversification allowable on their leases have indicated they would like to move towards either freehold title or tenure that allows for multiple uses of land.

In support of either freeholding tenure and/or improving lease tenures for pastoral leasehold land that allows for non-impacting diversification of land uses, Cook Shire Council advocated for enabling pastoral diversification through a simple permit and application process. Options which could be offered to pastoral leaseholders include:¹¹⁸

- Opportunistic cropping and/or orcharding of existing cleared land for fodder/hay production

¹⁰⁹ AgForce Queensland, Submission No 41, p 45.

¹¹⁰ Longreach Regional Council, Submission No 1, p 1.

¹¹¹ AgForce Queensland, Submission No 41, p 45.

¹¹² D Gschwind, Queensland Tourism Industry Council, Public hearing transcript, Brisbane, 22 August 2012, p 21.

¹¹³ Qld Department of Environment and Resource Management. (2007). Diversification of leases for agricultural purposes PUX/901/337 Version 2 (SLM/205/1926 – Version 2). Retrieved from website: http://www.derm.qld.gov.au/about/policy/documents/3337/slm_2005_1926.pdf, Cape York Sustainable Futures Submission No 40, p25

¹¹⁴ Longreach Regional Council, Submission No 1, p. 1; Goondiwindi Regional Council, Submission No 9, p 1; C G Gavill, Submission No 19, p2; Plant family, Submission no .27, p 1; T & E Ecroyd, Submission No 10; G Elmes, Submission no. 25; C Jackson, Submission No 58.

¹¹⁵ Cook Shire Council, Submission No 7, p 1.

¹¹⁶ Cook Shire Council, Submission No 7, p 1.

¹¹⁷ Goondiwindi Regional Council, Submission No 9, p 1.

¹¹⁸ Cook Shire Council, Submission No 7, pp 1-2.

- Farm stay (and other minimal impact short-stay camping type options)
- Low impact eco, cultural, environmental tourism options including hunting
- Ability of landholders to graze a range of stock on agricultural leases
- Secondary industry options / value adding
- Low impact aquaculture based on native / endemic species
- Horticulture based on an agreed parcel of land and assessed under normal Environmental Impact Quotient.

Cook Shire Council believes that allowing for diversification of land uses would have an economic flow-on for regions and suggested the committee consider the Western Australia (WA) model for adoption.¹¹⁹ The Council's views are echoed by Cape York Sustainable Futures, which states that "*diversity policy for pastoral leases needs to be relaxed and more economic opportunities (tourism, conservation and others) permitted for existing lessees.*"

The Queensland Traditional Owners Network (QTON) supports rural land use diversification on term releases but clearly expressed that any policy or legislative changes that improve certainty for lessee "*must fully consider all associated native title implications in the first instance.*" Further, QTON stated that any change to existing provisions that would allow the sale of State leasehold land must also "*be carefully considered in terms of potential native title implications arising.*"¹²⁰

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

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

However Mr Noble goes on to suggest that:

*A statutory regime could be introduced under which existing Native Title interests (having regard to their content) are exercisable (only) on a stated area of the lease land and lease activities (including any new use) are exercisable on the balance of the area only. Any disputes may be resolved by a statutory dispute resolution process supervised by the Land Court.*¹²¹

The WA reforms to pastoral leases would, if proposed legislative amendments pass, introduce new types of leases, allowing multiple and varied use of the WA rangelands (which cover 87 per cent of the state), and giving pastoralists greater security with perpetual leases over the land.¹²² The WA reforms have also carefully considered native title and the concern that granting new tenure options, such as a perpetual pastoral lease, "*will extinguish native title and force pastoralists and traditional owners into conflict leading to protracted litigation.*"¹²³ However, the WA government has proposed developing a template ILUA to satisfy the future act obligations under the proposed new tenure options, which has been supported by legal advice. Further, the WA government will

¹¹⁹ Cook Shire Council, Submission No. 7, p 2.

¹²⁰ Queensland Traditional Owners Network, Submission No 22, pp 3-4.

¹²¹ B. Noble, Private email to the Chair of the committee, 1 November 2012.

¹²² <http://www.rdl.wa.gov.au/programsandprojects/pastoral/rangelandreform/Pages/Default.aspx>

¹²³ Western Australian Department of Regional Development and Lands, 'Summary of Response to the Rangelands Tenure Options – Response Paper, September 2011', p 12.

consider negotiating with leaseholders and native title bodies in the development of those template ILUAs that are acceptable for use with different types of leases.¹²⁴

Committee comment:

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

The committee is also conscious of the concerns raised about the different regulations applicable to different lease types and the resulting tension between mining lease holders and farmers and graziers (i.e. holders of agricultural and pastoral leases respectively).

4.7 Grazing rights on forestry land

Many lessees lost their right to graze on forestry areas under the South-East Queensland Regional Forests Agreement (SEQRFA), which oversaw the transition of forestry and other protected areas into national forest. Some leases were "*wound back or allowed to expire and not be renewed.*"¹²⁵

Other lessees had their leases converted into a "Permit to Occupy" through this process. These permits offer little security of tenure to landholders, which impacts on their incentive to invest in infrastructure improvements and meet more than the minimum of their responsibilities in land care management under the terms of their lease.¹²⁶

The Western Hardwoods Plan of 2004 removed grazing from 1.2 million hectares of designated forestry lands and converted them to National Park. This has resulted in 280 graziers standing to lose their grazing permits upon expiration. At this point in time, the graziers affected by the plan have not received any notification about whether their leases will be extended or not.¹²⁷

Leaseholders whose leases cover areas of state forest and leasehold land in the one parcel have been advised that their leases will not be renewed once they come up for renewal in the next few years.¹²⁸

AgForce argues that the termination of forestry leases '*contradict explicit charters that include covenants which entitle lessees to receive an offer of a new lease at the expiration of the term of their existing lease.*'¹²⁹

AgForce and leaseholders believe that producers and farmers are the best managers of forestry land as they have a vested interest in ensuring management of feral pests and weeds, fire and other land conservation practices, in a way that ensures the land remains productive and fertile.¹³⁰ Under the terms of their leases, leaseholders are responsible for maintaining their land, including forestry areas, which means keeping the land free from noxious plants, maintaining firebreaks that help to prevent bushfires from destroying timber reserves and using cattle to reduce the fuel load.¹³¹

¹²⁴ Western Australian Department of Regional Development and Lands, 'Summary of Response to the Rangelands Tenure Options – Response Paper, September 2011', p 12.

¹²⁵ AgForce Queensland, Submission No 41, p 51.

¹²⁶ AgForce Queensland, Submission No 41, p 51, L Hewitt, Policy Manager, AgForce Queensland, Public Hearing Transcript, Alpha, 30 August 2012, p 6.

¹²⁷ AgForce Queensland, Submission No 41, p 52.

¹²⁸ AgForce Queensland, Submission No 41, p 52.

¹²⁹ AgForce Queensland, Submission No 41, p 52.

¹³⁰ AgForce Queensland, Submission No 41, p 52; A Struss, AgForce Leasehold Land Committee and Grazier, Public hearing transcript, Roma, 24 August 2012, p 5; C Jackson, Grazier and Chair of the Injune/Arcadia Valley AgForce Branch, Public hearing transcript, Roma, 24 August 2012, p 5, J Baker, leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; T Day, Submission No 96, p 1.

¹³¹ J Baker, Leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; Plant family, Submission No. 27, p 1.

However according to one stakeholder, operating under the current conditions imposed by grazing permits *'inhibits structural improvements to the lease' and prevents the land being 'managed in either a profitable or environmentally sustainable manner'*.¹³²

The emphasis should be on management of land through co-operation rather than regulation¹³³ because it provides *'flexibility to deal with local considerations, cost effectiveness, enduring outcomes, positive stakeholder involvement and ownership'*.¹³⁴

AgForce proposes that the government investigate the *'potential for the re-introduction of grazing in areas, such as the SEQRFA tenure areas, where it can be shown to not impact on any real and identified conservation values'*.¹³⁵ In particular, AgForce would like to see the reintroduction of grazing rights on forestry land where it can be shown to not impact on conservation values, for those lessees that hold a range of grazing leases and permits (often issued pursuant to the *Forestry Act 1959 (Qld)*).¹³⁶

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

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

The Wildlife Preservation Society of Queensland stated that while grazing is permitted to occur on conservation land under an approved management plan, *'a lot of the forestry practices in the past have been and would remain unsustainable because of the rate of growth of eucalypts. The harvesting rate is such that the trees do not get to the status they should be for a sustainable industry.'*¹³⁷

The Mackay Conservation Group (MCG) stated that cattle should not be grazed on a conservation area *'without good reason'* and that there should be *'independent scientific advice before grazing'* occurred on forestry areas.¹³⁸

The Capricorn Conservation Council (CCC) was opposed to creating tenure that would allow *'less control over appropriate environmental ecologically sustainable practice'*. Instead, CCC supported the strengthening of the *'current environmental management provisions on leasehold land—for example, grazing lease and forest reserves'*.¹³⁹

However, Goondiwindi Regional Council was supportive of allowing grazing in state forests to

*ensure that these large parcels of land are able to provide some revenue to offset the substantial management costs that they generate. The sustainable logging of all relevant timber varieties and controlled grazing of some of these areas will also provide economic stimulus for the region and provide better environmental outcomes in many cases.*¹⁴⁰

¹³² M Finger, Submission No. 43, pp. 1-2; M Finger, Public hearing transcript, Alpha, 30 August 2012, p. 21.

¹³³ M Finger, Public hearing transcript, Alpha, 30 August 2012, pp. 21-22.

¹³⁴ D Kempton, 'How Secure is Leasehold Tenure', HTW Rural Lease Tenure Renewal Seminar, 22 May 2008, downloaded on 7 November 2012 from http://www.htw.com.au/Industry_Presentations/townsville%20rural%20lease%20tenure%20renewal%20seminar%20-%20may%202008%20-%20david%20kempton%20presentation.pdf, p. 2.

¹³⁵ AgForce Queensland, Submission No 41, p. 53.

¹³⁶ AgForce Queensland, Submission No 41, pp. 51-52.

¹³⁷ D Boyland, Policies and Campaigns Manager, Wildlife Preservation Society of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p 2

¹³⁸ P Julien, Coordinator, Mackay Conservation Group, Public hearing transcript, Mackay, 27 August 2012, p. 4.

¹³⁹ M McCabe, Coordinator Capricorn Conservation Council, Public hearing transcript, 29 August 2012, p. 5.

¹⁴⁰ Goondiwindi Regional Council, Submission No 9, p 2.

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

4.7.1 *The issue for leaseholders – lack of secure tenure*

Because grazing permits cannot be transferred, mortgaged or sublet, and may not be renewed with as little notice of the non-renewal as 6 months, lessees lack certainty, which impacts on the ability of lessees to use their leases as equity to secure financing from banks to purchase freehold property or expand their rural enterprises. This has often resulted in unviable businesses and individual lessees exiting from their leases.¹⁴¹

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

Current policies suggest the objectives of current tenure arrangements are to ensure an appropriate balance between what are seen as competing land uses – agriculture, grazing, forestry, tourism, mining, conservation. This issue has been on the agenda of the previous as well as the current government, with a series of pieces of legislation passed in 2011 relating to land use.¹⁴² The relationship between land tenure and other government objectives as expressed through policy and legislation will be considered in the committee’s final recommendations.

4.7.3 *Possible solutions*

To address the problems posed by a lack of secure tenure, a number of stakeholders suggested that a new tenure be created, by either freehold title or a perpetual lease, which would provide grazing rights and also enable the forest to be maintained as a state asset with the state retaining ownership of any timber on the land. This would provide a greater security of title that would enable graziers to borrow against the lease to expand their business and also provide more incentives to invest in their land and manage the land in an environmentally sustainable manner.¹⁴³ As one leaseholder stated, converting to freehold or special leases “*would provide more certainty for our businesses, encourage investment and greater guardianship over these lands, and increase production and therefore economic productivity and viability*”.¹⁴⁴

The overwhelming suggestion from stakeholders was to convert to freehold in order to access the capital required to make the investments needed to be efficient and viable in the long term.¹⁴⁵ Any new tenure that converts leases to freehold should include options that are ‘*affordable and long term*’¹⁴⁶ with a suggestion that the tenure should be a minimum of 50 years and up to a 99-year lease.¹⁴⁷

The key concerns about any move towards freehold title relate to implications for native title and for the environment. Some graziers specifically stated that they are open to a ‘commonsense’ approach to native title agreements that ‘*promote cultural rather than simply economic gains. Interim environmental agreements can be developed to ensure leases are in good condition before they are freeholded, and the science and the systems are already in place to achieve this*’.¹⁴⁸

AgForce also indicated that it would be interested in investigating a new model of tenure that was a move towards freehold title so that a leaseholder would not have to pay any rent but that the

¹⁴¹ AgForce Queensland, Submission no. 41, p 52; Plant family, Submission no. 27, p. 2; M Finger, Submission No 43, pp 1-2; M Finger, Public hearing transcript, Alpha, 30 August 2012, p 21.

¹⁴² Eg. Strategic Cropping Land Act 2011.

¹⁴³ J Baker, leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; E Robinson, Public hearing transcript, 30 August 2012, p 15; M Finger, Public hearing transcript, Alpha, 30 August 2012, p 21; B Hoare, Submission No 97, pp 2-3.

¹⁴⁴ J Grant, leaseholder, Public hearing transcript, Roma, 24 August 2012, p 4.

¹⁴⁵ AgForce Queensland, Submission No 41, p 37; E Robinson, leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; C G Gavill, Submission No 19, p 2 ; B Hoare, Submission No 97, pp 2-3 ; J Baker, leaseholder, Public hearing transcript, Alpha, 30 August 2012, p 12; M Finger, Public hearing transcript, Alpha, 30 August 2012, p 21.

¹⁴⁶ E Robinson, Public hearing transcript, Alpha, 30 August 2012, p 15; C G Gavill, Submission No 19, p 2.

¹⁴⁷ E Turner, private capacity, Public hearing transcript, Roma, 24 August 2012, p 2; C Jackson, Submission No 58, p 3.

¹⁴⁸ E Robinson, Public hearing transcript, Alpha, 30 August 2012, p 15.

payments that were made were going toward paying the 'freehold' title. The granting of this tenure would not extinguish native title.¹⁴⁹

In supporting the argument that forestry reserves and grazing leases can co-exist and be beneficial to each, one stakeholder suggested that thinning was the best way to increase productivity of commercial timber on grazing land. The ability to undertake this activity could be provided to leaseholders with a special lease over forestry land. Restricting the ability to do this under current lease conditions is detrimental to forestry reserves.¹⁵⁰ Another stakeholder wanted to see a return to the ability of leaseholders to maintain 'previously cleared or treated land'. Under current lease conditions, they are unable to maintain these areas, which has contributed to 'cutting our stocking rate for cattle and viability, as well as providing a haven for wild pigs, dingoes and weeds, causing concern on our freehold land and our neighbours' land as well'.¹⁵¹

Committee comment:

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

The committee notes that the government has announced reforms to regulation relating to simplifying the process of renewing grazing leases and providing greater certainty to leaseholders through a streamlined State Rural Leasehold Land Strategy.¹⁵² The committee encourages the government to proceed with these announced reforms.

4.8 Living areas policy

There was division among stakeholders on the present living areas policy and this is explained in some detail in the AgForce submission which canvassed the issue with its membership in 2011 and found it to be particularly contentious. Given the divisiveness of this issue, AgForce State Council reconsidered the restrictions and held it was in favour of the retention of provisions limiting corporations to hold restricted tenures. Notwithstanding this resolution, AgForce stated that it supports an approach which sees increased security of tenure through greater conversion opportunities and any freeholding program should not exclude corporations. Therefore, AgForce continues to support restrictions on corporations and trusteeships holding and managing tenure but they should not be excluded from any tenure conversion.¹⁵³

A number of individual pastoralists supported tenure conversions seeing them as an important way to enable their children to inherit the property and continue to live on and farm the land with certainty into the future. According to one submitter:¹⁵⁴

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

Similar issues concerning the current barriers to inheritance, security of tenure and continuity of family involvement in leasehold lands was raised in a submission by Mr K Dwyer of Chinchilla who

¹⁴⁹ B Finlay, General President, AgForce Queensland, Public hearing transcript, Roma, 24 August 2012, p 14.

¹⁵⁰ C Jackson, Grazier and Chair of the Injune/Arcadia Valley AgForce Branch, Public hearing transcript, Roma, 24 August 2012, p 14.

¹⁵¹ J Grant, Grazier, Public hearing transcript, Roma, 24 August 2012, p 4.

¹⁵² Hon A Cripps, Minister for Natural Resources and Mines, 'Newman cuts red tape for graziers on Leasehold Land,' Media release, 22 November 2011 downloaded from <http://statements.qld.gov.au/Statement/2012/11/22/newman-cuts-red-tape-for-graziers-on-leasehold-land>.

¹⁵³ AgForce, Submission No 41, p 43.

¹⁵⁴ Doble, Submission No 68, p 2.

wrote to the committee about his experiences of attempting to convert the tenure of his property to freehold tenure:

For many years my wife's uncle, Mr Sydney Gordon Russell had held this land under special lease 16/6074. When Mr Russell died in 1983 the lease was included in property bequeathed to my wife and me. Subsequently we renewed the lease when its term expired and paid the annual rent each year. The Department decided to change our lease from Special Lease to Permit to Occupy. From our perspective the major difference in the two situations is that we could not pass on our lease to our beneficiaries which we would like to do because of the length of time the Russell family had been involved with it. My wife and I are both over 80 years of age and we wish to settle matters relating to estate planning which would include the Leasehold Lands we hold as well as the land held under freehold title.

We wrote to the Lands Department (as it was then) many years ago seeking to convert the leasehold land to freehold. The then Minister Mr Bill Glasson replied that conversion of the lease to freehold tenure would not be allowed as the land had potential for subdivision into rural residential sites. The land is situated on the banks of Charley's Creek and was severely affected by the 1211 (sic) New Year floods and the land would be of little interest to anyone other than us.¹⁵⁵

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

The policy was originally introduced to 'prevent undue concentration of ownership of large aggregations in one locality, but to allow additional ownership across the state and throughout a number of districts'.¹⁵⁶ In the same report Wolfe goes on to state that:

Some provision is required to control unseemly aggregations of grazing and pastoral land regardless of tenure. The restrictions on dealings with grazing land as now applies to land formerly held under a grazing homestead perpetual lease is required so that land used in the grazing industry is available for small business and to provide a further mechanism for ensuring these lands are properly employed in the industry or for the use for which they are most suited. As the aim of the policy is to support the family unit operations on the grazing and pastoral lands, the object is not achieved by placing a restriction on ownership in terms of total area measured by hectares, as was the case between 1968 and 1981.

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

- Concentration of control in industry – leading to monopolisation of industry and market domination.
- Increased barriers to entry of newcomers into an industry. It noted a very strong level of demand for leasehold land exists in the community, mostly from eligible family units wishing to acquire more land rather than increase productivity on the existing holding.
- Inefficiency results if holdings are not used to their full capacity. Reportedly, not only paddocks but large holdings have been left idle or for years are not used to their proper capacity. It would appear that it is sometimes less costly and more profitable to acquire more land rather than

¹⁵⁵ K Dwyer Submission No 4, p 1.

¹⁵⁶ P M Wolfe, D G Murphy, and R G Wright, (1990) Report of a review of land policy and administration in Queensland (p.90) Brisbane: Land Policy and Administration Review Committee, cited in the AgForce submission to the Inquiry into the Future and Continued Relevance of Government Land Tenure across Queensland, August 2012, p 38.

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.

Table 15: Restrictions on corporations and trusteeships to hold and manage tenure

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: <ul style="list-style-type: none"> - 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.

Source: AgForce, Submission No 41, p 42.

AgForce goes on to note that the living areas calculations have not been reviewed in over 15 years, and have therefore failed to take into account a range of recent factors such as the increase in productivity and profitability on some individual tenures, terms of trade and the need to spread fixed costs. A more scientific approach to carrying capacity has proven that the living area standards are inaccurate. It should also be noted that living areas change with industry profitability and margins which are all market-driven and government policy has continually proven its inability to adapt to such factors.¹⁵⁷

Committee comment:

The committee recognised the wording of the Recommendation 11 in the Interim Report was ambiguous and has clarified this in the Final Report.

¹⁵⁷ AgForce, Submission No 41, p 39.

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

The committee recognises modern family business arrangements and believes that increased security of tenure can be achieved by not excluding corporations and trusteeships.

Recommendation 15

The committee recommends that the Queensland Government reviews the current restrictions with regard to corporations and trusteeships and their managing of leasehold tenure.

Some lessees supported tenure conversion reforms to permit subdivision of large land parcels. As Ms Megan Atkinson, a pastoral leaseholder, states in her submission, having the '*ability to convert tenure for our family's security would be very reassuring*' and suggests '*allowing areas such as these large land parcels to be subdivided*'.¹⁵⁸

However, this was matched by a countervailing view, perhaps best expressed by Mr Hugh McGown, a grazier from Roma who said:

*We had huge difficulties in the south-west strategy, and we made a number of submissions saying to the state, 'If you address some of these issues, we can make better progress in addressing these unviable areas, small blocks, people trying to get out of them. We need to amalgamate these areas.' We had impediments like stamp duty, survey standards, dissimilar title—absolute impediments to really good resource management outcomes. You have to remember: some of these areas where they had these structural adjustment programs were in our poorer land types. The state, in its wisdom, said, 'We do not want the big companies to own these as drought reserves. We will subdivide them and make them into smaller areas.' And that is where the problem started.*¹⁵⁹

AgForce notes that the department has admitted that the living area standard has not been enforced for many years, and in view of this and the varied ways in which agricultural businesses are operated today and the decline in total numbers of Queensland producers, AgForce recommends the removal of this provision. Furthermore, the policy has been criticised as anti-competitive and arguably may pass the requisite tests of market, agreement and substantial lessening of competition detail under the *Competition and Consumer Act 2010* (Cth). AgForce maintains that the majority of negative impacts considered and discussed in the Wolfe Report are no longer applicable, in particular the inefficiency argument. AgForce contends that statements that rents are not a constraining factor and that demand for new land comes mainly from family units are clearly incorrect.¹⁶⁰ AgForce, therefore, concludes that the most appropriate mechanism to deal with any unintended consequences of moving toward greater freeholding of existing leasehold land (such as undesirable subdivisions) is via other regulatory mechanisms such as statutory planning regimes.

¹⁵⁸ M Atkinson, Submission No 47, p 2.

¹⁵⁹ H McGown, Public hearing transcript, Roma, 24 August 2012, p 4.

¹⁶⁰ Ibid. p 41.

Committee comment:

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

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

4.9 State planning process and policies

The committee recognises that land use (planning) and land tenure are inextricably linked. The committee therefore provides information regarding current planning policies as part of its discussion of land tenure issues.

In August 2012 the Queensland Government released the temporary State Planning Policy. The purpose of this policy is to ensure that economic growth is:

- facilitated by local and state plans, and
- not adversely impacted by planning processes.

This policy is now reflected in relevant State and local government decision making. The State interests in economic growth include:-

1. Promoting agriculture by:

- preserving good quality agricultural land for its income earning potential, and as a natural resource
- supporting agriculture as the predominant land use in Rural zoned areas
- not supporting land uses that have the potential for conflict with agriculture in Rural zoned areas.

The agriculture industry is central to Queensland's economy, employment and our food and timber supply. Planning for and promoting agriculture opportunities will enable the growth and sustainability of the agriculture industry, and its contribution to the growth of the Queensland economy.

2. Promoting tourism by:

- facilitating tourism projects that complement local conditions
- removing hurdles and locational limitations for appropriate tourism development.

Development for tourism is distinct from other development owing to the diversity of its type, size, location and impact. Tourism supports local and regional economies in urban and non-urban areas – providing opportunities for growth and employment.

Tourism provides resilience and diversity in local economies that may otherwise be dependent on a narrow economic base. Growth of the tourism industry will complement and balance rural pursuits and nature conservation activities.

3. Promoting the State's mineral and extractive resources industries by:

- preserving mineral and extractive resource industries
- resolving at a regional and local level potential land use conflicts
- supporting our mining communities with housing and community facilities.

The resources industry is a major contributor to the Queensland economy. It supports the energy and other needs of industries and communities across the state, nationally and internationally by supplying valuable commodities including coal, coal seam gas, minerals and petroleum.

4. Promoting construction activities by:

- facilitating residential, commercial and industrial development in appropriately zoned areas
- identifying infrastructure required to support new development
- removing impediments to a steady supply of land in suitable locations
- ensuring an efficient, effective and accountable planning and development system.

Application of the temporary state planning policy

The temporary State Planning Policy 2/12 'Planning for Prosperity' is a statutory instrument under the *Sustainable Planning Act 2009* which applies to all local government areas in Queensland. The following Policies apply to the range of circumstances set out in the *Sustainable Planning Act 2009*, including a referral agency's assessment of a development application, however the policies do not apply to:

- a) an assessment manager's assessment of a development application, or
- b) the assessment of a master plan application,
- c) resolution of competing or conflicting outcomes between the various policies.

Any conflicts are to be resolved as set out in part 2 below and not in the assessment of a master plan or a development application (by an assessment manager and referral agency). This Policy will be applied in the making or amending of regional plans under the *Sustainable Planning Act 2009*. The terms used in this Policy have the same meaning given in the *Sustainable Planning Act 2009* and the Queensland Planning Provisions.

Application of the policies

The application of the policies may involve the resolution of competing or conflicting outcomes between the various policies, and are best resolved when:

- a) making or amending local planning instruments;
- b) making regional plans; and
- c) deciding whether to designate land for community infrastructure.

At the decision making stage on a development application, the purpose of this policy will be achieved by a balancing of competing or conflicting outcomes that gives additional weight to:

- a) agricultural uses in areas zoned for agricultural uses;
- b) urban uses in areas zoned for urban uses;
- c) tourist development which can be shown to be complementary to an area's environmental, scenic and cultural values; and
- d) mineral and extractive resources development which can be shown to be complementary to an area's primary intended land use.

Policies about the matters of State interest

The Policies are to:

Remove regulatory barriers which impede development

- 1) Remove regulatory barriers which impede the development of the following in appropriately zoned or suitable locations:-
 - Agriculture
 - Tourism projects
 - Mining and extractive resource industries
 - Residential, commercial and industrial activities.

Agriculture

- 2) Protect good quality agricultural land from incompatible development - such as residential (including rural residential), commercial and industrial uses - in Rural zoned areas
- 3) Identify and provide for the infrastructure and services necessary to support a viable and resilient agricultural economy
- 4) Provide specific appropriate locations for the conduct of agricultural activities with significant impacts (for example, intensive animal husbandry and intensive horticulture)

Tourism

- 5) Protect existing and appropriate tourism development
- 6) Identify opportunities for the expansion of existing tourism development
- 7) Identify localities or areas appropriate for tourism development, and protect these areas from incompatible development
- 8) Provide for the infrastructure and services necessary to support both existing tourism and identified tourism opportunities

Mining and extractive resources

- 9) Identify known mineral, petroleum, gas, hard rock and geothermal reserves, and protect these reserves from incompatible development
- 10) Seek to avoid conflicts between potential development of known mineral, petroleum, gas and geothermal reserves and other incompatible land uses, including by the allocation of new areas for urban development away from known reserves
- 11) Provide for development directly supporting the resources industry, such as supporting infrastructure, housing, transportation networks, downstream processing and port facilities
- 12) Facilitate development that supports the efficient extraction of known resource deposits, including by the allocation of sufficient land to support housing, community facilities and amenities for mining workforces

Construction

- 13) Facilitate supporting infrastructure, and industrial and commercial activities
- 14) Identify and provide for the infrastructure and services necessary to support existing and planned urban areas

Planning system reform

- 15) Amend planning regulations that add unnecessary costs to development
- 16) Provide an efficient and effective performance-based development assessment process, that:
 - Maximises community engagement and consultation activities at the plan making stage;
 - Maximises the use of exempt development, self assessment, compliance assessment and third party assessment/certification processes;
 - Standardises development assessment codes, processes and requirements for common land uses and development types across the state; and,
 - Removes unnecessary costs on development by:
 - eliminating the 'gold plating' of infrastructure
 - accepting staged infrastructure
 - using other innovative infrastructure solutions.¹⁶¹

4.10 Rental calculation methods

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

As discussed above, the annual rent for a 'primary production' lease is calculated at 1.5 per cent of the five-year average of the land value for rental purposes.¹⁶² Until 2017, the annual rent is capped at no more than 20 per cent more than the previous year's rent.¹⁶³

¹⁶¹ Temporary State Planning Policy 2/12 Planning for Prosperity, August 2012, accessed 14 May 2013 <http://www.dsdip.qld.gov.au/resources/policy/state-planning/temporary-state-planning-policy-2-12.pdf>.

¹⁶² Queensland Government, Department of Natural Resources and Mines, 'Rental arrangements: Category 11 – Primary production', Fact sheet, July 2012, <http://www.derm.qld.gov.au/factsheets/pdf/land/l215.pdf>, accessed 23

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

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

4.10.1 Rent levels

Don Hick was typical of many pastoral leaseholders who made submissions to the committee, in stating that high leasehold rents were rendering his business unprofitable.¹⁶⁴ At the public hearing at Alpha, Emma Robinson stated:¹⁶⁵

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

Lauren Hewitt, the AgForce Queensland Policy Manager said at the Roma public hearing that, in comparison to New South Wales, Queensland rentals are very high. By way of example, she referred to the property owned by Bim Struss, a grazier who also gave evidence at the Roma public hearing:¹⁶⁶

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

Ms Hewitt explained that rent calculations in the western areas of NSW were adjusted as a result of a tenure review about ten years ago, with the objective of keeping rents at a low level.¹⁶⁷

Roly Hughes advocated a similar policy to that currently in place in western NSW, suggesting that leasehold rents should be kept low. He also suggested that there should be assistance to help look after the land.¹⁶⁸

The WWF, however, is of the view that the Queensland Government is charging below market rents for pastoral leases. In its submission, it suggested that the Government should '*consider charging true market value for pastoral leases on public land*'¹⁶⁹.

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

November 2012. See also, Land Act 1994, Chapter 5, Part 1; Land Regulation 2009, Part 4, Schedules 6, 12; Land Valuation Act 2010, Chapter 2, Part 2.

¹⁶³ Queensland Government, Department of Natural Resources and Mines, 'Rental arrangements: Category 11 – Primary production', Fact sheet, July 2012, <http://www.derm.qld.gov.au/factsheets/pdf/land/l215.pdf>, accessed 23 November 2012.

¹⁶⁴ Submission No 48, p 2. See also, for example: Jane Carter, Submission No 44, p 2; Megan Atkinson, Submission No 47, p 1; Gus McGown, Submission No 50, p 2; Anthony Struss, Submission No 52, p 1; Emma Robinson, Submission No 53, p 2; Kim Lansdowne, Submission No 57, p 2; Colin Jackson, Submission No 58, p 2; Richard Hawkins, Submission No 59, p 2; Roly Hughes, Submission No 64, p 2; Charlton Doblo, Submission No 68, p 2; Raymond Stacey, Submission No 69, p 1; Harry Shann, Submission No 70, p 2.

¹⁶⁵ Alpha public hearing, 30 August 2012, transcript, p 14. See also, Kim Lansdowne, Submission No 57, p 2; Richard Hawkins, Submission No 59, p 2.

¹⁶⁶ Mr Struss is also the Chair, AgForce Leasehold Land Committee.

¹⁶⁷ L Hewitt, Policy Manager, AgForce Queensland, Roma public hearing, 24 August 2012, transcript, p 13.

¹⁶⁸ Submission No 64.

¹⁶⁹ Gilly Llewellyn, World Wildlife Fund, Submission No 61 p.4.

*see the need for some recognition that remote pastoral leases are generally operated as rate and lease paying businesses which are often severely impacted by seasonal and market forces.*¹⁷⁰

Similarly Ms Jane Carter noted that:

*In 1984 a Toyota work vehicle could be purchased with the sale of 20 head today 85 head have to be sold to buy the same type of vehicle. Yearly Rent paid in 2007 was \$5,856 in 2012 it is \$14,000. The rent must be paid in a year of severe drought when a property has to be totally destocked, that property has no income.*¹⁷¹

As discussed above, the Northern Territory Government currently charges rent at 0.248 per cent of the unimproved capital value of each pastoral lease. The actual rate was 1.22 per cent, but the Northern Territory Government reduced it because of 'poor industry conditions after the live export scenario' in 2011.¹⁷²

Committee comment:

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

Recommendation 16

The committee recommends that the Land Regulation 2009 be amended to incorporate additional capacity for the Queensland Government to respond to the needs of pastoralists in a more timely and flexible manner in its methods of rental calculation employed during periods of hardship, resulting from natural disasters and market failure.

4.10.2 UCV as a basis for calculating rent

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

*... unprecedented property sales in the district have sent our UCV through the roof. The increased UCV has no relevance of what we can earn from our land. Setting rent at 1.5% of UCV will see our well managed efficient property operation slowly crawl to an unviable business.*¹⁷³

At the Roma public hearing, Colin Savill said:¹⁷⁴

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

Mr Savill identified the lack of connection between using the UCV for determining annual rent, and income.¹⁷⁵ At the Alpha public hearing, John Hain pointed out that increases in land value are *f no value to the ongoing landholder*'.¹⁷⁶

¹⁷⁰ Cook Regional Council Submission No 7.

¹⁷¹ J Carter, Submission No. 44 p. 2.

¹⁷² Information provided to the Queensland Parliamentary Library and Research Service from the Northern Territory Valuation Office: Queensland Parliamentary Library and Research Service, Client Information Brief, 'Leasehold land tenure', 22 November 2012.

¹⁷³ Submission No 52, p 2.

¹⁷⁴ Mr Savill, Roma public hearing, 24 August 2012, transcript, p 3.

With respect to using UCV as a basis for calculating rent, Ms Hewitt stated:¹⁷⁷

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

Ms Hewitt went on to say that New Zealand has ‘a very good [model] that is linked to productivity’.¹⁷⁸

Committee comment:

In New Zealand rent is calculated by a formula that assesses the productive capacity of each pastoral lease as a pastoral farming operation and uses statistical data about farm revenues to estimate the value of the assessed productive capacity.¹⁷⁹

Another submitter to the inquiry, Peter Tannock, stated:¹⁸⁰

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

Mr Tannock suggested that rentals should “remain moderate (e.g. 1.0% of UCV) and be linked to productivity”.¹⁸¹

Mr Hick and Harry Shan made similar suggestions in their submissions with respect to calculating rent. Mr Hick suggested that ‘leasehold rents should be tied to profitability, not land values’ because ‘land values can increase because of lack of availability and other reasons’,¹⁸² and Mr Shan said that ‘rental levels should be more related to the earning capacity of the land rather than market value’.¹⁸³

Mr Kim Lansdowne and Mr Richard Hawkins simply submitted that rents ‘should not be based on UCV’.¹⁸⁴

Committee comment:

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

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

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

¹⁷⁵ Submission No 19, p 1.

¹⁷⁶ Mr John Hain, Alpha public hearing, 30 August 2012, transcript, p 5. A similar comment was made by Harry Shan, Submission No 70, p 2.

¹⁷⁷ Roma public hearing, 24 August 2012, transcript, p 13.

¹⁷⁸ Roma public hearing, 24 August 2012, transcript, p 13.

¹⁷⁹ Crown Pastoral Land (Rent for Pastoral Leases) Amendment Bill, Explanatory Note, , pp 1-2.

¹⁸⁰ Submission No 45, p 8.

¹⁸¹ Submission No 45, p 8.

¹⁸² Submission No 48, p 2

¹⁸³ Harry Shann, Submission No 70, p 2. See also, Emma Robinson, Submission No 53, p 2 and John Hain, Alpha public hearing, 30 August 2012, transcript, p 5.

¹⁸⁴ Kim Lansdowne, Submission No 57, p 2; Richard Hawkins, Submission No 59, p 2.

Recommendation 17

The committee recommends that the Queensland Government considers alternatives to the current method of rent calculation which is based on unimproved capital value.

4.10.3 Increases in rent

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

*In the mid 2000s, rural property had a bit of a bonanza. [Unimproved values (UVs)] in property rose significantly. Many properties experienced anything from 500 per cent to 2,000 per cent increases in unimproved values, and that is the value upon which rent is determined. At that stage, lessees were paying 0.8 per cent as an annual rental figure. A review in 2007 determined that that was not high enough and so the figures were moved from 0.8 per cent of UV to 1.5 per cent, but they recognised that that could not be done overnight because of the substantial gap that would be in there. The government, at that time, decided to bring in a 10-year capping mechanism, so for the next 10 years until 2017, lessees are paying a compounding rate of 20 per cent increases per annum off the 2004 rental that they owned, bearing in mind that at that time the government decided to increase it from 0.8 per cent of UV to 1.5 per cent and also bearing in mind that lessee's UV, the actual per cent, increased up to 2,000 per cent or 3,000 per cent in some instances. It was a substantial gap.*¹⁸⁵

At the Alpha public hearing, Ms Hewitt identified some of the problems arising from increasing rents:¹⁸⁶

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

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

*As the cost of our rental increases the value of leases becomes less, as people factor these costs when looking to purchase land. This will also eventually result in a catch 22 situation for the Government as declining values will mean less revenue.*¹⁸⁷

In her submission to the committee, Ms Robinson said that *the impact of rising leasehold rents is crippling our profitability. Leasehold rents will soon become our biggest cost – rent is based on unrealistic UCVs and producers have no way of reducing or managing this rising fixed cost*.¹⁸⁸

At the Alpha public hearing, Mr Hain said:¹⁸⁹

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

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

Jane Carter, for example, stated in her submission that *while living costs have risen dramatically, the selling price of commodity cattle has not*.¹⁹⁰ Her point is echoed in Ms Megan Atkinson's submission:

¹⁸⁵ Roma public hearing, 24 August 2012, transcript, p 9.

¹⁸⁶ Alpha public hearing, 30 August 2012, transcript, p 8.

¹⁸⁷ John and Jane Hain, Submission No 29, p 1.

¹⁸⁸ Submission No 53, p 2.

¹⁸⁹ Alpha public hearing, 30 August 2012, transcript, p 5. See also Alpha public hearing, 30 August 2012, transcript, p 14 for comments by Ms Robinson and p 6 for further comments by Mr Hain.

'costs are continually going up (including rents but the return on our production remains the same or less'.¹⁹¹ Similarly, Mr Shan stated: over the past ten years our rental has more than trebled ... whilst the earning capacity of our enterprise has not increased at all'.¹⁹²

At the Roma public hearing, Mr Savill said, *'My rental at the moment is just short of \$4,000 a year. Based on the Delbessie formula it will end up at \$18,000. It is just not affordable'*. He said that the only reason that he can afford to run it at the moment is because it is combined with two freehold blocks.¹⁹³

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

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

Leaseholders who addressed the committee, in person and in submissions, were particularly concerned about the amount of rent they will have to pay after the cap is removed in 2017. Mr Hain, for example, told the committee at the public hearing at Alpha:¹⁹⁴

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

In his submission, Raymond Stacey made a similar point:¹⁹⁵

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

So too Ms Robinson:¹⁹⁶

In 2017 when the land cap is removed on current UCVs we will be looking at paying about \$60,000 in land rent. That is about \$1,100 a week and we will be essentially paying the Crown more than we are paying ourselves. While this is down from \$80,000 due to a lowering of UCVs in the last couple of years, land rent will be the biggest cost to our business after interest on debt. Coupled with the cost of rates, it means we will be up for about \$85,000 before we sell a beast. ...

In 2000 our land rent was approximately \$8,000. So over the period, land rent will have increased 7½ times. Our fixed costs have pretty much doubled, but the average

¹⁹⁰ Submission No 44, p 2.

¹⁹¹ Submission No 47, p 2.

¹⁹² H Shann, Submission No 70, p 2.

¹⁹³ Roma public hearing, 24 August 2012, transcript, p 3.

¹⁹⁴ Alpha public hearing, 30 August 2012, transcript, p 5.

¹⁹⁵ Submission No 69, p 2.

¹⁹⁶ Alpha public hearing, 30 August 2012, transcript, p 14.

price paid for cattle remains roughly the same. I think the use of UCVs to calculate land rent is a fairly blunt tool... We are currently paying rent on UCVs that have been strongly influenced by the mining boom. In our area the properties that have sold in the last five to six years have all sold to people who have been bought out by mining companies. They are cashed up and willing to pay beyond the potential value ...

... we are really motivated by the long-term prospect of running a viable grazing enterprise rather than chasing potential short-term capital gains.

Committee comment:

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

Recommendation 18

The committee recommends that the Queensland Government retains the current cap on annual rent arrangements due to expire at the end of 2017 until the completion of the Queensland Government review, as proposed in Recommendation 17, considering alternatives to the current method of rent calculation which is based on unimproved capital value.

4.11 Tenure security for community reserves

One of the key leasehold types where the committee received evidence was in relation to the treatment of leasehold land managed on behalf of the State Government by local government as community reserves. These reserves include:

- Town water facilities
- Sewerage treatment plants
- Showgrounds
- Recreation facilities such as pools, racecourses and parks
- Airports
- Campgrounds
- Waste Disposal Dumps
- Cemeteries
- Cultural activities such as museums
- Halls (including Town Halls and CWA Halls).

The key issues local government raised with the committee were:

Councils pointed out that the State Government requires that local government obtain permission from the State as part of the Development approvals process for any improvements on the land. Local governments argue that this delays the development approvals process for little benefit. Barcaldine Council highlighted that this process applied to extensions to the airport terminal in Barcaldine and construction of a skateboard park in town. A similar issue was raised by the Redlands City Council.¹⁹⁷

Councils also raised concerns about the security of tenure for areas where they had made considerable investment in capital infrastructure for facilities such as water treatment plants, sewage treatment works and waste disposal dumps.

The committee is sympathetic to the issues raised by local government in regard to the matters above and can see merit in the State Government exploring the development and establishment of a

¹⁹⁷ Submission number 46, Barcaldine Regional Council p. 1 and Submission number 89 Redlands City Council, p. 10

program of incentives to encourage local government to convert such operational reserves to freehold tenure.

The committee received a submission from the Queensland Country Women's Association¹⁹⁸ (QCWA) which also raised issues relating to the security of tenure security for their halls over 100 of which are situated on community reserve State leases and managed by local government. The committee also heard evidence from the QWCA on this matter.¹⁹⁹ The QWCA provided the committee with details of all its properties, locations and tenure status in which they highlighted that they were not in a position to freehold these community reserves but they sought to renegotiate the conditions by which the reserves are managed.

At the hearing where the QCWA presented their evidence to the committee, Mrs Sheila Campbell, the Southern Region, State Vice President stated:

In my region the CWA Hall or the CWA Rooms are often the only public meeting place in small communities. If something happens to them there is nowhere for these ladies to meet, and it's not just for ladies. We can go through a list and tell you that the local RSL meet there, the mother's club meet there and so on. It is a concern in that regard.

The CWA State President, Mrs Jennie Hill went on to emphasize this point when she said:

It depends on the size of the hall, but you might have the SES, the local fire brigade, craft groups and all sorts of other groups meet in the halls.

The QCWA pointed out that they spend a great deal of money on the upkeep and improvements of their buildings and sought reassurances from the committee that any tenure reform process would not jeopardise their control over their assets. The QWCA indicated that they had encountered a few problems where local governments had taken over their lease management and had sought to change the terms and conditions of their lease in ways they considered to be both unreasonable and unsustainable. The QWCA is concerned about the manner in which the trustees, including local governments, are managing the terms and conditions of their lease.

The committee also received a submission from the Queensland Chamber of Agricultural Societies which represents 128 member societies across the state. The Queensland Chamber of Agricultural Societies is concerned about the length of their leases and tenure security, as well as their ability to conduct more commercial activity on community reserve tenure.

The committee also received a submission from Central Queensland University outlining the challenges presented to modern day development of campuses with commercial tenants and special purpose facilities that stretch the limits of the terms and conditions attached to DOGITS and were seeking the opportunity to convert their existing DOGIT tenure to freehold or in the absence of this solution a relaxation of the terms of their current lease agreement.

Committee comment:

The committee has sympathy for the concerns raised by the QCWA and the Queensland Chamber of Agricultural Societies in respect to tenure security. Both stakeholder groups indicated to the committee that they would appreciate State Government involvement in assisting with the development of template leases which address their concerns as they have had some difficulties with a number of local governments.

There was late representation made to committee members on the issue of commercial activity on community reserves. This was particularly in relation to showgrounds and how this might assist the financial viability of agricultural societies.

¹⁹⁸ Queensland Country Women's Association, p. 1

¹⁹⁹ See Transcript of Public Briefing Inquiry into Land Tenure Across Queensland 7 February 2013.

Upon examination, it appears this issue is not limited to community reserves but, in general, has been managed by consultation with local communities.

The committee notes that ongoing commercial operations on community reserves may be inappropriate and that one option to better address the community interest may be to seek alternative forms of tenure.

Notwithstanding this, the committee is of a view that this is an area that the Queensland Government should examine in consultation with stakeholders and the broader community.

The committee considered the issue raised by the Central Queensland University and upon review of the current legislation confirmed that it is not possible to convert DOGIT lands granted under S. 14(2) of the Land Act to freehold tenure. However under s. 52(3) and 52 (4) of the Land Act there is discretion for the Minister to approve an action (with or without conditions) that is inconsistent with the original purpose of the grant of land, if she or he is reasonably satisfied that the inconsistent action will not diminish the purpose for which the land was granted or adversely affect any business in the area surrounding the land. It would therefore appear that there are currently viable options for Central Queensland University to explore beyond their proposed approach to convert their existing tenure which is currently not possible. However it is understood that there have been recent changes to the terms of leases for a number of tertiary institutions to extend their tenure providing a greater period of security of 100 years.

Recommendation 19

The committee recommends that the Queensland Government explores the development and establishment of a program of incentives to encourage local government to convert community reserve land held in trust which hosts operational facilities to freehold tenure.

Recommendation 20

The committee recommends that the current bank of community reserves occupied by organisations such as the QCWA and Showgrounds continues to be held as State leasehold land in trust.

Recommendation 21

The committee recommends that the Queensland Government notes the concerns raised regarding leases of community reserves held in trust, including those by local and state government, and investigates the provision of a template lease with agreeable terms and conditions including Ministerial discretion to provide a lease period of up to 100 years for security of tenure and significant capital investments purposes.

Recommendation 22

The committee recommends that the Queensland Government explores the means by which ongoing commercial activities can occur on tenures which are presently restricted, including community reserves.

Recommendation 23

The committee recommends that the current definition of community purpose listed in Schedule 1 of the *Land Act 1994* be extended to include a specific category of educational and research purposes and that upon renewal all such leases are extended to the maximum tenure of 100 years.

5 Factors currently affecting the viability of the tourism industry in Queensland

5.1 Tenure security

Stakeholders indicated a number of factors impacted on tenure security for tourism operators. These factors include local government rates, rateability, exemptions, tenure classification and tenure term. The committee notes that a number of inter-state jurisdictions are currently reviewing the various administrative and financial requirements for operators with a view to reducing environmental 'red tape'.

5.1.1 Creating a commercially viable environment

Tourism stakeholders advised the committee during the inquiry that creating a commercially viable environment for tourism businesses was essential in ensuring their longevity.²⁰⁰ In Queensland tourism generates \$60million per day in visitor expenditure, directly and indirectly employs 220,000 Queenslanders and contributes \$18 billion to the Queensland economy.²⁰¹ The Queensland Government has clearly indicated its support of the state's tourism industry and stated its goal to double visitor expenditure from \$15 billion to \$30 billion by 2020.²⁰²

Several tourism stakeholders indicated their interest in developing and running ecotourism projects within national parks.²⁰³ However, these stakeholders stated that the land tenure system must be set up in a way that encourages commercial operators to invest in the long-term in ecologically sustainable tourism developments and related infrastructure.²⁰⁴

In this regard, the committee notes that the Queensland Government released its draft Ecotourism Plan on 17 April 2013 for public input.²⁰⁵ The Queensland Tourism Industry Council and Spicers Group have indicated their support for the plan.²⁰⁶ The plan aims to address concerns to the tourism industry regarding commercially viable investment arrangements with a '*strong focus on best practice operations to deliver quality ecotourism experiences for visitors*'.

5.1.2 Long-term leases and permits

According to stakeholders, creating a commercially viable environment relies on a number of issues being resolved. The first one is providing certainty of land tenure to attract long-term investment in tourism. This can be achieved by providing commercially viable lease terms that reflect the level of investment and likely return. Stakeholders have suggested that long-term leases of up to 50 years will provide certainty of tenure, which will attract long-term investment and financial backing as the longer-term lease reduces risk.²⁰⁷ QTIC supported this position by stating that lease terms:²⁰⁸

²⁰⁰ Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing, Brisbane, 11 July 2012, p. 16.

²⁰¹ Tourism Queensland, 'Tourism Economic Key Facts', October 2012, downloaded on 25 January 2013 from http://www.tq.com.au/fms/tq_corporate/research%20%28NEW%29/Economic%20and%20Forecasts%20Data/QLD%20Tourism%20Key%20Facts%20October%202012.pdf.

²⁰² J Stuckey MP, Minister for Tourism, Major Events, Small Business and the Commonwealth Games, 'Minister's Message', DestinationQ Forum 2012, downloaded on 25 January 2012 from <http://www.destq.com.au/>.

²⁰³ D Duell, Chief Executive Officer, Spicers Group, Public hearing transcript, Brisbane, 22 August 2012, p. 23.

²⁰⁴ Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing, Brisbane, 11 July 2012, p. 16.

²⁰⁵ Hon Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing, 'Have your say on Queensland's draft Ecotourism plan', Media release, 17 April 2013.

²⁰⁶ Hon Steve Dickson MP, Minister for National Parks, Recreation, Sport and Racing, 'Have your say on Queensland's draft Ecotourism plan', Media release, 17 April 2013.

²⁰⁷ Spicers Group, Submission No. 8; P Martyn, Deputy Director General of Department Tourism, Public hearing transcript, Brisbane, 22 August 2013; Cape York Sustainable Futures, Submission No. 40, D Duell, Spicers Group, Public hearing transcript, Brisbane, 22 August 2012; M Shepherd, Chair, Alliance for Sustainable Tourism, Submission 13, p. 3; P Thynne, Director Noosaville Marina Pty Ltd, Public hearing transcript, Brisbane, 22 August 2012, p. 25.

need to reflect the commercial life of the investment and the commercial conditions that the investment is made under...to attract investment we have to provide certainty...under landholdings and tenure of leases.

Kingfisher Bay Resort (KBR) provided an example of the impact of shorter-term leases that make it difficult to plan for the future in a capital intensive operation. For KBR, in order to recoup a \$50 million investment in a tourism operation, long-term tenure is required rather than the current situation of a 15-year permit (a form of tenure over national park) with a five-year rolling renewal.²⁰⁹

The Association of Marine Park Tourism Operators (AMPTO) provided a similar point of view based on low returns but the high risk involved with investment in tourism in remote locations, such as the islands in the Great Barrier Reef or on Cape York. The AMPTO is looking for certainty of tenure on island leases that extends past the current 20- and 30-year leases. These leases make:²¹⁰

it incredibly difficult for you to go to a bank and say, 'We want to put another \$20 million or \$30 million into infrastructure investment.' You just do not have the tenure to get a return, particularly given the fact that those returns are so low. We also see opportunities being lost because of lack of certainty. I think any change to the legislation that gave a very certain future for us would make an incredible difference.

The Queensland Government emphasised the importance it placed on attracting tourism investment to Queensland by stating 'investment attraction for tourism projects will play a major role in achieving the government's 2020 growth target' and that the 'land tenure system can help to facilitate the development of the tourism in Queensland to meet that target'.²¹¹ One way to encourage tourism-related developments is 'through commercially viable lease terms that reflect the nature of the investment and the likely return'.²¹² The Government advised it was supportive of a land tenure system that helps to create 'a commercial operating environment that provides certainty of land tenure to attract long-term investment in ecologically sustainable tourism developments and infrastructure'.²¹³

The committee also recognises QTIC's point regarding the renewal of leases and ongoing investment costs. Stakeholders indicated that even a 20-year lease raises issues of security for tourism developers and investors because tourism investments not only occur at the beginning of the lease but throughout the term of the lease as infrastructure requires continuous upgrading. According to QTIC:²¹⁴

If you have a 20-year lease and at year 18 you have to make a substantial re-investment in your product, you are only going to do that if you have a horizon ahead of you that is reflective of that investment cycle.

As part of consideration to the terms of leases, some stakeholders are also seeking recognition of 'the high costs of establishing and operating a tourism related venture in a national park which is potentially remote' as well as 'the non-financial value created by private investment for public

²⁰⁸ D Gschwind, Chief Executive Officer, Queensland Tourism Industry Council, Public hearing transcript, Brisbane, 22 August 2012, p. 20.

²⁰⁹ G Smith, Managing Director, Kingfisher Bay Resort, Public hearing transcript, Brisbane, 22 August 2012, p. 26.

²¹⁰ C McKenzie, Executive Director, Association of Marine Park Tourism Operators and on behalf of Alliance for Sustainable Tourism, Public hearing transcript, Cairns, 28 August 2012, pp. 5-6.

²¹¹ Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing transcript, Brisbane, 11 July 2012, p. 16.

²¹² Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing transcript, Brisbane, 11 July 2012, p. 17.

²¹³ Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing transcript, Brisbane, 11 July 2012, p. 16.

²¹⁴ D Gschwind, Chief Executive Officer, Queensland Tourism Industry Council, Public hearing transcript, Brisbane, 22 August 2012, p. 26.

benefit'.²¹⁵ Establishing tourism activities within national parks requires the development of infrastructure, such as buildings, facilities and tracks and trails, and ongoing maintenance costs of that infrastructure.

Additionally, tourism operators in national parks are subject to commercial and special activity permits and fees, which need to be commercially viable. The Queensland Government's Tourism in Protected Areas (TIPA) framework that provides 'a management framework for commercial operations in key protected areas'²¹⁶ is aimed at providing 'commercially viable permit agreement tenures and fees for commercial tourism operators'.²¹⁷ It is committed to achieving this by transitioning operators 'from three-year permits to 15 year permits with allocations that allow for existing use plus a margin for growth.'²¹⁸ TIPA also aims at reducing administration and costs involved for tourism operators in managing fees payable under their permits by requiring operators to lodge returns on a quarterly basis rather than a monthly basis.²¹⁹

The committee notes the release of the State Government of Victoria's 'Tourism Investment Opportunities of Significance in National Parks Guidelines' in April 2013. One of the guiding principles taken into consideration when determining whether proposals for tourism investment opportunities in national parks will be approved is:²²⁰

lease durations granted for private tourism investment proposals will be commensurate to the level of capital investment, rate of return on investment and level of environmental and social outcomes delivered.

Committee comment:

The committee supports the view that rolling leases of up to 50 years help provide certainty for tourism development investors, as they allow for longer term investment decisions and planning and easier access to finance. Long-term leases provide tourism proponents with the opportunity to demonstrate to investors that they will have a commercial return on investment for projects. Further, long-term leases recognise the level of investment required for tourism developments in often remote areas of Queensland and the ongoing costs involved in maintaining those developments.

The committee is of the opinion that consideration be given to the fact that commercial operations and tourist infrastructure within or adjacent to national parks is specifically geared to the national park experience. The profitability of single destination attractions, such as national parks, can be limited making them less attractive for investors seeking a commercially competitive return on their investment. However, the committee recognises that Destination National Park tourism operations can and do provide a valuable service for the community at large in the form of recreation, education and jobs.

²¹⁵ D Duell, Chief Executive Officer, Spicers Group, Public hearing transcript, Brisbane, 22 August 2012, p. 19; D Duell, Chief Executive Officer, Spicers Group, Submission 8, p. 2; P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing, Brisbane, 11 July 2012, p. 17.

²¹⁶ Department of National Parks, Recreation, Sport and Racing's Queensland Parks and Wildlife Service, 'Tourism in Protected Areas Initiative (TIPA)', downloaded on 25 January 2012 from http://www.nprsr.qld.gov.au/tourism/tools/tourism_in_protected_areas_initiative_tipa.html.

²¹⁷ Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing transcript, Brisbane, 11 July 2012, p. 18.

²¹⁸ Department of National Parks, Recreation, Sport and Racing's Queensland Parks and Wildlife Service, 'Tourism in Protected Areas Initiative (TIPA)', downloaded on 25 January 2012 from http://www.nprsr.qld.gov.au/tourism/tools/tourism_in_protected_areas_initiative_tipa.html.

²¹⁹ Department of National Parks, Recreation, Sport and Racing's Queensland Parks and Wildlife Service, 'Tourism in Protected Areas – Advice for Tourism Operators Holding Commercial Activity Permits in TIPA Areas', downloaded on 25 January 2013 from http://www.nprsr.qld.gov.au/tourism/pdf/tipa_faq_transfer.pdf.

²²⁰ State Government of Victoria, Department of Sustainability and Environment, 'Tourism Investment Opportunities of Significance in National Parks Guidelines' downloaded on 18 April 2013 from http://www.dse.vic.gov.au/_data/assets/pdf_file/0004/164290/DSE-Tourism-Guidelines.pdf.

The committee is of the view that the Queensland Government needs to undertake a review of current tourism leases to identify the appropriate point to make a determination about the renewal or rollover of these leases and whether this might be best based on a percentage of the term of the lease or at the point of receiving a significant capital investment proposal.

Recommendation 24

The committee recommends that the Queensland Government investigates the provision of rolling leases of up to 50 years that provide security of tenure to tourism proponents subject to the caveat that any lease renewal is in compliance with the requirements of the *Native Title Act 1993*.

Recommendation 25

The committee recommends that the Queensland Government reviews the trigger point for determining the renewal process for tourism leases and whether this should best occur when the lease has reached a certain percentage of its term or at the point of receiving a significant capital investment proposal from a tourism operator/developer proponent.

5.1.3 Negotiable lease rents and payments

A number of stakeholders indicated the importance of negotiable lease rents and payments that reflect the nature of the investment and the likely return.²²¹ As the CEO of the Queensland Tourism Industry Council told the committee at a public hearing:²²²

lease rents have to be commercially viable and reflect the nature of the business and the nature of the business environment in which that business operates.

The Alliance for Sustainable Tourism stated that lease rents and payments should not only reflect the nature of the investment but 'recognise the disproportionate short term risks and likely return.'²²³ Mr McKenzie, the representative from the Association of Marine Park Tourism Operators, advised that '*financial returns on investment were less than five per cent*'.²²⁴ He proposed a reduction in lease rents and fees for tourism operators in the same way that consideration is given to the grazing and pastoral industry:²²⁵

Our returns are low; our risks are high. However, the grazing and pastoral industry get a two per cent lease fee on their land simply because they are a high-risk business with low returns. I would suggest that tourism is in exactly that same situation, with the other exception being that we are a high-employment industry...We would like to see land tenure for tourism islands and tourism activities in remote locations be treated as a separate category within the Land Act similar to pastoral leases...Currently, we pay six

²²¹ D Duell, Chief Executive Officer, Spicers Group, Submission No 8, p. 2; M Shepherd, Chair, Alliance for Sustainable Tourism, Submission 13, p. 4; Cape York Sustainable Futures, Submission No 40, p. 2; D Gschwind, Chief Executive Officer, Queensland Tourism Industry Council, Public hearing transcript, Brisbane, 22 August 2012, p. 20; D Duell, Chief Executive Officer, Spicers Group, Public hearing transcript, 22 August 2012, p. 19.

²²² D Gschwind, Chief Executive Officer, Queensland Tourism Industry Council, Public hearing transcript, Brisbane, 22 August 2012, p. 20.

²²³ M Shepherd, Chair, Alliance for Sustainable Tourism, Submission 13, p. 4.

²²⁴ C McKenzie, Executive Director, Association of Marine Park Tourism Operators, Public hearing transcript, Cairns, 28 August 2012, p. 5.

²²⁵ C McKenzie, Executive Director, Association of Marine Park Tourism Operators, Public hearing transcript, Cairns, 28 August 2012, p. 5.

per cent on the value of the lease of the land. The pastoral industry pays two per cent. We have to do enormous capital costs to make it viable. When you start looking at those capital costs and returns on investments, you realise that it just does not stack up.

One way to address these issues, according to the Alliance for Sustainable Tourism, is the introduction of a new lease type for tourism at reduced rates.

The Queensland Government has recently formed the Tourism Cabinet Committee with 'senior members responsible for departments of particular relevance to tourism'²²⁶ 'to consider crown land rental rates for tourism related purposes and land-use planning'.²²⁷

Committee comment:

The committee recognises the increased level of risk to tourism operators, particularly those on island and coastal areas of Queensland adversely affected by recent extreme weather events, and the impact of this on the viability of the industry.

The committee therefore supports the consideration of negotiable lease rents and payments from tourism operators that reflect the nature of the risks and cost of investment and the likely return.

Recommendation 26

The committee recommends that the Queensland Government considers a mechanism to provide for a reduction in lease rents and payments for tourism operators and developers immediately after natural disaster events that impact upon their operations to encourage investment and recognise their importance to the Queensland economy.

5.1.4 Reduce regulatory burden

The overwhelming view of the tourism industry was that the regulatory burden to business needs to be reduced to encourage further investment in the industry. As one stakeholder said:²²⁸

We also share the widespread view that some of the regulator requirements for tourism operators to conduct tours and activities in, on and around national parks are currently unnecessarily complex and unwieldy and we support a review of that.

QTIC supported this view by saying.²²⁹

...in practical terms we would expect that the tenure and the land use agreements, whatever the instrument may be, are simple, efficient and allow operators to do their business without needing to have many lawyers and many experts advising them on how to structure these agreements.

The Alliance for Sustainable Tourism believes that there are a number of key impediments in the regulatory environment for tourism operators. These include:²³⁰

- Long approval processes for new developments
- Lack of certainty and clarity of process
- Complex regulatory processes often being misaligned with commercial realities

²²⁶ Queensland Government, 'DestinationQ', downloaded on 25 January 2013 from <http://www.business.qld.gov.au/industry/tourism/destinationq>.

²²⁷ Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing transcript, Brisbane, 11 July 2012, p. 18.

²²⁸ D Duell, Chief Executive Officer, Spicers Group, Public hearing transcript, Brisbane, 22 August 2012, p. 19.

²²⁹ D Gschwind, Chief Executive Officer, Queensland Tourism Industry Council, Public hearing transcript, Brisbane, 22 August 2012, p. 21.

²³⁰ M Shepherd, Chair, Alliance for Sustainable Tourism, Submission 13, p. 3.

Specifically, the Alliance stated that the number of current permits required to access National Parks needs to be reduced to lessen the burden on tourism operators in order to attract ecotourism investment.²³¹

The Queensland Government also recognises these three impediments as key regulatory barriers for tourism operators. The government advised the committee that it is addressing these issues by considering a number of the recommendations made in two major reports, the LEK and Allen reports, undertaken as part of the national tourism regulatory reform agenda, 'through the government's proposed planning reforms and in ecotourism.'²³²

Committee comment:

The committee notes the Queensland Government's stated commitment to reducing the regulatory burden on the tourism industry and supports moves towards examining how to reduce the time for approvals to be processed for new ecologically sustainable tourism developments within and around National Parks and the time and costs to tourism operators in terms of meeting their regulatory requirements. One of the visions of the draft *Queensland Ecotourism Plan* released for public comment in April 2013 is to 'foster thriving operations'. The plan indicates a number of planning reforms to reduce administration for operators, including:²³³

- Establishing a coordinated, joint Queensland agency approval process – State Assessment and Referral Agency
- Preparing a single State Planning Policy that includes tourism as a state interest in planning and development
- Establishing a streamlined permit system for tourism operators within national parks and other protected areas
- Monitoring and reviewing regulatory processes and procedures to ensure they are meeting needs of the tourism industry.

5.1.5 Recognition of eco-certified tourism operators

The committee heard evidence regarding the importance of certifying ecotourism operators. One aim of TIPA is to recognise and reward high standard of operations, EcoCertified operators and the effective enforcement of permit conditions.²³⁴ The committee supports this and understands that one of the strategic priorities in the draft Queensland Ecotourism Plan is to assist operators in achieving best practice through:²³⁵

- Requiring compulsory Department of National Parks, Recreation, Sport and Racing endorsed accreditation of all commercial tourism operators in national parks (including marine parks) to recognise the importance of these protected areas
- Establishing tourism skills training programs for ecotourism operators focused on improving skills, standards and staff retention
- Promote accredited guide training and the employment of accredited guides to raise ecotourism standards
- Recognising and rewarding operators who exceed compulsory accreditation and/or invest in providing visitors with accredited guides, with advantageous management arrangements, priority access to new visitor sites on national parks and access to marketing and industry programs.

²³¹ M Shepherd, Chair, Alliance for Sustainable Tourism, Submission 13, p. 4.

²³² Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing transcript, Brisbane, 11 July 2012, p. 16.

²³³ Department of National Parks, Recreation, Sport and Racing, 'Queensland Ecotourism Plan 2013-2020 – draft for consultation', p. 12.

²³⁴ Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing transcript, Brisbane, 11 July 2012, p. 18.

²³⁵ Queensland Government, Department of National Parks, Recreation, Sport and Racing, 'Queensland Ecotourism Plan 2013-2020 – draft for consultation', p. 8.

Committee comment:

The committee supports the proposals set out in the draft *Queensland Ecotourism Plan 2013-2020* to provide a consistent approach to certifying ecotourism operators and recognising and rewarding operators who exceed compulsory accreditation. The committee considers that such initiatives provide an important framework for achieving the necessary balance between promoting the viability of tourism in protected areas and managing the impacts of increasing visitor numbers in protected areas and national parks associated with the growth of ecotourism.

5.2 Variability of local government rates calculation formulae

5.2.1 Overview

In Australia, Queensland is unique in that the State Government by consent has delegated a considerable degree of autonomy to local government. The local government acts of each Australia's states and territories establish the powers of municipal governments to levy rates, fees and special charges against landholders to fund the provision of local infrastructure, services and other beneficial community activities and key council operating expenses. There is significant discretion for councils across the various jurisdictions under these acts and regulations to determine the level of these rates, as well as identifying instances in which landholders may be exempt or eligible for a discount or rebate on the general rates and other service or special charges they might otherwise incur. In general, tourism businesses operating on leasehold land have not been afforded particular exemptions in Queensland or other Australian jurisdictions. Instead, the development of infrastructure on leaseholder land by tourism operators has generally entitled them only to exemption from specific service charges for water, sewerage and waste services, or exemptions from consumption or usage-related charges.²³⁶

Councils have indicated that the revenue generated from charges, fees and rates levied on tourism operators on leasehold land contribute to a range of services and activities beyond waste, water and service infrastructure, including marinas, roads and other access and services facilities used by visitors and clients of tourism businesses. However, the revenue collected does not fully fund these services, facilities and infrastructure.

Local governments have the statutory capacity to provide industry-related discounts by identifying differential rating categories for particular land uses with the intention of benefiting or more equitably levying particular business sectors or landholder groups.

Other jurisdictions have used their statutory power to apply different rating categories to tourism operators. For example in South Australia, 44 per cent of regional and 20 per cent of metropolitan council respondents to a 2006 survey (19 councils in total) reported providing financial assistance to tourism operators, including grants and rates concessions. In Western Australia, the City of Perth currently administers a program that provides grants of up to \$20,000 for tourism operators that include heritage and conservation assistance and rates relief packages.²³⁷

Tourism operators may also receive conditional incentives or concessions under heritage and conservation agreements, planning approvals and development contracts established between local councils and lessees.²³⁸

²³⁶ L Manderson, Queensland Parliamentary Services, Client Information Brief, 'Local Government Rates and Discounts for Island Resorts and Tourism Operators Managing their Own Infrastructure', p. 2.

²³⁷ L Manderson, Queensland Parliamentary Services, Client Information Brief, 'Local Government Rates and Discounts for Island Resorts and Tourism Operators Managing their Own Infrastructure', p. 2.

²³⁸ C Chan, D Forwood, H Roper and C Sayers, 'Development Contributions,' Chapter 7, Public Infrastructure Financing: An International Perspective, 31 March 2009, pp. 115-120.
http://www.pc.gov.au/data/assets/pdf_file/0008/86930/public-infrastructure-financing.pdf (accessed 1 February 2013).

5.2.2 *Tourism leases, services infrastructure and local government rates and charges in Queensland*

It has been long-term government policy in Queensland not to freehold tourism icons or properties but instead to retain tourism leases over these areas, which are generally for terms of up to 30 years but can be as long as 100 years. Tourism lessees pay rent in accordance with the *Land Regulation 2009*, which is currently set at 6 per cent of the three year, average unimproved land value, or ten per cent more than rent payable for the lease for the immediately preceding period. These leases are capped at the 10 per cent mark until June 2015.²³⁹

In addition to these State Government rental payments, lessees are also charged general rates and various infrastructure or other service-related charges by local governments. The *Local Government Act 2009* (Qld) identifies four such types of rates and charges:

1. *General rates* for services, facilities and activities that are supplied or undertaken for the benefit of the community in general.²⁴⁰
2. *Special rates and charges* for services, facilities and activities that have a special association with a particular land because the land or its occupier specially benefits from, has special access to, or specially contributes to the need for a particular service, facility or activity.
3. *Utility charges* for a service, facility or activity for waste management, gas, sewerage and/or water.
4. *Separate rates and charges* for any other service, facility or activity (for example, fire management levies or environmental levies relating to environmental management expenses in some protected and World Heritage areas).²⁴¹

While the Act states that each local government 'must levy general rates on all rateable land within the local government area' and 'may level special rates and charges, utility charges and separate rates and charges';²⁴² determination of the level and makeup of the rates or charges is ultimately a discretionary matter to be decided by resolution at the local government's annual budget meeting.²⁴³

While councils may calculate rates on the basis of a determined 'gross rental value' or 'unimproved land value', for example councils may equally choose to adopt differential ratings structures, which allow them to shift the revenue raising effort to or away from certain sectors or areas of the community by way of a system of 'differential' ratings categories.²⁴⁴ This capacity affords some latitude for local governments to establish exclusive or special rates for the purposes of tourism and or economic development. More often than not, however, such rating structures are likely to result in a relatively higher rate burden on land-based tourism operators as the intention is to capture the capital improved value of the land (that is, the total market value of the land and buildings *plus* various local government infrastructure investments and improvements).²⁴⁵

This tendency towards higher differential rates particularly exists because the sum total of rates, charges and fees collected from the tourism sector in any one local government area has often not been sufficient to fully fund required local government promotional and marketing efforts; local visitor services (such as visitor information centres); and transport and other infrastructure provisions to meet visitor needs.

²³⁹ L Dann, General Manager, Land and Indigenous Services, Department of Natural Resources and Mines, Public briefing transcript, Brisbane, 11 July 2012, p. 6.

²⁴⁰ Section 94(1)(a) Local Government Act 2009 (Qld).

²⁴¹ Section 92 Local Government Act 2009 (Qld).

²⁴² Section 94(1)(b) Local Government Act 2009 (Qld).

²⁴³ Section 94(2) Local Government Act 2009 (Qld).

²⁴⁴ Australian Local Government Association, *The Collection of Property Rates in Australia – A State By State Description*, 2010. <http://alga.asn.au/?ID=84> (accessed 1 February 2013).

²⁴⁵ Victorian Tourism Industry Council, *Differential Rate – A Regional Tourism Dream or Nightmare?*, 27 October 2011. <http://www.vtic.com.au/sites/default/files/Differential%20Rate.pdf> (accessed 4 February 2013).

This challenge can in part be explained by an underlying inability to rate non-property-based tourism operators, who therefore do not contribute to a council's funding base or the broader tourism promotion activities that councils engage in, despite benefitting from the council's promotional initiatives and infrastructure.²⁴⁶

In addition to these discretionary, differential rating capacities, the *Local Government Act 2009* (Qld) also identifies some general circumstances in which landholders may be exempt from rates. For example, Crown land and other land used for public and beneficial purposes; State forests; strategic infrastructure sites; and Aboriginal land, are all afforded a general exemption under section 93 of the Act. Section 96 of the Act also establishes that a State Government regulation may provide for 'any matter connected with rates and charges', including concessions and the categorisation of land for rates and charges.

Exemptions, rebates, remissions and concessions have most typically been extended to those landholders mentioned in section 93 – including community and non-for-profit groups, pensioners, and lessees or landowners in situations of financial hardship. However, discretionary local government rates determination powers and State powers of concession-related regulation-making may present potential avenues for reduced rates arrangements for self-contained, infrastructure-managing island resorts and other tourism developments.

The committee notes the following evidence presented by the Managing Director of Kingfisher Bay Resort during the public hearing:²⁴⁷

much of the tourism support infrastructure in our business is on state owned land, which we have access to under various tenure permits to occupy leases. This infrastructure includes: a seabed lease, which we constructed a jetty on; a foreshore permit, which allowed access to that jetty from freehold land which we control; and land under various tenure for water storage, waste disposal and an airstrip. The rents are currently levied on those sites at varying rates as detailed in my submission. I believe the tourism support infrastructure sites should be rent free to assist businesses in a minor way, but it would improve the viability of remote area tourism.

Committee comment:

The committee notes the existing powers in the *Local Government Act 2009* (Qld) under s93 for the State Government to influence and support the viability of the tourism industry in Queensland. The committee recognises that any policy intervention of this nature must be balanced with the current policy to delegate such matters for determination by local government to give effect to the principle of local government autonomy. Ultimately, the resolution of these two competing interests is a question for government to determine.

Recommendation 27

The committee recommends that the Queensland Government engages with local councils to investigate alternatives to the current inequity of local government rate calculation for tourism-based industries.

²⁴⁶ New South Wales Tourism & Local Government Taskforce, Report of the Tourism and Local Government Taskforce, August 2010, p. 5. http://archive.tourism.nsw.gov.au/Sites/SiteID6/objLib10/LG_TASKFORCE_REPORT_Final.pdf (accessed 31 January 2013).

²⁴⁷ G Smith, Managing Director, Kingfisher Bay Resort, Public hearing transcript, Brisbane, 22 August 2012, p. 20.

5.2.3 Exemptions, discounts and differential rates for tourism operators in selected Queensland local governments

Table 16: Differential rates, exemptions and discounts for tourism operators in selected Queensland local government areas²⁴⁸

	Exemptions/ concessions General rates for services	Special rates and charges	Exemptions/ concessions Utility charges
Bundaberg Regional Council	Differential general rates on all rateable land – not tourism-based but relates to ‘other commercial’, ‘central coastal towns’ and ‘rural residential’ rating categories. Minimum general rate payment is in line with those established for other commercial land classifications. 10 per cent discount is offered for payment in full by due date.		Service charges for waste, water management and sewerage are largely usage-based, which offers reprieve from additional infrastructure service costs for self-sufficient island resorts, such as Lady Elliot Island Eco Resort, and other tourism operators.
Burdekin Shire Council	No infrastructure-related offsets or rate exemptions for island resorts or other tourism operators. No special tourism discounts or reduced rates for tourism operators. Reduced infrastructure service fees in instances where services are privately provided or engaged ie. Waste, sewerage. Discounts provided for payment by the due date.		Minimum access charge of \$413 is payable in respect of a water connection to any land and building or other structure whether occupied or not, though usage fees levied separate so landholder need only pay for what they use.
Cairns Regional Council	Resorts, motels, hotels and other related tourist operations charged at the standard rate level applicable to their land category under Council’s land use code. For example, there are two established differential rates – ‘Commercial Inner City’ – levied against those tourist operations in an area along the main esplanade and its surrounds; and ‘Commercial Suburban’, under which the island resorts and other foreshore and less central operations fall. Island resorts not exempt from paying general rates (although some are largely service- independent and self-reliant in operations) because resorts still dependent on Council-maintained wharves, roads and other transport infrastructure that service the islands. Other small exemptions may be put in place that will positively impact level of fees and charges as a result of conditions established by agreement in individual development approvals. Proportional refunds and concessions have been made available for landowners who have entered into a Land Management Agreement or Conservation Agreement. Standard discounts available for on-time payment.	Foreshore operators may face special charges for canal dredging and beach rock wall maintenance. No discounts or other offsets or exemptions provided on this.	Island operators exempt from all infrastructure charges typically levied against other mainland operators who utilise Council sewerage, water and waste disposal services and trunk infrastructure except one island resort that is provided water supply – it is charged for this service provision at same rate as any coastal or land-based operation.
Carpentaria Shire	Rates levied to a differential rating		Waste, sewerage and water charges

²⁴⁸ L Manderson, Queensland Parliamentary Services, Client Information Brief, ‘Local Government Rates and Discounts for Island Resorts and Tourism Operators Managing their Own Infrastructure’, pp. 5-13.

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	Exemptions/ concessions General rates for services	Special rates and charges	Exemptions/ concessions Utility charges
Council	scheme which provides no special categorisation for self-sufficient tourism-based island or foreshore lessees as area does not contain any of these. Standard on-time payment discounts and concessions apply.		are levied only against those properties that use these services and related infrastructure networks (fixed, access-type charges are not imposed where services are not engaged).
Cook Shire Council	Island resorts and other foreshore operations are classed as 'other' under Council's differential rating scheme. None of the islands in the Shire that fall under this leasing category are provided with Council water, sewerage or garbage collection services. No infrastructure charges are therefore levied against operators. Operators are charged standard general rates based on the property's valuation. A 10 per cent discount is offered on general rates if paid by the due date.	Operators are charged an environmental levy which is designed to help fund conservation and other projects.	
Fraser Coast Regional Council	Has 34 differential rating categories and concordant rate levels. One of these is a specific differential category for 'Fraser Island and Other Islands', which, at 0.5223 cents in the dollar, is the lowest differential rate offered for any land use/tenure category. Annual rate liability = differential rate of 0.5223c x the land's assessed rental value. Further, the island category's established minimum rate of \$978 is higher only than the rate established for rural townships and primary production and therefore lower than all other 32 identified categories. Discounts are available for annual rates and water and sewerage accounts if payment is received by the due date.	Fraser Island landholders are charged an island-specific garbage levy. Island operators are also potentially subject to waste service charge based on their waste service requirements. Environmental and fire levies are payable for each rateable, valued parcel of land.	All landholders charged a standard water access charge and water availability charged. Consumption charges levied on usage basis only – thus exempting any tourism operators who manage their own supplies and supply infrastructure. This is also the case with sewerage charges.
Gladstone Regional Council	Has 16 differential rating categories based on the use or authorised use of land. Island and other foreshore developments are categorised as 'land wholly or partly used for businesses or commercial purposes, including motels and construction camps, but not for industrial purposes'. This categorisation does not provide any reduced rate liability. Discounts are available for on-time payment of general rates and most charges and remissions.		Landholders pay a fixed water connection availability charge, with consumption charges levied separately. Waste access charges apply whether services are used or not with separate usage charges.
Gold Coast City Council	No general rates discounts or concessions are available to tourism operators. Most industry landholders are classified under the Council's various commercial categories – these are often subject to some of the higher rating levels in the Council's differential scheme. No exemptions or discounts are available for general rates. However, infrastructure-self-sufficient properties are not charged standard waste, water or other infrastructure charges where they have provided these services and infrastructure privately. Standard discounts apply for on-time payment.	Properties in Surfers Paradise and Broadbeach also face additional special charges related to their location in a management and promotional area and to their monitoring by CCTV for security purposes.	

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	Exemptions/ concessions General rates for services	Special rates and charges	Exemptions/ concessions Utility charges
Hinchinbrook Regional Council	No tourism industry-specific reduced-rate category. Council does not provide any special exemptions or discounts for self-sustaining resorts and other tourist operations. Rebates and remissions available to pensioners, community groups or charitable organisations only.		Infrastructure charges levied on user pays basis with base 'connection' or 'access' charges for water and other services set to cease in 2012/13. Waste management levy is applied universally.
Mackay Regional Council	'Resorts and Commercial Operations' have their own differential category under the Council's general rating scheme. The differential rating of 2.6760 cents in the dollar for this category is one of the higher rating differential classes behind only shopping centres, canefarming and major port and industrial use categories. No discounts or concessions are available to landholders under this category. Does allow for financial hardship rates relieve and conservation rebate.		The region's islands are all located outside the Council's identified boundaries for the levying of infrastructure charges and are therefore exempt from any utility-related liabilities.
Redland City Council	No tourism industry-related incentives or subsidies are offered by Council.	Some island operators face additional fire levies and other special charges related to provision and maintenance of marina berths and tidal works.	Utility charges are comprised of a base access or connection fee and subsequent consumption-based fees.
Rockhampton Regional Council	No special provision for reduced rates for resorts or other island developments responsible for their own water and waste service infrastructure. All rateable properties are rated general rates and any special or separate charges are applicable. Services charges – Council only charges if the property is connected or able to be connected to Council's infrastructure. Standard on-time payment discounts are available.		
Townsville Regional Council	All resorts and other properties are levied the full applicable rate for their respective differential rating category (Council unaware of any resort or tourist property within Council boundaries that currently operator or maintain their own utility service infrastructure). Discounts are offered for prompt payment of all rates and charges.		Utility charges involved both a fixed charge (also applicable to vacant land) and a metered or consumption based charge.
Whitsunday Regional Council	Large number of islands and related tourist developments in this area. Only Hamilton Island, however, maintains its own service infrastructure and this lessee still engages with Council refuse disposal services to transport and dispose of their waste to the mainland. Discounts are provided for on-time payment.		Utility service charges include both a fixed access/infrastructure charge component and a consumption charge.

Committee comment:

The committee notes the variations that exist between local governments in Queensland regarding exemptions, discounts and differential rates for tourism operators. The committee believes that these differences contribute to providing a competitive tension between local governments seeking

to attract and develop tourism opportunities in their areas. The ability of local governments to attract tourism operators lies with individual councils via their capacity to respond through the adjustment of local government rates and the provision of incentives for tourism operators to establish businesses in their area. However, as noted in the previous section, the State Government presently retains the capacity to make its own determinations on such matters and it is ultimately a policy question for government to determine whether the policy of local government autonomy or state support for the tourism sector prevails in this instance.

5.3 Grants, concessions, conditional incentives and rebates for self-sufficient tourism operations

As indicated in Table 16, some local governments in Queensland provide concessions for self-sufficient tourism operations. However, some stakeholders indicated the need for more assistance with tourism operations. Several examples were provided to the committee regarding the increasing costs of land tenure for tourism purposes. The Managing Director of Kingfisher Bay Resort told the committee at its public hearing in Brisbane.²⁴⁹

... a new category lease was introduced about three years ago—category 13, island and mainland tourism leases—whereby the rent increased from four to six per cent of the three-year average land value. That was a 50 per cent increase in the rent. That rental has been capped for a period... But once it is removed it is a 50 per cent increase in cost.

Additionally, Mr Sorenson, the State Member for Hervey Bay, also provided the committee with an example of the questionable ongoing viability of increasing costs for tourism leaseholders where a camping lease fees on Fraser Island increased by over 300 per cent initially from \$30,000 to \$90,000 and then to \$100,000 while the income derived from that business remained static.²⁵⁰

Committee comment:

The committee notes the evidence as provided by Kingfisher Bay Resort and Mr Sorenson regarding increases in lease rents and the question of ongoing viability for the tourism businesses in these situations. The committee is particularly concerned about significant increases in rents over a short period of time and acknowledges circumstances in which the tourism industry can face hardships as a result of natural disasters or market failure, such as cyclones and industrial disputes affecting the aviation industry. The committee believes that the *Land Regulation 2009* needs to be amended to incorporate the capacity of the Queensland Government to respond in a timely and flexible manner in its methods of rental calculation employed during periods of hardship, such as natural disasters or market failure, for tourism proponents.

Recommendation 28

The committee recommends that the Queensland Government retains the current cap on annual rent arrangements due to expire in June 2015 until the completion of the review into rental calculations for tourism businesses, which is recommended in Recommendation 29.

Recommendation 29

The committee recommends that the Queensland Government undertakes an urgent review into rental calculations for tourism businesses.

²⁴⁹ G Smith, Managing Director, Kingfisher Bay Resort, Public hearing transcript, Brisbane, 22 August 2012, p. 20.

²⁵⁰ T Sorenson, Member for Hervey Bay, Public hearing transcript, Brisbane, 22 August 2012, p. 23.

Recommendation 30

The committee recommends that the Land Regulation 2009 be amended to incorporate additional capacity for the Queensland Government to respond in a more timely and flexible manner in its methods of rental calculation employed during periods of hardship, resulting from natural disasters or market failure, for tourism proponents.

Further, there appears to be scope for the development of a more proactive grants program to support the viability of self-sufficient tourism operators.

The committee notes that the *Queensland Ecotourism Plan 2013-2020 – Draft for consultation* identifies an opportunity to provide stimulus for local and regional economies through the development of new and existing ecotourism products.²⁵¹ The committee also acknowledges the contribution of the Queensland Government in commencing this stimulus process for industry through sponsorship of *DestinationQ* forum in Cairns.

Committee comment:

The committee recognises the importance of initiatives that provide stimulus for local and regional economies through the development of new and existing ecotourism products in encouraging self-sufficient tourism. This is particularly applicable to the ecotourism sector. The committee encourages the Queensland Government to pursue this initiative as an important means of addressing the current viability of the tourism sector in Queensland.

5.4 Tourism activities in non-rateable areas

5.4.1 Rateability and exemptions for tourism activities in national parks

The current Queensland Government policy towards tourism activities in national parks is one of increasing access for ecotourism operations while also reducing regulation and streamlining administrative processes for tourism operators.²⁵² This is supported by the Queensland Government's introduction of the *Nature Conservation and Other Amendment Act 2013*, the release of the draft Queensland Ecotourism Plan for consultation and the Tourism in Protected Areas Initiative (TIPA), which is a management framework that aims to 'respond to the business needs of tourism operators by offering greater certainty and flexibility through longer tenures and streamlined administrative processes'.²⁵³

Tourism activities in national parks may only be conducted by the holder of a commercial activity permit, special activity permit or commercial activity agreement. Recent legislative amendments²⁵⁴ have been effected that mean that a single permit or agreement may now be issued to cover all the activities of a commercial tour operator regardless of whether they cross tenures with the exception

²⁵¹ Queensland Government, Department of National Parks, Recreation, Sport and Racing, 'Queensland Ecotourism Plan 2013-2020 – draft for consultation', p. 7.

²⁵² Hon Steve Dickson, Minister for National Parks, Recreation, Sport and Racing, Record of Proceedings, *Introduction of the Nature Conservation and Other Amendment Bill 2012*, 13 November 2012, p. 2489.

²⁵³ Queensland Government, Department of National Parks, Recreation, Sport and Racing, 'Tourism in Protected Areas Initiative (TIPA)', *Tourism Tools: Tour Operator Handbook*, last updated 17 February 2012. Downloaded from http://www.nprsr.qld.gov.au/tourism/tools/tourism_in_protected_areas_initiative_tipa.html on 18 April 2013.

²⁵⁴ In August 2012, the combined, or 'universal' Commercial Activity Agreement (CAA) was created through the *National Parks, Recreation, Sport and Racing Legislation Amendment Regulation (No.2) 2012*. In December 2012, the combined Commercial Activity Permit (CAP) was created through the *National Parks, Recreation, Sport and Racing Legislation Amendment Regulation (No.3) 2012*. P Sharpe, Department of National Parks, Recreation, Sport and Racing, Email correspondence of 19 April 2013.

of where joint permits are issued such as for State Plantation Forests and in the Great Barrier Reef World Heritage Area.²⁵⁵

Australia's other state and territory jurisdictions have a variety of similar commercial activity permits or concessional authorisations. The tenure arrangements under these permits or authorisations are available for varying maximum terms and subject to compliance with a range of different generic and park or site-specific conditions. However, all applications must be consistent with:²⁵⁶

- planning and environmental legislation
- statutorily identified objectives and values
- national park management plans
- Indigenous joint management agreements
- other established sustainability principles

Additionally, a 'net public benefit' or 'community benefit' test is commonly applied with applicants often required to provide evidence of business credentials, sufficient financial capacity and an ability to meet minimum insurance and indemnity requirements and some level of endorsed environmental accreditation.²⁵⁷

5.4.2 Rateability and exemptions for non-land based tourism activities in Queensland

Local governments have often expressed the view that the rates, charges and fees collected from the tourism sector are not enough to fully fund tourism marketing and maintain visitor service facilities, transport services and amenities in the local government area. One of the reasons that this funding shortfall occurs is due to the inability to rate non-property based tourism operators, including mobile and water-based tourism operators and commercial operators based in national parks. This is because of established statutory exemptions for protected areas under most local government legislation.²⁵⁸

Committee comment:

The committee notes the inequity between land-based and non-land based tourism activities and believes that the State and local governments should consider options for greater equity in the rateability for non-land based tourism operators.

5.5 Treatment of island and foreshore developments

In Queensland there are presently a number of foreshore developments facing an uncertain future due to complex legal issues associated with their current tenure arrangements and management structures.

In particular, through the inquiry process the committee received evidence from the following entities:

- Keswick Island Progress Association
- Urangan Boat Harbour/Great Sandy Straits Resort
- Noosaville Marina

²⁵⁵ Queensland Government, Department of Environment and Resource Management, 'Information Sheet: Administration: QPWS standards for insurance and indemnity,' 26 September 2011. Downloaded from <http://www.nprsr.qld.gov.au/register/p02108aa.pdf> on 18 April 2013; Queensland Government, Department of National Parks, Recreation, Sport and Racing, *Commercial activities*, last updated 14 June 2011. http://www.nprsr.qld.gov.au/tourism/tools/commercial_activities.html; P Sharpe, Department of National Parks, Recreation, Sport and Racing, Email correspondence of 19 April 2013.

²⁵⁶ L Manderson, Queensland Parliamentary Services, Client Information Brief, 'Local Government Rates and Discounts for Island Resorts and Tourism Operators Managing their Own Infrastructure', p. 25.

²⁵⁷ L Manderson, Queensland Parliamentary Services, Client Information Brief, 'Local Government Rates and Discounts for Island Resorts and Tourism Operators Managing their Own Infrastructure', p. 25.

²⁵⁸ L Manderson, Queensland Parliamentary Services, Client Information Brief, 'Local Government Rates and Discounts for Island Resorts and Tourism Operators Managing their Own Infrastructure', p. 2.

A number of the tourist locations containing residential leasehold lots have faced dramatic increases in the unimproved capital value of Crown leasehold estates. Similar trends have occurred elsewhere in Australia due to the underlying potential for commercial use.²⁵⁹ The principle law governing Crown land use and the allocation of interests in Crown land is the *Land Act 1994*. The focus of the Act is on the appropriate use of crown land that is the subject of the granted lease rather than on any protection available to interest holders.²⁶⁰

The only interests that the *Land Act 1994* creates and recognises are legal interests.²⁶¹ There is no provision in the Act dealing with the quality of the interest created upon registration and there is no access to Torrens system rights.²⁶²

Under the Act the interest created are statutory rights and it is to the Act that interest holders must look for both their rights and available remedies.²⁶³

5.5.1 Background to the Sandy Straits Marina appeal in the Land Court

The issue before the land court raised complex issues.²⁶⁴

In October 1991 the State issued a Harbour Lease to Great Sandy Straits Marina Pty Ltd for a term of 75 years. The purpose of the lease was for the construction of a resort and marina at the Urangan Boat Harbour. In January 1998 the Harbour Lease was surrendered and replaced with a Perpetual Lease.²⁶⁵

By 2003 no part of the leased land remained undeveloped. The developed residential and commercial premises were transferred to end user purchasers by way of the grant to those purchasers of long term sub-leases for a term of between 75 and 999 years.

Under each sublease no outgoing rental was payable by the sublessee. The sublessee paid a lump sum at the time of the grant of the lease which was equivalent to what would have been the purchase price when a purchaser acquired the strata titled freehold unit. The sub-lessee's only outgoing obligation under the sublease was to pay to the sub-lessor a proportion of the outgoings including cleaning, insurance and repairs, incurred by the sub lessor. This obligation also included a requirement that a proportion of the rent payable by the sub-lessor to the State under the Perpetual Lease would be payable to the sub-lessor.

In December 2006 the Perpetual Lease was transferred for \$660,000 from Great Sandy Straits Marina Pty Ltd to Agreedto Pty Ltd, another private company.

In April 2010 Agreedto Pty Ltd made application under s166 of the Land Act 1994 for conversion of 5.4 hectares of land from perpetual lease to freehold.

The Minister determined that the offer of conversion to freehold would attract a price of \$11.5m based on the valuation of the land as at 6 April 2010. This figure was reduced to \$10.0m on an internal review application lodged by Agreedto Pty Ltd. Agreedto Pty Ltd appealed the \$10.0m

²⁵⁹ John Dickson. 'Leasehold Valuations in Victoria' *The Valuer and Land Economist*. Vol 33, No. 3 August 1994. P 194.

²⁶⁰ L. Craddock. 'State of Origin: Queensland Crown Leasehold – lessons from New South Wales' *Journal of New Business Ideas and Trends*. Volume 9 No. 2 2011 pp 1-10. http://www.jnbit.org/upload/JNBIT_Craddock_Blake_2011_2.pdf.

²⁶¹ L. Craddock. A Blake. 'Dealing with unique interests in Crown Land: A Queensland perspective' Paper delivered to the Pacific Rim Real Estate Society Annual Conference, Wellington, New Zealand. January 2010, p 6. http://www.prrs.net/papers/Craddock_Dealing_with_unique_interests_Crown_Land.pdf

²⁶² L. Craddock. 'State of Origin: Queensland Crown Leasehold – lessons from New South Wales' *Journal of New Business Ideas and Trends*. Volume 9 No. 2 2011 Pp 1-10. p. 5 http://www.jnbit.org/upload/JNBIT_Craddock_Blake_2011_2.pdf.

²⁶³ *Ibid.* p. 5.

²⁶⁴ Land Court of Queensland. *Agreedto Pty Ltd v Chief Executive Department of Natural Resources and Mines (No 2)* (2012) QLC 0073 p.5.

²⁶⁵ Perpetual leases do not expire and as such they have a level of security equal to that of freehold. http://www.derm.qld.gov.au/land/state/pdf/land_tenure_qld.pdf p.5.

figures in the Land Court. On 21 December 2012 the Court dismissed the appeal by Agreedto and costs were awarded in the respondents' favour.²⁶⁶

The committee heard evidence from Mr Maxwell, the Chair of the Great Sandy Straits Marina Resort Tenants Association at its public hearing on 22 August 2012. At this hearing Mr Maxwell stated:

I am secretary of the association and a resident on site, one of the approximate 300 leases under sublease arrangement. In a way, I think we are seen as the bottom of the food chain in this tourism type development. I have not got this in my notes, but I was sitting here thinking that the best way to sum it up—and I have been involved in this thing for quite a few years now—is that I had two overseas investors who owned subleases over units in Urangan harbour say to me that what we are stuck with there is something you would expect to find in a Third World country, not in Queensland. Both of those—one was from Germany and one was from America—sold out some years ago now. From our point of view when we look at it, if the Mafia were in charge of state property development, they could not have done any better than the Sandy Straits land tenure.

I have called my paper the look of a state sponsored property scam. I do not say there is a deliberate scam involved—although there could be—but it looks to me like there might be elements of incompetence, negligence, unethical behaviour and perhaps corruption. The actions of the state to date— including currently a demand by sublessees that they pay for the land a third time and also take over liabilities in the order of \$10 million that were caused by the state, which are actually excluded from our state approved sublease—are really no less than an abuse of state power, in my view.

Sandy Straits has to be unique in Queensland. Incredibly, the property has had three land tenures. Each has been unsuitable or a failure in its circumstances, particularly the current one. This alone suggests that there are important lessons to be learnt by the committee. If Sandy Straits is a disaster never to be repeated, which it is, and if the land value has already been extracted twice over, which it has, and if freehold is agreed, which it is and we currently sit on a lease, why can't the state bring the stakeholders together and resolve the land tenure?

The land has undergone three changes of tenure for the benefit of the developer to ensure the sale of the 300 subleases, so why not make a fourth change for the sublessees whose savings actually funded the development and the public works? There is a current legal action before the Land Appeal Court. However, it is my view that it will not solve the state's problems no matter the determination of the land price, which is the subject of the appeal.

The whole situation remains seriously unjust and will continue to waste everyone's time and effort for years to come. I ask: is there a solution to this mess? I say that there is, but there is also a need for all three stakeholders to share the pain, those stakeholders being the state, the head lessee and the sublessees. The major problem to date is that no-one seems to be listening or wants to know. If they had listened, surely action would have been taken by now to rectify this situation. I can only hope that this committee may at last take a hard look at what went wrong and why to result in two basic outcomes: first, to ensure that the lessons are learned and our type of land tenure is never repeated again; and, second, to rectify the substantial wrong that should never have occurred in the first place and direct a resolution on an equitable basis for all stakeholders. I thank you for allowing me to speak.²⁶⁷

Mr Maxwell was followed by another witness addressing the situation at the Great Sandy Straits Marina, Mr David Pyne, a solicitor from Agreedto Pty Ltd.

²⁶⁶ Land Court of Queensland. *Agreedto Pty Ltd v Chief Executive Department of Natural Resources and Mines (No 2)* (2012) QLC 0073 p.5.

²⁶⁷ Mr Ray Maxwell. Transcript of Proceedings of Public Hearing – Inquiry into Relevance of Land Tenure Across Queensland, Brisbane, August 22 2012, p.21-22.

I would like to thank the committee for the opportunity to talk to my submission that was filed on behalf of Agreedto, which is the head lessee at the Urangan boat harbour. With DERM already having made an offer to freehold, the state has already conceded that freehold tenure is the most appropriate form of tenure for that development. Where our matter has come unstuck is the value to be paid for that freeholding, which is currently before the Land Appeal Court. In a nutshell, the state has determined a value of \$10 million and our client contends the value to be zero. However, it is critically important that one understands that this is not a case of the lessees wanting something for nothing, nor is it a case of the government being asked to give away its valuable asset for nothing or without being compensated in any way.

On one hand we have the state. At the commencement of the development, the developer constructed for the state various public works to a value akin to the then freehold value of the land. Since that time the lessee has paid state land rent well in excess of that original value for the land. So for this parcel of land, which the state has leased on a perpetual basis, the state has been paid not once, not twice, but three times and it is rising continually. On the other hand, each of the sublessees have already paid full market value at freehold prices for their 999-year subleases and then they have been forced to contribute on an annual basis a rapidly growing land rental cost. This is something that freehold owners do not have to bear.

In our Land Court appeal all we ask is for the value to be applied as intended by the Land Act itself. The act was drafted to ensure a fair outcome on conversion to ensure that neither the state nor the lessee is advantaged or disadvantaged. The market value for this piece of land as freehold encumbered by approximately 300 non-income producing subinterests is zero. This is not in dispute. Why then DERM has persisted with a perversely technical and, in our view, wrong interpretation of 'unimproved value' without having regard to the proper construction of the act, which result would leave the lessee to pay \$10 million plus and the very next day have that land be valued at zero, simply beggars belief. Whilst we remain confident that the court will correctly determine a proper value of zero, there remains some other concerns including that the title itself contains a number of errors, which has been caused by the number of years that it has existed in its current shape and also the proper assistance of other state government departments to ensure the conditions of the offer can actually be met and the proposed tiered community title scheme can be properly established.

There also remains a bone of contention among sublessees that they are, by the terms of the offer itself, going to be held responsible for ongoing maintenance and potentially substantial repairs for public use infrastructure on lands separate and different to the lands in question under the freeholding. This inquiry is a great first step to learn from the errors of this particular development but also to commit to the lessee and the sublessees to properly and fully address the problems at the Great Sandy Straits Marina Resort.²⁶⁸

The Member for Hervey Bay, Mr Ted Sorensen also sought to raise other issues with the various coastal developments in his electorate

I have been asked by a lot of small businesses to put this submission in. As you know, the land tenure across Queensland includes a range of leases, including the Department of Transport and Main Roads, TMR, or the department of natural resources, DERM. These leases can be wet and dry leases. In Hervey Bay there are various leases, predominantly tourism based businesses along the Esplanade, foreshore and the Urangan boat harbour. These leases are either with TMR or DERM. In the boat harbour itself, we have a residential area called the Great Sandy Straits Marina, and I will let my colleague here talk about that in a minute.

²⁶⁸ Mr David Pyne, Solicitor for Agreedto Pty Ltd, Public Hearing – Inquiry into Relevance of Government Land Tenure Across Queensland, p. 22.

It is a real dog's breakfast in the boat harbour itself. There are different leases. I will give you a few examples. The transport department leases it off the DERM department, and they charge a premium of about three per cent on these leases so the lessee then ends up paying about nine per cent. Then there is the ratchet clause in there which ratchets up the valuation. The leases are based on those valuations but when the valuations drop the leases do not drop. It is making it very difficult for a lot of these people, especially in the Urangan boat harbour, to make ends meet.

A couple of hundred yards down the road along the Esplanade, they have an averaging system. These leases are all over the place. Some are with DERM, some are ratchet clauses, then you have averaging clauses and it goes on and on. You talk to each different person and they have a different lease with the government. At the end of the day it is the government that owns it. They are some of my difficulties. I know there are a lot of people struggling in that Urangan boat harbour, even the clubs and organisations. For example, a commercial enterprise for a club is at seven per cent; a community club is at five per cent; amateur clubs can be three per cent; and the volunteer emergency services are peppercorn, which they should be. That gives you a bit of a briefing of where I come from. I am here for the community, especially the businesses and the residential community.²⁶⁹

5.5.2 Other foreshore developments

There were also issues raised about the security and conditions of tenure for leases currently on the Noosa River. The committee heard from Mr Peter Thynne, a Director of Noosaville Marina Pty Ltd who raised the following issues:

We have a small lease on the Noosa River. There are quite a few leases along there. We have two issues that are becoming bigger issues each day. One is that tenure runs out in the year 2017. Our own particular lease has 11 tenants. All our businesses are water based and they have young families, et cetera. There has been significant investment on our part. We have invested \$4.5 million into that lease. It is getting to the stage now where, being a marina, it needs upgrading. We need to spend more money, but there is no right of renewal in 2017. That is one area that I think is very important for the people of Noosa River.

The second thing is our lease itself has specific wording in it that is subject to a range of interpretation. Without reading out the whole lease to you, we are a marine facility purpose which these days in the modern era encompasses all sorts of things. In our case we do not encompass lots of things. We are more boats. We have a floating restaurant. We also have some masseuses within our lease. We have water sports injuries from time to time. They have been operating there for two years now. DERM have asked us to give them 90 days notice because they do not comply with the wording of the lease. The lease does say 'purposes incidental to' so we have been able to cite a case where one of our tenants actually had a crash and about five people were injured. Had we had masseuses there, there were beds to lay them on and there were people with some expertise to look after them until the ambulance got there.

DERM did not agree with our interpretation of 'incidental to' which we think is ridiculous. Also we run commercial vessels. We are looking at putting five more berths in and DERM have said they have to be commercial vessels. In the actual wording it says 'including the mooring of vessels.' I think at any marina in the world these days you will find private and commercial.

The renewal of lease then becomes a big issue. I have a recommendation on both of these issues. One is with the renewal of lease that there be immediate inclusion in the existing lease for a further 20 years and beyond that date, 20 years on, there is an option by both

²⁶⁹ Mr Ted Sorensen, MP Public Hearing – Inquiry into Relevance of Government Land Tenure Across Queensland, p. 21.

*parties, subject to certain conditions. But I think that 20 years should run five by five by five by five so that you can then deal with any issues that evolve around interpretation because in five years time things might change. It gives you an opportunity to change that, but the lease runs for 20 years, say.....Our lease is not bad but it runs out. We have a lot of money there and we have to stop spending because we have no surety. The other thing is the interpretation of the wording in that lease. Once those two things are fixed then it will be a good lease from my point of view.*²⁷⁰

In response to a question from Mr Mulherin MP about whether a 20 year lease with options is sufficient time to make viable investment decisions Mr Peter Thynne responded that he believed the lease should be longer because situations on rivers do change. Longer is better from a tenant's point of view but from the long term planning of what is going on with the river, you could not lock it for that period because demand changes, things change.

Mr Mulherin then went on to inquire about whether the lease took into account vertically integrated businesses from the marine environment to onshore development associated with marine infrastructure where it is a complete supply chain so that people can access a complete experience when they visit the area, from being offshore to onshore accessing a range of services.

Mr Thynne in his response to this question drew on the example of the Everglades where marine use and tourist use of an area are now blended and where they are moving a couple of hundred thousand people annually through the experience which also incorporate other suitable tourist activities as well. He suggested that it would be helpful if the wording of the lease was more flexible to reflect this reality.

Another submission was received by Mr Roger Murray on behalf of the Keswick Island Management Services Pty Ltd which represents 20 members who are sub-lease holders on Keswick Island seeking to change the existing leasehold tenure to freehold. In this submission the point is made that most lease holders have paid for their land at prices that equated to freehold and that any State charges for tenure conversion should be mindful of this fact.

Mr Murray in his submission states that presently Mackay has limited access to the Great Barrier Reef and that Airlie Beach is now generally considered the gateway to this important tourism region. Mr Murray highlights that islands which were previously accessible from Mackay eg: Brampton and Lindeman are closed and now owned by foreign interests. Mr Murray considers that it is unlikely that these islands will ever be accessible again to ordinary Australians and that Keswick Island is therefore the logical remaining gateway to the Great Barrier Reef from Mackay. Mr Murray argues that there is considerable potential for Keswick Island to play an important role in the future of Mackay tourism but only if the current land tenure issues are resolved.²⁷¹

In the public briefing to the committee held in Brisbane on 11 July 2012, Mr Paul Martyn, the Deputy Director General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games made general reference to these issues in the context of the key outcomes from the 2012 *DestinationQ* forum held in north Queensland. Mr Martyn noted:

Secure tenure can help provide confidence to banks to lend and reduce commercial risk for tourism Following the election, the government moved swiftly to establish a dedicated tourism investment attraction unit. Its key role is to identify and develop investment opportunities for the tourism industry in Queensland.

The initial focus of the unit is on creating new investment opportunities in a number of priority areas, many of which require land tenure considerations to be addressed prior to

²⁷⁰ Mr Peter Thynne, Director Noosaville Marina Pty Ltd. Public Hearing – Inquiry into Relevance of Government Land Tenure Across Queensland, p. 19.

²⁷¹ Rodger Murray, Briefing Submitted to Parliamentary Inquiry into Land Tenure on Behalf of The Keswick Island Progress Association, via Mr Tim Mulherin MP on 22 February 2013. p. 2

them becoming investment ready. We are currently progressing catalytic investment projects identified in tourism opportunity plans developed for the state's 10 tourism regions. Some of our priorities include the redevelopment of island resorts, particularly along the Great Barrier Reef, and ecotourism, which featured prominently at DestinationQ.²⁷²

There was some suggestion made by a number of stakeholders that the difficulties and successes experienced by particular foreshore developments could be attributed to the legal structure and arrangements put in place by the head lessee. However, an exhaustive review of legal and other relevant literature provided no evidence to support this assertion.²⁷³

Committee comment:

The issues associated with developments on foreshores and watercourses present a particularly complex set of challenges that go well beyond the capacity of this Inquiry to investigate thoroughly. There are a large number of government and private sector stakeholders involved in this particularly complex area of land tenure and the matters deserve careful consideration in order to progress this question in a manner that adequately addresses and resolves all the concerns of the stakeholders involved.

Recommendation 31

The committee recommends that the issues raised in relation to foreshore development are fully reviewed by the Queensland Government in a separate and specific independent inquiry.

5.6 Tenure classification and the limits on diversification

A number of stakeholders from the rural and tourism sectors supported a proposal for allowing for the diversification of land uses, including tourism.²⁷⁴

As pointed out previously by Mr Thynne, the conditions on the Noosaville Marina lease limit the ability for the marina to host a diverse range of businesses likely to attract an increased number and range of visitors to the precinct.²⁷⁵

QTIC also made the point that the tourism industry is made up of a 'number of industry participants; including accommodation, hospitality, transport, retail, business and major events, recreation, and educational and cultural services'.²⁷⁶ These participants may include hospitality businesses, retail, farm stays, car hire companies, art galleries and so on.²⁷⁷ Therefore, QTIC's definition of tourism is far wider than what is defined by the department on leases for tourism purposes.

As noted in the section under pastoral leases, the committee considers the issue of diversification of activity on leasehold lands to be one of the most important issues of this inquiry as it is central to the inquiry's goals of identifying barriers to and promoting the viability of tourism in Queensland. The committee believes that allowing diversification of lease purpose for tourism leaseholders makes tourism destinations and operations more attractive to tourists by encouraging other commercial activities. The committee is keen to see the Queensland Government considers all options that will

²⁷² Public Briefing – Inquiry into the Future and Continued Relevance of Land Tenure, 11 July 2012. P. 17

²⁷³ Queensland Parliamentary Library Brief 8 February 2013 p.3

²⁷⁴ S Harwood, James Cook University, Submission No. 5; Alliance for Sustainable Tourism, Submission No. 13; Sunshine Coast Council, Submission No. 14; Queensland Traditional Owners' Network, Submission No. 22; Cape York Sustainable Futures, Submission No. 40; AgForce, Submission No. 41; C Jackson, Submission No. 58; Queensland Tourism Industry Council, Submission No. 86.

²⁷⁵ P Thynne, Director, Noosaville Marina Pty Ltd, Public hearing transcript, Brisbane, 22 August 2012, p. 19.

²⁷⁶ Queensland Tourism Industry Council, Submission No 86, p. 3.

²⁷⁷ Queensland Tourism Industry Council, Submission No 86, p. 9.

achieve greater flexibility in the current thresholds which trigger the need for a review of a lease when a lessee diversifies the nature of the commercial activities undertaken on the property.

5.6.1 Tenure conversion, lease renewals and ILUAS

The committee supports the view of the Queensland Traditional Owners' Network as stated in their submission that any policy or legislative changes to provide 'certainty' to lessees of State land (term of lease, diversified term lease use provisions) must fully consider all associated native title implications in the first instance.²⁷⁸ This is reflected in the recommendations made in chapter 5.

²⁷⁸ Queensland Traditional Owners' Network, Submission No. 22.

6 Balancing and protecting ecological values

6.1 Overview

The committee heard a broad range of evidence from a large number of stakeholders on matters relating to ‘the balanced protection of Queensland’s ecological values’. The main issues for many stakeholders related to discussions around Queensland’s protected area estate and tourism.

The Queensland Department of National Parks, Recreation, Sport and Racing (NPRSR) is responsible for managing Queensland’s protected area estate, which covers over 12 million hectares of land, approximately 7 percent of the state, and includes national parks, marine parks, forests, declared fish habitat areas, resources reserves and conservation parks.²⁷⁹ Under the Department of National Parks, Recreation, Sport and Racing’s *Strategic Plan 2012-2016*, the government has committed ‘to delivering improved access to national parks and forests’ to support its vision of *Active and Healthy Queenslanders*.

6.1.1 Key legislation for tourism-related activities and development within the protected area estate

The *Nature Conservation Act 1992* (NCA) is the key piece of legislation that determines the types of tourism and outdoor recreation permitted within Queensland’s protected area estate with the proviso that these activities do not conflict with or degrade other values of the protected estate and are conducted using the appropriate licence or permit or under the proper authority.

Part 4 of the *Nature Conservation Act* provides for the way that the protected areas are declared, dedicated and managed through:

- identification of classes of protected areas
- individual management principles for each class of protected area
- prohibiting particular activities in specified classes of protected area
- specifying who may grant a lease, agreement, licence, permit or other authority in the various classes
- providing that a lease or other authority must be consistent with the management principles for that class of protected area.

In Queensland, commercial activities may only be conducted in protected areas by the holder of a commercial activity permit, special activity permit, or commercial activity agreement, as issued under the series of subordinate legislation established under the *Nature Conservation Act 1992* – and in particular, the *Nature Conservation (Protected Areas Management) Regulation 2006* and the *Nature Conservation (Administration) Regulation 2006*.²⁸⁰

In relation to providing the authority to develop structures and undertake works in national parks in Queensland, section 35 of the *Nature Conservation Act 1992* (Qld), provides the chief executive with the authority to issue approval for a proposed use of a national park including one that may be inconsistent with the management principles and management plan for the area, where the chief executive is satisfied that:

- (i) if the land is in a national park, the cardinal principle for the management of national parks will be observed to the greatest possible extent; and
- (ii) if the land is in a national park (recovery), the management principle under section 19A(a) will be observed to the greatest possible extent; and
- (iii) the use will be in the public interest; and
- (iv) the use is ecologically sustainable; and
- (v) there is no reasonably practicable alternative to the use.

²⁷⁹ Department of National Parks, Recreation, Sport and Racing, ‘About us’, downloaded on 22 January 2013 from <http://www.nprsr.qld.gov.au/about/index.html>; Dr J Glaister, Acting Director-General, Department of National Parks, Recreation, Sport and Racing, Public briefing transcript, Brisbane, 11 July 2012, p. 12.

²⁸⁰ For example, section 67 of the *Nature Conservation (Administration) Regulation 2006* allows that ‘the chief executive may for the State, enter into an agreement (a commercial activity agreement) with a person authorising the person to conduct a commercial activity in a protected area’.

These authorities may also be renewed for the term authorised under the relevant management plan; or if no management plan is in force, for a period not longer than 10 years.²⁸¹

Other jurisdictions within Australia have similar commercial activity permits or concessional authorisations. These authorisations or tenure arrangements are available for varying terms and subject to compliance with a range of different generic and park or site-specific conditions. In all cases, however, the developments or activities in question must be consistent with planning and environmental legislation and statutorily identified objectives and values; with national park management plans; with Indigenous joint management agreements (where applicable); and with other established sustainability principles. A 'net public benefit' or 'community benefit' test is also commonly applied, with applicants also typically required to provide evidence of business experience and credentials; sufficient financial capacity to conduct the business activity in question; an ability to meet minimum insurance and indemnity requirements (including public liability insurance of at least \$10 million, or \$20 million for nationally-managed parks); and some level of endorsed environmental accreditation.²⁸²

According to the Acting Director-General of the Department of National Parks Recreation, Sport and Racing, many types of tourism and recreation activities are currently excluded from the protected area estate because they are not considered nature based recreation.²⁸³

6.2 Implications of the Nature Conservation and Other Legislation Amendment Act 2013

In order to meet the increased demand for sport and recreation services from an expected population growth to 4.4 million people in Queensland by 2031, the Queensland Government has stated that it will 'reform the protected areas and forests regulatory framework, and how it is implemented, to provide improved access to national parks'²⁸⁴. The Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games told the committee that the government is working towards 'unlocking' the state's natural assets and national parks by considering a reduction in the number of permits required to access national parks, developing a new Queensland ecotourism plan and reviewing the *Nature Conservation Act 1992* in order to enable greater access to Queensland's 12 million hectares of national parks and 72,000 square kilometres of marine parks.²⁸⁵

The *Nature Conservation and Other Legislation Amendment Act 2013* makes amendment to the *Nature Conservation Act 1992* that enables the authorisation of privately operated ecotourism facilities in certain classes of protected area and provide a simplified process to authorise existing service facilities in national parks.²⁸⁶ The amendments in the Bill authorise private operated ecotourism facilities in three classes of protected area: national parks, national parks (recovery) and national parks (Cape York Peninsula Aboriginal land).

The Bill was referred to the Health and Community Services Committee on 13 November 2012. The committee recommended that the Bill be passed in its report tabled on 7 February 2013. The Health and Community Services Committee made four recommendations.

²⁸¹ Section 37 Nature Conservation Act 1992 (Qld).

²⁸² L Manderson, Research Officer, Queensland Parliamentary Library, 'Client Information Brief – Land tenure agreements and the licensing of commercial activities in national parks', 23 January 2012, p. 25.

²⁸³ Dr J Glaister, Acting Director-General, Department of National Parks, Recreation, Sport and Racing, Public briefing transcript, Brisbane, 11 July 2012, p. 14.

²⁸⁴ Department of National Parks, Recreation, Sport and Racing, 'NPRSR Strategic Plan 2012-2016', downloaded on 22 January 2013 from <http://www.nprsr.qld.gov.au/about/corporatedocs/strategic-plan.html>; Dr J Glaister, Acting Director-General, Department of National Parks, Recreation, Sport and Racing, Public briefing transcript, Brisbane, 11 July 2012, p. 13.

²⁸⁵ Mr P Martyn, the Deputy Director-General of the Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public briefing, Brisbane, 11 July 2012, p. 17.

²⁸⁶ Nature Conservation and Other Legislation Amendment Bill 2012, Explanatory Notes, p. 1

Recommendation 2 responds to stakeholder concerns regarding authorising ecotourism facilities within the protected area estate:²⁸⁷

The committee notes that a number of issues raised in evidence about ecotourism facilities are to be addressed in a policy framework that the Explanatory Notes state will be developed to guide the authorisation and development of those facilities. The committee recommends that the Minister inform the Legislative Assembly during the second reading debate about the following:

- the scope and timing of the consultation that will inform the development of the policy framework,*
- whether public comment will be sought on applications for each lease or authority for an ecotourism facility and the arrangements that will apply to trigger public comment on proposals, and*
- what arrangements will be put in place, through lease conditions, performance criteria, rehabilitation bonds or other mechanisms, to specify who is responsible for rehabilitation of the site of an ecotourism facility when an operator leaves the facility, and what rehabilitation is required.*

The Bill passed without amendment by the Legislative Assembly on 18 April 2013. In his second reading speech on the Bill, the Hon S Dickson, Minister for National Parks, Recreation, Sport and Racing addressed the recommendations made by the Health and Community Services Committee in its report on the Bill. In relation to recommendation 2 of the report, the Minister advised the House that a 'comprehensive framework and associated procedures will be developed to support the implementation of the provisions relating to ecotourism facilities on national parks.'²⁸⁸ The implementation framework will be developed by June 2013 and will include:²⁸⁹

- a transparent process for assessing ecotourism proposals
- a model for determining rental arrangements
- criteria and lease conditions against which a lessee's performance will be evaluated
- clear procedures on how leases will be administered.

The Minister also stated that the Department of National Parks, Recreation, Sport and Racing is working with the Department of Tourism, Major Events, Small Business and the Commonwealth Games and the Department of Natural Resources and Mines to develop the framework. The framework will then be released for consultation to provide the tourism industry and other stakeholders with the opportunity to review the framework and provide feedback.²⁹⁰

The Minister also responded to the sub-section of the recommendation referring to whether public comment will be sought on applications for each lease or authority for an ecotourism facility and the arrangements that will apply to trigger public comment on proposals. He advised that:²⁹¹

Public comment will be sought on applications for ecotourism facilities in the vast majority of cases. However, from a practical point of view public comment may not be needed for some minor proposals, such as a proposal to build a small lock-up canoe shed in an already developed site. Invitations for public comment will be triggered by existing processes that will apply to ecotourism facility proposals. For example, in most cases it is likely that public comment will occur under the regulatory impact statement process in regard to the regulation required to be made to allow for the ecotourism facility use.

²⁸⁷ Health and Community Services Committee, *Nature Conservation Amendment and Other Legislation Amendment Bill 2012*, Report No. 15, February 2013, p. 10.

²⁸⁸ Hon S Dickson, Minister for National Parks, Recreation, Sport and Racing, Record of Proceedings, 18 April 2013, p. 1184.

²⁸⁹ *Ibid.*, p. 1184.

²⁹⁰ *Ibid.*, p. 1184.

²⁹¹ *Ibid.*, p. 1184.

However, for a large scale proposal, public comment may also be triggered as part of an environmental impact statement process. Public comment may also be invited as part of the process of seeking local government development approval for the facility, if required, depending on the nature of the specific proposal and the applicable local government planning scheme.

The Minister also advised that the implementation framework would address matters relating to the arrangements for specifying who is responsible for the rehabilitation of the site of an ecotourism facility when an operator leaves the facility and what rehabilitation is required.

Committee comment:

The State Development, Infrastructure and Industry Committee considers that the recommendation of the Health and Community Services Committees and the response from the Minister of National Parks, Recreation, Sport and Racing in his second reading speech on the *Nature Conservation and Other Amendment Legislation Bill 2012* addresses the concerns raised by stakeholders during this inquiry into government land tenure relating to the proposals for authorising ecotourism facilities in national parks.

6.3 Management of the protected area estate and the cardinal principle

Stakeholders were divided over the best management practices for Queensland's protected area estate. The protected area estate in Queensland is managed for recreational activities, infrastructure and tourism development through legislation. The management of the protected area estate identifies classes of protected areas and determines the types of activities permitted in those classes and management principles for each class of protected area. The underlying principle that governs the protection of national parks is the cardinal principle.

6.3.1 The cardinal principle

The cardinal principle for national parks provides clear direction for the management of their ecological values:²⁹²

to provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values. Natural condition means protection from human interference - allowing natural processes to proceed.

Some stakeholders stated that an increase in recreational and ecotourism opportunities in national parks would not conflict with other values of the protected estate and the conservation objective of the cardinal principle while other stakeholders took the opposing view - that maintaining the cardinal principle for managing national parks was not compatible with increased tourism and recreation. Most stakeholders acknowledged the importance of management strategies for containing visitor impacts on the protected area estate as discussed below.

6.3.2 Management of visitor impacts on the protected area estate

A number of stakeholders indicated their concern about a potential increase in visitor impacts on the protected area estate if the Nature Conservation and Other Legislation Amendment Bill 2013 were passed. The management of national parks and visitor impacts is most often achieved through classifying land of high conservation value, specifying visitor or recreation zones and providing a range of intermediary or buffer zones that are graded according to the impact of the permitted activity, such as from basic walking trails to recreation areas that allow vehicles, camping and picnicking infrastructure.²⁹³ Protected area managers use a number of visitor use strategies, including Recreation

²⁹² Department of National Parks, Recreation, Sport and Racing, 'Principles', downloaded on 22 January 2013 from <http://www.nprsr.qld.gov.au/managing/principles/index.html>

²⁹³ L Manderson, Research Officer, Queensland Parliamentary Library, 'Client Information Brief – Land tenure agreements and the licensing of commercial activities in national parks', 23 January 2012, p. 11.

Opportunity Spectrum (ROS), Limits of Acceptable Change (LAC), Visitors Activities Management Process (VAMP) and Process for Visitor Impact Management (VIM).

During the Inquiry, the committee heard a number of suggestions from stakeholders regarding their preferred management models of the protected area estate. Some stakeholders indicated a desire for a more stringent land classification model that restricted types of tourism and recreation in the protected area estate.²⁹⁴ Other stakeholders supported the use of a classification methodology that would enable increased access to protected areas in a sustainable manner while also ensuring the protection of that area and its environmental values.²⁹⁵ The Director-General of the Department of National Parks, Recreation, Sport and Racing indicated that the department had commenced an analysis of classifying land 'to provide for improved accessibility for tourism and recreation.'²⁹⁶ This process forms part of the current review of the *Nature Conservation Act 1992*.

The Wildlife Preservation Society of Queensland (WPSQ) recognises the importance of tourism development and its benefits to Queensland.²⁹⁷

Wildlife Queensland is not opposed to other tenures under the Nature Conservation Act 1992 being used in accordance with an approved management plan for infrastructure development or some active recreational pursuits.

Queensland Conservation suggested a management model for categorising the level of protection that could be investigated was the one adopted by the United States Parks Service where 27 percent of the land mass of the country is protected in some form. Twelve percent of that land is classed as nature conservation under the International Union for Conservation of Nature categories. The remainder has been categorised as having 'appropriate use'. The Queensland Conservation representative stated at the Brisbane public hearing:²⁹⁸

For example, they determine what is okay for walking, what is okay for four-wheel driving and what is okay for other recreational or tourism opportunities. And I would suggest that that is a good way for Queensland to proceed—not to look at national parks in terms of accessing them more greatly but actually growing more of a protected area estate that allows those other protected uses... We have great iconic places outside of parks which I think are probably more attractive to both recreational users and tourism. We should be developing those opportunities.

Currently in Queensland the types of recreation and infrastructure permitted in different zones within the protected area estate are determined by a classification model based on the Recreation Opportunity Spectrum (ROS). The key features and characteristics of ROS classes used in New South Wales, and in equivalent Victorian and Queensland ROS categorisations are shown in Table 17.

²⁹⁴ Wildlife Preservation Society of Queensland, Submission No 39; GECKO, Submission No 51; Mackay Conservation Group, Submission No 83.

²⁹⁵ D Duell, Chief Executive Officer Spicers Group, Public hearing transcript, Brisbane, 22 August 2012, p. 19; D Gschwind, Chief Executive Officer, Queensland Tourism Industry Council, Public hearing transcript, Brisbane, 22 August 2012, p. 21; T Hutcheon, Executive Director, Queensland Conservation Council, Public hearing transcript, Brisbane, p. 3.

²⁹⁶ Dr J Glaister, Director-General, Department of National Parks, Recreation, Sport and Racing, Public briefing, Brisbane, 11 July 2012, pp. 14-15.

²⁹⁷ D Boyland, Polices and Campaign Manager, Wildlife Preservation Society of Queensland, Submission 39, p. 3.

²⁹⁸ T Hutcheon, Executive Director, Queensland Conservation Council, Public hearing transcript, Brisbane, p. 3.

Table 17: Recreation Opportunity Spectrum as utilised in New South Wales, Victoria and Queensland²⁹⁹

New South Wales	Class 1	Class 2	Class 3	Class 4	Class 5
Equivalent Victorian ROS category	Remote	Semi-remote	Roaded natural	Semi-developed	Developed
Equivalent Queensland ROS category	Remote	Semi-remote non- motorised	Semi-remote motorised	Natural	Divided into two: intensive and urban
General description	Essentially unmodified environment of large size	Predominantly unmodified environment of moderate to large size	Predominantly natural environment; general small development areas	Modified environment in a natural setting – compact development area	Substantially modified environment; natural backdrop
Access	No roads or management tracks – few or no formed walking tracks	No roads – management tracks and formed walking tracks may be present	Dirt roads – management tracks and walking tracks may be present	Two-wheel drive roads (dirt and sealed); good walking tracks	Sealed roads; walking tracks with sealed surfaces, steps, etc.
Modifications and facilities	Modifications generally unnoticeable – no facilities; no structures unless essential for resource protection and made with local materials	Some modifications in isolated locations – basic facilities may be provided to protect the resource (such as pit toilets and BBQs)	Some modifications but generally small scale and scattered; facilities primarily to protect the resource and public safety; no powered facilities	Substantial modifications noticeable – facilities may be relatively substantial and provided for visitor convenience (such as amenity blocks) and caravans may be present at times	Substantial modifications that dominate the immediate landscape – many facilities (often including roofed accommodation) designed for large numbers and for visitor convenience
Social interaction	Small number of brief contacts (e.g. less than five per day); high probability of isolation from others; few if any other groups present at campsites	Some contact with others (e.g. up to 20 groups); but generally small groups – no more than six groups present at campsites	Moderate contact with others; likely to have other groups present at campsites; families with young children may be present	Large number of contacts likely; variety of groups, protracted contact and sharing of facilities common – may have up to 50 sites	Large numbers of people and contacts: groups of all kinds and ages; little likelihood of peace and quiet
Visitor regulation	No on-site regulation – off-site control through information and permits may apply	Some subtle on-site regulation, such as directional signs and formed tracks	Controls noticeable but harmonised (such as information boards and parking bays)	On-site regulation clearly apparent (such as signs, fences and barriers) but should blend with natural backdrop	Numerous and obvious signs of regulation – rangers likely to be present
Access	No roads or management tracks – few or no formed walking tracks	No roads – management tracks and formed walking tracks may be present	Dirt roads – management tracks and walking tracks may be present	Two-wheel drive roads (dirt and sealed); good walking tracks	Sealed roads; walking tracks with sealed surfaces, steps, etc.

²⁹⁹ Lockwood et al., *Managing Protected Areas: A Global Guide*, 2010, p. 509.

This table shows that national park managers in Queensland implement a wide range of zoning or visitor strategies aimed at reducing the environmental impact of visitors and land use conflicts.

The committee notes that the Health and Community Services Committee (HCSC) considered the issue of park management and management plans as part of its inquiry into the *Nature Conservation and Other Legislation Amendment Bill 2012*. Section 4.3.12 of its report considered a number of submissions that ‘argued that the environmental impacts associated with the development of facilities inside a park will influence the way in which parks are managed and questioned whether conservation values will be compromised.’ The Department of National Parks, Recreation, Sport and Racing advised HCSC that these concerns would be ‘considered during the development of a policy framework and assessment processes.’³⁰⁰

HCSC concluded that the proposed policy framework for ecotourism infrastructure may include park management plans or statements.³⁰¹ HCSC determined that consultation on the proposed policy framework might address concerns raised regarding the impacts of development within national parks and management plans. HCSC recommended that the ‘Minister inform the Legislative Assembly during the second reading debate about the scope and timing of the consultation that will inform the development of its policy framework.’³⁰²

In addressing the issue of visitor impacts in national parks, the Department of Tourism, Major Events, Small Business and the Commonwealth Games also provided information on the development of the Tourism in Protected Areas (TIPA) framework, a partnership between the Queensland Government and the tourism sector. The committee was advised that, while TIPA is in its ‘early stages of implementation,’³⁰³ its aim is ‘to ensure a balance between conservation of the state’s iconic national parks and tourism’ by providing ‘a management framework for commercial operations in key protected areas which attract high visitation.’³⁰⁴ The framework will allocate access for commercial operators to key protected areas ‘based on sustainable visitor capacity’ and will respond to the business needs of these operators by ‘offering greater certainty and flexibility through longer tenures and streamlined administrative processes’ and ensuring an equitable and efficient allocation of tourism opportunities based on ‘sustainable visitor capacity.’³⁰⁵

6.3.3 Grazing and national parks

The committee notes the Queensland Government’s announcement on 14 May 2013 regarding ‘*opening up selected properties and national park land with previous grazing history for emergency agistment*’. The Deputy Premier and Minister for State Development, Infrastructure and Planning stated that immediate action was required in order to address the ‘*worsening drought crisis*’.³⁰⁶

The Minister for Natural Resources and Mines stated that the changes, which were moved during the consideration in detail process of the Vegetation Management Framework Amendment Bill 2012 on 21 May 2013, will:³⁰⁷

³⁰⁰ Health and Community Services Committee, Report No. 15 – Nature Conservation and Other Legislation Amendment Bill 2012, February 2013, p. 15.

³⁰¹ Health and Community Services Committee, Report No. 15 – Nature Conservation and Other Legislation Amendment Bill 2012, February 2013, p. 15.

³⁰² Health and Community Services Committee, Report No. 15 – Nature Conservation and Other Legislation Amendment Bill 2012, February 2013, p. 10.

³⁰³ P Martyn, Deputy Director-General, Department of Tourism, Major Events, Small Business and the Commonwealth Games, Public hearing transcript, Brisbane, 22 August 2012, p. 18.

³⁰⁴ Department of National Parks, Sport, Recreation and Racing, ‘Tourism in Protected Areas Initiative (TIPA)’, downloaded on 23 January 2013 from http://www.nprsr.qld.gov.au/tourism/tools/tourism_in_protected_areas_initiative_tipa.html.

³⁰⁵ Department of National Parks, Sport, Recreation and Racing, ‘Tourism in Protected Areas Initiative (TIPA)’, downloaded on 23 January 2013 from http://www.nprsr.qld.gov.au/tourism/tools/tourism_in_protected_areas_initiative_tipa.html.

³⁰⁶ Hon J Seeney, Deputy Premier, Minister for State Development, Infrastructure and Planning and Hon S Dickson, Minister for National Parks, Recreation, Sport and Racing, Joint media release, ‘Lifeline for drought stricken Queensland graziers’, 14 May 2013.

³⁰⁷ Hon A Cripps, Minister for Natural Resources and Mines, Record of Proceedings, 21 May 2013, pp 1573-1574.

allow emergency grazing access to specified national parks. At present the Nature Conservation Act does not allow a stock grazing permit to be granted for a national park. However, the amendments will allow grazing to be authorised on five national parks and one national park (recovery) for the purposes of drought relief grazing. The specified national parks are Blackbraes National Park, Forest Den National Park, Mazeppa National Park, Moorrinya National Park, Nairana National Park, and Nairana National Park (Recovery). This initiative will provide immediate support to the Queensland cattle industry and landholders by allowing emergency short-term grazing access to approximately 50,000 hectares of national park land. The six specified parks are predominantly outside the drought declared area and contain areas of the drought tolerant introduced buffel grass, a source of available food, relatively high in biomass, that can support emergency grazing in these locations. Drought relief stock grazing permits will be able to be issued for these parks until the end of 2013. However, if drought conditions continue beyond that date, there is capacity for those permits to remain in force until such time as the drought declarations are lifted over the permit holder's home property. Additionally, the amendments specify that no fees will be payable for these emergency grazing permits.

Committee comment:

The committee is aware that some stakeholders indicated their preference for the implementation of a management model that categorises different sections of the protected area estate to determine the level of protection required and the recreational and tourism opportunities permitted in each category. The committee understands that this is how the protected area estate is managed in Queensland under a Recreation Opportunity Spectrum type model. This is in alignment with the International Union for Conservation of Nature system of categories.

Further, the committee supports the implementation of the Tourism in Protected Areas framework as a tool for managing visitor impacts in parts of the protected area estate. The committee is of the view that the response from the Minister of National Parks, Recreation, Sport and Racing in his second reading speech on the *Nature Conservation and Other Amendment Bill 2012* clarifies his clear intention to consult on the framework and to provide the public with opportunity to comment on ecotourism development proposals in the protected area estate.

The committee supports the Queensland Government's proposal to open selected properties and national park land to provide timely assistance to drought-stricken Queensland graziers. The committee notes, however, that ongoing protection of high conservation areas needs to be maintained in keeping with the cardinal principle and supports strategies that manage these areas.

6.4 Scientific assessment of value of land to be protected for ecological purposes

A key point raised during the Inquiry was that any land set aside for preservation should be scientifically assessed to determine its ecological value. The Department of Environment and Heritage Protection advised the committee that it assesses on the ecological value of land by identifying bio-regions and uses these as a tool to classify land and provide management plans. The department has:³⁰⁸

identified 13 key bioregions in Queensland and has developed systems to map and assess the environmental characteristics and integrity of various land types and wetland areas. These systems enable EHP to rank land for its conservation value, assessing its specific values to account for factors like rarity, diversity, fragmentation, habitat condition, resilience, threats, and landscape connectivity.

³⁰⁸ T Roberts, Deputy Director-General, Environmental Policy and Planning, Department of Environment and Heritage Protection, Public briefing transcript, 11 July 2012, pp. 22-23.

According to the Department of Environment and Heritage Protection, these factors determine what land should be identified as potential future national parks or other protected area tenure. The more critical role an area plays for an ecosystem, the more value it has in contributing to biodiversity outcomes. This regional ecosystem classification scheme and the associated biodiversity planning assessments are part of a framework that aim to provide a consistent approach for assessing biodiversity values at the landscape scale in Queensland. The framework is 'regularly reviewed as new information becomes available'. The department advises that the framework has been:³⁰⁹

incorporated into several planning initiatives including the development of guidelines for clearing on leasehold lands under the Lands Act 1994 and the Vegetation Management Act 1999, the preparation of, or amendments to, local government planning schemes, the assessment of the comprehensiveness, adequacy and representativeness of the conservation reserve network and as a guide for proactive conservation actions by government and non-government organisations.

This approach is consistent with the scientific bioregional framework used by the Commonwealth Department of Sustainability, Environment, Water, Population and Communities to manage the National Reserve System. The Commonwealth notes, however, that at present there is not a consistent approach from states in identifying and mapping regional ecosystems in Australia. The Commonwealth, however, does acknowledge that a number of states, including Queensland and New South Wales, have identified and mapped regional ecosystems for the purposes of biodiversity conservation.³¹⁰

The use of bioregional plans to manage the protected area estate is supported by a number of stakeholders.³¹¹ The Tablelands Forest Users Group and NPAQ advocated for establishing bioregional management plans for national parks.³¹²

NPAQ further suggests that reporting on bioregional management plans could also be part of an annual report that encompasses a 'whole-of-government approach' that measures the effectiveness of management actions within protected areas. This would 'highlight specific management issues and the requirements to deal with those issues on our protected area estate.'³¹³ Part of plans should also include reporting on 'complementary activities, such as research and rehabilitation.'³¹⁴

The Wildlife Preservation Society of Queensland made a number of further suggestions for scientifically assessing the ecological value of land for protection purposes including:³¹⁵

- Investigating models for the design of wildlife conservation systems – large reserves are likely to be inadequate for wildlife conservation and new strategies are required if national parks are opened up more to ecotourism.
- Ensuring a biodiversity management plan is included as part of all major developments within protected areas.
- Undertaking systematic biodiversity surveys and assessments to address gaps in biodiversity planning.

³⁰⁹ Department of Environment and Heritage Protection, 'Regional ecosystems', downloaded on 27 February 2013 from http://www.ehp.qld.gov.au/ecosystems/biodiversity/re_introduction.html

³¹⁰ Commonwealth Department of Sustainability, Environment, Water, Population and Communities, 'Australia's bioregion framework', downloaded on 27 February 2013 from <http://www.environment.gov.au/parks/nrs/science/bioregion-framework/index.html>.

³¹¹ D Boyland, Policies and Campaign Manager, Wildlife Preservation Society of Queensland, Submission 39, pp. 4 – 5; Ms A English, Spokesperson, Tablelands Forest Users Group, Public hearing transcript, Cairns, 28 August 2012, p. 8; P Donatiu, Executive Coordinator, National Parks Association of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 3.

³¹² Ms A English, Spokesperson, Tablelands Forest Users Group, Public hearing transcript, Cairns, 28 August 2012, p. 8; P Donatiu, Executive Coordinator, National Parks Association of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 3.

³¹³ P Donatiu, Executive Coordinator, National Parks Association of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 3.

³¹⁴ Sunshine Coast Regional Council, Submission No 14.

³¹⁵ D Boyland, Policies and Campaign Manager, Wildlife Preservation Society of Queensland, Submission 39, p. 4.

The committee also notes that the Queensland Parks and Wildlife Service (QPWS) is currently reviewing the Master Plan for Queensland's parks system.³¹⁶ The aim of this plan is to outline the directions for management of all protected areas in Queensland for the next period of time.³¹⁷

6.4.1 *Wild Rivers Act 2005*

The purpose of the *Wild Rivers Act 2005* is to:³¹⁸

- (a) preserve the natural values of rivers that have all, or almost all, of their natural values intact; and
- (b) provide for the preservation of the natural values of rivers in the Lake Eyre Basin.

Some leaseholders indicated that the achievement of the purpose of the *Wild Rivers Act 2005* has impacted on their ability to develop their leases, as parts of their leases were included in a declaration under the Act, which initially permitted only simple grazing and did not 'recognise the need for infrastructure such as roads, fences, dams, yards and so on.'³¹⁹ Later, lessees were provided the opportunity to enter into a voluntary property management plan that replaced the compulsory codes of conduct.³²⁰

Some stakeholders were concerned with weed and landscape management in riparian areas defined as 'High Protection Areas' under the *Wild Rivers Act 2005*. One proposal suggested to overcome this was to write bio-plans that are specific to an area, rather than continue with current regulations that apply across the board to all areas.³²¹

The committee notes the Queensland Government is in the process of undertaking amendments to its wild river declarations. In regards to Cape York, the Government is supportive of developing regional bio-plans, as the Department of Environment and Heritage Protection is currently developing the Cape York Peninsula Bioregion Management Plan. Public consultation on the plan occurred between June and September 2012. This plan will replace wild river declarations on Cape York Peninsula. The Cape York Peninsula Bioregion Management Plan will be included as part of the draft Cape York Statutory Regional Plan, which will be available for public comment in mid-2013.³²²

Further, the Queensland Government has undertaken consultation on proposed amendments to the Cooper Creek and Georgina and Diamantina basins wild river declarations. Amendments to the Lake Eyre Basin wild river declarations have already been made and are aimed at '*improving safety for*

³¹⁶ Department of National Parks, Recreation, Sport and Racing, 'QPWS Master Plan', downloaded on 27 February 2013 from http://www.npsr.qld.gov.au/managing/plans-strategies/parks_master_plan.html.

³¹⁷ Department of National Parks, Recreation, Sport and Racing, 'Managing protected areas', downloaded on 27 February 2013 from <http://www.npsr.qld.gov.au/managing/index.html>.

³¹⁸ Wild Rivers Act 2005, s.3(1).

³¹⁹ D Kempton, 'How Secure is Leaseholder Tenure', HTW Rural Lease Tenure Renewal Seminar, 22 May 2008, downloaded on 7 November 2012 from http://www.htw.com.au/services/industry_presentations/townsville%20rural%20lease%20tenure%20renewal%20seminar%20-%20may%202008%20-%20david%20kempton%20presentation.pdf, p 4.

³²⁰ D Kempton, 'How Secure is Leaseholder Tenure', HTW Rural Lease Tenure Renewal Seminar, 22 May 2008, downloaded on 7 November 2012 from http://www.htw.com.au/services/industry_presentations/townsville%20rural%20lease%20tenure%20renewal%20seminar%20-%20may%202008%20-%20david%20kempton%20presentation.pdf, p 4.

³²¹ C Campbell, Submission No 62, p. 2.

³²² Department of Environment and Heritage Protection, 'Wild rivers,' downloaded from <http://www.ehp.qld.gov.au/wildrivers/index.html> on 13 March 2013; Hon A Powell, Minister for Environment and Heritage Protection, 'Consultation commences on Cape York Bioregion Management Plan,' Media release, 28 June 2012, downloaded from <http://statements.qld.gov.au/Statement/ID/79666> on 13 March 2013; Department of Environment and Heritage Protection, 'Cape York Peninsula Bioregion Management Plan Scoping Paper', downloaded from <http://www.ehp.qld.gov.au/cape-york/bioregion-management-plan.html> on 13 March 2013; Department of State Development, Infrastructure and Planning, 'Cape York Regional Plan', downloaded from <http://www.dsdp.qld.gov.au/regional-planning/cape-york-regional-plan.html> on 15 March 2013.

*workers in the remote areas of western Queensland and providing greater efficiencies for petroleum and gas companies whilst maintaining environmental standards within the river systems.*³²³

The Queensland Government also states that *'the Department of Natural Resources and Mines is developing alternative strategies to protect Queensland's western rivers while allowing sustainable development to proceed.'*³²⁴

Committee comment:

The committee notes the recent proposed amendments to the *Vegetation Management Act 1999* with the introduction of the *Vegetation Management Framework Amendment Act 2013*. The committee is satisfied that the issues raised during the land tenure inquiry in relation to vegetation management were investigated and addressed during the committee's inquiry into the *Vegetation Management Framework Amendment Bill 2013*.

The committee also notes the suggestions provided by the Wildlife Preservation Society of Queensland and is of the view that the Department of Environment and Heritage Protection's work into identifying key bio-regions in Queensland for the purpose of ranking their conservation value and the review of the QPWS Master Plan for Queensland's parks system will address most issues raised in this area.

However, the committee is of the opinion that balancing the protection of Queensland's ecological values with meeting the increased demands for tourism, infrastructure and recreational activities within the protected area estate would benefit from further investigation. Such investigations should focus on the use of data gathered during the process of identifying and mapping bio-regions in Queensland to address gaps in biodiversity planning and the potential benefit of including compulsory biodiversity management plans as part of major developments in the protected area estate.

The committee believes that the key to fully addressing stakeholder concerns in this area will come from the collaboration between the government departments involved in the various aspects of assessing the value of land for ecological purposes and management of the protected area estate: the Department of Environment and Heritage Protection, the Department of National Parks, Recreation, Sport and Racing and the Department of Tourism Major Events, Small Business and the Commonwealth Games.

Recommendation 32

In the context of proposals for the development of ecotourism facilities in the protected area estate, the committee recommends that the Queensland Government uses the data gathered during the identification and mapping of bioregions in Queensland to:

- further investigate and address gaps in biodiversity planning
- determine the potential benefits of including compulsory biodiversity management plans as part of major developments within the protected area estate.

³²³ Department of Environment and Heritage Protection, 'Wild rivers,' downloaded from <http://www.ehp.qld.gov.au/wildrivers/index.html> on 13 March 2013.

³²⁴ Department of Environment and Heritage Protection, 'Wild rivers,' downloaded from <http://www.ehp.qld.gov.au/wildrivers/index.html> on 13 March 2013.

Recommendation 33

The committee recommends that the annual reports for the Department of Environment and Heritage Protection and the Department of National Parks, Recreation, Sport and Racing incorporate uniform information outlining the ways in which the management plans for each of the 13 bioregions influence and improve the implementation of the Tourism in Protected Areas framework.

6.5 Low impact recreation in national parks

A number of conservation groups and individuals supported the protection of the cardinal principle of managing national parks and were opposed to opening national parks to private ecotourism operations, as proposed under the *Nature Conservation and Other Legislation Amendment Bill 2012* and high impact forms of recreation.³²⁵ The general position was that high-impact recreational and commercial activities are not compatible with the cardinal principle for the protection of the ecological value of national parks or the state's obligations under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.³²⁶ This was summarised by one stakeholder who stated:³²⁷

Any high-impact form of accommodation, such as resorts, or recreation, such as horse riding, motorbikes and quad bikes, actually directly threaten the national park's natural condition.

The Wildlife Preservation Society of Queensland supported NPAQ's view that high impact recreational activities and ecotourism development should not occur within any of the classes of national parks:³²⁸

... nature based tourism is best served by keeping the national parks in their natural state ... and placing non passive activities and major infrastructure on tenures other than all classes of national parks. Wildlife Queensland is concerned that commercial development within has the potential to be inconsistent with the cardinal principle of managing national parks. The aim of protection is to prevent or minimise impacts that may degrade ecosystems and to facilitate regeneration. Any form of commercial development therefore should involve the least possible human impact on ecological processes and take into consideration all aspects of the area's natural and cultural values.

In stating their opposition to increasing access to national parks to development and high impact recreational activities, some stakeholders made a number of suggestions that would allow for an increase in ecotourism development and meet the increasing need for recreational activities while also ensuring the balanced protection of Queensland's ecological values within the protected area estate. These included:

- Expanding national parks as part of a biodiversity strategy.³²⁹
- Introducing a user-pays fee system, which is dependent on the type of activity to be undertaken within the national park.³³⁰ This is discussed further below.

³²⁵ Refer to Submissions 17, 20, 28, 34, 38, 42, 49, 51, 63, 69, 83; P Julien, Coordinator, Mackay Conservation Group, Public hearing transcript, Mackay, 27 August 2012, p. 5; I Herbert, Landholder, Public hearing transcript, Rockhampton, 29 August 2012, p. 1.

³²⁶ J Aldenhoven, Submission 29, pp. 2-3.

³²⁷ P Donatiu, Executive Coordinator, National Parks Association of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 2.

³²⁸ D Boyland, Policies and Campaign Manager, Wildlife Preservation Society of Queensland, Submission 39, p. 3.

³²⁹ D Boyland, Policies and Campaign Manager, Wildlife Preservation Society of Queensland, Submission 39, p. 4; National Parks Association of Queensland, Submission 17, p. 4; J Aldenhoven, Submission 38, p. 3; A Picone, Acting Northern Australia Program Manager, Australian Conservation Foundation, Submission 49, p. 1; G Llewellyn, Conservation Director, WWF, Submission 61, p. 1.

³³⁰ M McCabe, Coordinator, Capricorn Conservation Council, Public hearing transcript, Rockhampton, 28 August 2012, p. 6.

- Developing tourism facilities and fixed accommodation adjacent to national parks. This is discussed further below.

6.5.1 Ecotourism development adjacent to national parks

An alternative to developing ecotourism facilities and tourism activities within the protected area estate is to have them located adjacent to national parks. There are numerous examples of private or privately-funded tourism operations or infrastructure located next to or in private enclaves within Australian national parks, including the O'Reilly's Rainforest Retreat on private land surrounded by the Lamington National Park, Cradle Mountain Lodge just outside the entrance to Tasmania's Cradle Mountain National Park and the Southern Ocean Lodge on South Australia's Kangaroo Island.³³¹

The National Parks Association of Queensland (NPAQ) supports the identification and use of land suitable for various types of recreation, such as recreation reserves, on land that is not national park.³³² NPAQ told the committee:³³³

that we prefer them to be adjacent or close to national parks, on a variety of other land tenures. I guess the opportunity is there for the government to consider how it will also design new national parks in the future and whether it might actually incorporate other forms of tenure close to or within national parks that allow those types of accommodation to co-exist.

The Mackay Conservation Group supports this with its suggestion that a process for identifying suitable land for various types of recreation to remove pressure from national parks, such as forestry areas, unallocated state land and private land 'of low conservation value' could be investigated as a method for expanding the protected area estate.³³⁴ Designing new national parks adjacent to, or incorporating, a range of other land tenures that allow fixed accommodation could also be explored.³³⁵

Specifically, NPAQ suggested the government establish a process that advises when a lease expires or other lease movement occurs that would present an opportunity to consider the suitability of the area for a protected area category. Land sources might include state forests no longer required for that purpose, Commonwealth controlled land that might become available, or privately held land that becomes available and that might be suitable for preservation. This would require a process that advises the relevant government departments when any such opportunities have occurred so that the land can be investigated for its potential addition to the protected area estate or as a form of tenure that permits high-impact recreational activities.³³⁶

According to the NPAQ, the process for identifying land should be based on the type of recreation and the reasonable proximity to larger urban areas.³³⁷ QTIC originally supported 'the conversion of other tenures on unallocated state land or forestry leases to national parks until they found that it had restricted 'tourism use'. In this way, QTIC supports the use of other 'non-national park but conservation-type areas' that could be used more effectively in regards to tourism and recreational activities.³³⁸ The Director-General of the Department of National Parks, Recreation, Sport and Racing

³³¹ L Manderson, Research Officer, Queensland Parliamentary Library, 'Client Information Brief – Land tenure agreements and the licensing of commercial activities in national parks', 23 January 2012, p. 19; W Jarred, Research Officer, Queensland Parliamentary Library, 'Client Information Brief – Land tenure regimes in national parks in Australia', 22 January 2013, p. 26.

³³² P Donatiu, Executive Coordinator, National Parks Association of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 3.

³³³ P Donatiu, Executive Coordinator, National Parks Association of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 3.

³³⁴ Mackay Conservation Group, Submission No 83.

³³⁵ National Parks Association of Queensland, Submission 17, p. 2.

³³⁶ National Parks Association of Queensland, Submission 17, p. 4.

³³⁷ P Donatiu, NPAQ, Public hearing, Brisbane, 22 August 2012; Protect the Bush Alliance, Submission 20; J Aldenhoven, Public hearing transcript, Brisbane, 22 August 2012, p. 4.

³³⁸ D Gschwind, Chief Executive Officer, Queensland Tourism Industry Council, Public hearing transcript, Brisbane, 22 August 2012, p. 24.

stated that an investigation into the use of unallocated state land for tourism and recreational activities had begun. He also indicated the importance of protecting that land from urban encroachment.³³⁹

The Department of Natural Resources and Mines advised the committee on the process for identifying and using unallocated state land.³⁴⁰

The use of unallocated state land for tourism and for medium and high impact activities, as well as inclusion in the protected area estate is determined as an outcome of an evaluation pursuant to the provisions of the Land Act 1994, which requires an assessment of the land to determine its most appropriate use and tenure

The evaluation must take account of State, regional and local planning strategies and policies and the object of this Act.

In the event that the land has appropriate values that warrant the protection and management afforded by the Nature Conservation Act, action will be initiated in collaboration with NPRSR and DEHP to have this land dedicated as a protected area.

As an outcome of the Land Act evaluation opportunities may also be identified to allocate this land to facilitate the development of ecotourism projects and the Land Act provides a number of allocation methodologies to achieve this, including -

- a. Sale by auction or tender*
- b. Sale in priority*
- c. Leasing*

Each has their own criteria and must be applied.

I understand that very few parcels of USL may be suitable to facilitate developments of ecotourism projects and those few that are will be constrained by a range of matters, including infrastructure to support the venture, native title and access.

Committee comment:

The committee believes that there is merit to investigating the development of relationships with private tourism enterprises adjacent to national parks in order to support management of infrastructure within the protected area estate.

The committee understands that under the *Land Act 1994*, the state may reserve land for a national park or sport and recreation activities on unallocated state land.³⁴¹ The committee supports the Department of National Parks, Recreation, Sport and Racing's investigation into other land sources located near or adjacent to key tourism destinations, such as national parks, for the purpose of meeting demands for high impact recreational activities and tourism development. The committee believes this investigation, in consultation with the public and key stakeholders, will help to address concerns regarding the protection of biodiversity and the cardinal principle.

³³⁹ Dr J Glaister, Acting Director-General, Department of National Parks, Recreation, Sport and Racing, Public briefing transcript, Brisbane, 11 July 2012, p. 14.

³⁴⁰ Graham Nicholas, Acting Director, Land and Vegetation Management Policy, Land and Mines Policy, Department of Natural Resources and Mines, Email correspondence dated 24 April 2013.

³⁴¹ Department of Natural Resources and Mines, 'A Guide to Land Tenure', downloaded on 13 March 2013 from http://www.nrm.qld.gov.au/land/state/pdf/land_tenure_qld.pdf, p. 2.

Recommendation 34

The committee recommends that the Queensland Government continues to actively develop relationships with private tourism enterprises adjacent to national parks in order to support management of infrastructure within the protected area estate.

Recommendation 35

The committee recommends that the Queensland Government reviews the adequacy of existing tenure categories to determine whether they provide sufficient scope to accommodate new, high and medium impact tourism activities adjacent to national parks to meet the escalating demand for such facilities in Queensland.

6.5.2 User-pays fee system for high-impact recreational activities

The Capricorn Conservation Council (CCC) suggested the government introduce a user-pays system which would be based on the type of activity to be undertaken within the national park as a method of managing the impact of activities and development within national parks.³⁴² CCC used the example of users having to pay a higher entrance fee when driving their cars in the Alpine National Park.

In Queensland, there are several user-pays fees for national parks. For example, before camping in a park, forest or reserve, a camper must obtain a camping permit and pay a nominal camping fee.³⁴³ Vehicle access permits and their associated fees are also required for several areas of the protected estate.³⁴⁴ While there are other permits and fees for tourism operators, there are few other individual user-pays fees in Queensland.

User-pays systems are used to varying degrees in all Australian states and territories in which 'fees are charged for entry to protected areas, camping, recreational facilities, interpretive services, leases and licences, commercial activities and other facilities and services.'³⁴⁵ The outcomes for user-pays system are generally recognised to include cost effectiveness, improved conservation management, better client services and facilities and positive public attitudes towards the agency and protected area management.³⁴⁶

CCC suggested a user-pays system in order to manage national parks. This would mean linking commercial operations to conservation objectives. The Australian and New Zealand Environment and Conservation Council (ANZECC) found that best practice to ensure user-pays systems contributed to conservation objectives included:³⁴⁷

- Establishing good relationships with and controls over all types of commercial operators, and ensuring that all conditions of permits, leases and other agreements are adequate and fulfilled
- The use of the user-pays system to collect good visitor data
- Ensuring that core business is not over-ridden by commercial interests

³⁴² M McCabe, Coordinator, Capricorn Conservation Council, Public hearing transcript, Rockhampton, 28 August 2012, p. 6.

³⁴³ Department of National Parks, Recreation, Sport and Racing, 'Camping fees', downloaded on 27 February 2013 from http://www.nprsr.qld.gov.au/experiences/camping/camping_fees.html.

³⁴⁴ Department of National Parks, Recreation, Sport and Racing, 'Vehicle access fees', downloaded on 27 February 2013 from http://www.nprsr.qld.gov.au/recreation-areas/vehicle_access_permit_fees.html

³⁴⁵ Queensland Parks and Wildlife Service for Australian and New Zealand Environment and Conservation Council, 'Benchmarking and Best Practice Program – User-Pays Revenue', February 2000, p. 3.

³⁴⁶ Queensland Parks and Wildlife Service for Australian and New Zealand Environment and Conservation Council, 'Benchmarking and Best Practice Program – User-Pays Revenue', February 2000, p. 3.

³⁴⁷ Queensland Parks and Wildlife Service for Australian and New Zealand Environment and Conservation Council, 'Benchmarking and Best Practice Program – User-Pays Revenue', February 2000, p. 4.

ANZECC found that 'improved conservation outcomes and better visitor services and facilities can be achieved provided certain conditions are established and practices followed.'³⁴⁸ Further, ANZECC notes that:³⁴⁹

user-pays schemes have many benefits if the systems can achieve cost effectiveness. When revenue is retained by the agency it can contribute to improved conservation management and better user facilities and services.

A study on the attitudes of entry fees to national parks has shown that:

Visitors are more willing to accept the 'user-pays' principle if the money will be used for the benefit of the national park and its visitors. It was found that foreigners are more in support for a 'user-pay' fee than Australians, and among Australians, those visitors from Queensland are the least willing to accept the idea of a user-pay fee to enter the park. The results indicate that if visitors can be shown the benefits (both for visitors and for conservation) of charging an entry fee, then visitors are more likely to support such a concept than when they are unaware of the benefits of a user-fee.

Committee comment:

The committee notes the suggestion from the Capricorn Conservation Council to apply a user-pays fee system as a method of managing the impact of tourism-related activities and development within the protected area estate. The committee also notes that Queensland has implemented some user-pays fees for national parks, such as four wheel driving beach access on Fraser Island and North Stradbroke Island. The committee believes that further investigation is warranted given the results of the study into attitudes to manage the impact of increased activities, such as horse-riding and motorised activity within the protected area estate. Additionally, the committee considers that there may be some merit in investigating how visitors can be educated about the benefits to themselves and conservation objectives associated with existing fees for entry into or engaging in a particular activity within a national park.

Recommendation 36

The committee recommends that the Queensland Government investigate enhanced management options to respond to increased activities within the protected area estate.

Recommendation 37

The committee recommends that the Queensland Government consider investigating the implementation of an education program to highlight to visitors to national parks the benefits to themselves and conservation of the park when paying a fee for entry into, or engaging in a particular activity within, a national park.

6.6 Alignment of national park management with State Planning Policy and Queensland tourism strategy

Strategic alignment is required between the strategies and planning policies of state and federal environment and tourism agencies in managing conservation and meeting the demands for tourism. Two of the most significant strategies recognised recently for tourism are building regional capacity and marketing national parks as tourism destinations. Those agencies responsible for developing strategies

³⁴⁸ Queensland Parks and Wildlife Service for Australian and New Zealand Environment and Conservation Council, 'Benchmarking and Best Practice Program – User-Pays Revenue', February 2000, p. 4.

³⁴⁹ Queensland Parks and Wildlife Service for Australian and New Zealand Environment and Conservation Council, 'Benchmarking and Best Practice Program – User-Pays Revenue', February 2000, p. 27.

also recognise the importance of the conservation of the protected areas for tourists as holiday destinations, such as the Great Barrier Reef, Daintree and Lamington National Parks.³⁵⁰

The Commonwealth approach to national park management and tourism has been led by Parks Australia, the federal park agency responsible for conserving Australia's biodiversity and cultural heritage and managing the Commonwealth's protected areas, in partnership with Tourism Australia. These agencies are working together on the National Landscapes program, which is a long-term strategic approach to regional tourism development and conservation. The program provides:³⁵¹

a framework to consider tourism infrastructure, conservation and marketing in a united way, encouraging collaboration and partnerships. It brings together the tourism industry and conservation sectors to improve environmental, social and economic outcomes for each landscape.

The report on the National Landscapes program shows a number of positive outcomes, which include:³⁵²

- Establishing partnerships that are building local and national networks and leveraging development opportunities, including across State borders
- Developing government plans and strategies in the areas of regional capacity building and marketing

DestinationQ is the Queensland Government's strategy for promoting tourism and increasing tourism spend within the state. *DestinationQ* is a partnership between the Queensland Government and the tourism industry with the primary goals of making Queensland Australia's number one tourism destination and doubling visitor expenditure by 2020. This strategy also recognises the importance of building tourism at a regional level and has partnered Tourism and Events Queensland with regional tourism organisations to achieve these goals.³⁵³

The first annual *DestinationQ* Forum was held in Cairns in June 2012. In December 2012, the Queensland Government released its *DestinationQ* Blueprint 2012-2015. The blueprint has identified ecotourism as a major part of the *DestinationQ* strategy. The Department of National Parks, Recreation, Sport and Racing has now released its draft Queensland ecotourism plan to guide the government's approach to delivering 'high quality, best practice ecotourism experiences and developments that showcase and preserve Queensland's unique natural landscapes and wildlife.'³⁵⁴

The blueprint also identifies a 'destination management approach' to managing a destination to 'achieve an economically, environmentally and socially sustainable tourism industry'.³⁵⁵ This approach will be enhanced with announced state planning reforms. The Queensland Government is developing a new single State Planning Policy (sSPP). The sSPP:

*recognises tourism as a state interest for the first time and will assist in balancing competing or conflicting outcomes, giving additional weight to tourism development.*³⁵⁶

The Queensland Government has stated that one of its goals with implementing the streamlined planning system is to encourage new investment in tourism product to respond to the needs of tourism.

³⁵⁰ Parks Australia and Tourism Australia, 'Australia's National Landscape Program – 2012 Outcome Report March 2011 – June 2012, p. 4.

³⁵¹ Commonwealth Department of Sustainability, Environment, Water, Population and Communities, 'Australia's National Landscapes', downloaded from <http://www.environment.gov.au/parks/national-landscapes/index.html> on 4 March 2013.

³⁵² Parks Australia and Tourism Australia, 'Australia's National Landscape Program – 2012 Outcome Report March 2011 – June 2012, p. 4.

³⁵³ DestinationQ, 'What is DestinationQ', downloaded from <http://www.destq.com.au/what-is-destinationq.html> on 5 March 2013; Tourism and Events Queensland, 'DestinationQ Tourism Strategy', downloaded from http://www.tq.com.au/resource-centre/plans-&-strategies/queensland-tourism-strategy/queensland-tourism-strategy_home.cfm on 5 March 2013.

³⁵⁴ Queensland Government – *DestinationQ*, 'DestinationQ Blueprint 2012-1015', 2012, p. 10.

³⁵⁵ Queensland Government – *DestinationQ*, 'DestinationQ Blueprint 2012-1015', 2012, p. 11.

³⁵⁶ Queensland Government – *DestinationQ*, 'DestinationQ Blueprint 2012-1015', 2012, p. 14.

The reforms are aimed at reducing costs and timelines and provide greater certainty for proponents and councils. The Queensland Government has also stated that tourism development will also be part of new regional plans that are in the process of being developed and implemented across the state.³⁵⁷

The Queensland Government has also developed the Tourism in Protected Areas (TIPA) framework in partnership with the tourism sector to 'ensure a balance between conservation of the state's iconic national parks and tourism.'³⁵⁸ While TIPA provides a framework for managing commercial operations in key protected areas which attract high visitation, it does not address any matters relating to increased recreational activities within national parks. The Queensland Government is currently working with Tourism and Events Queensland and the Queensland Tourism Industry Council to finalise the framework and adopt a '*best practice approach to nature-based tourism informed by the recommendations of the early TIPA working group*'³⁵⁹.

Committee comment:

The committee believes that Queensland is following the example of the Commonwealth by forming a partnership between the Queensland Government and the tourism industry as part of its *DestinationQ* strategy. Because of the involvement of regional tourism organisations as part of this process, the committee notes that the Queensland Government is focussing on building tourism at a regional level by using local knowledge of tourism demands, tourism destinations and management matters to build regional capacity and market individual and regional tourism destinations, particularly in regards to the protected area estate.

The committee is also satisfied that announced reforms to state planning policies will ensure that tourism strategies will take account of land use planning matters and consider the particular issues related to the management of the protected area estate. The 'destination management approach' shown in the blueprint for tourism will also play a vital role in developing and marketing tourism in Queensland.

6.7 Recreational activities on forestry reserves

Stakeholders indicated several concerns to the committee regarding activities and occupation permits on forestry reserves. It should be noted at the outset of this section, however, that several Queensland Government policy changes regarding forestry reserves have occurred since the referral of the inquiry. Some of the comments made by stakeholders refer to the previous policy position regarding the types of recreational activities not permitted on forestry reserves.

The Tableland Forest Users Group was opposed to the policy of increasing protected area estate through conversion of Queensland state forests.³⁶⁰ The Tableland Forest Users Group told the committee that any conversion of state forests to national parks should not occur without a '*thorough scientific basis and compliance with national park criteria and informed and meaningful consultation with affected users and communities.*' One stakeholder stated that the conversion of state forests to national parks also impacts on the government's bottom line as holders of state forest leases currently manage the areas at their own cost and pay rent on those leases. The stakeholder believes that the Queensland Government does not have the financial or human resources to manage additional areas.³⁶¹ WWF had the opposite view and stated that the strategic conversion of state forests to national parks was vital for conservation and the timber industry.³⁶² The Gold Coast and Hinterland Environment Council also

³⁵⁷ Queensland Government – *DestinationQ*, 'DestinationQ Blueprint 2012-1015', 2012, p. 14.

³⁵⁸ Department of National Parks, Recreation, Sport and Racing, 'Tourism in Protected Areas Initiative (TIPA)', downloaded from http://www.nprsr.qld.gov.au/tourism/tools/tourism_in_protected_areas_initiative_tipa.html on 4 March 2013.

³⁵⁹ Department of National Parks, Recreation, Sport and Racing, 'Tourism in Protected Areas Initiative (TIPA)', downloaded from http://www.nprsr.qld.gov.au/tourism/tools/tourism_in_protected_areas_initiative_tipa.html on 4 March 2013.

³⁶⁰ M Finger, Submission no. 43; Tableland Forest Users Group, Submission no. 91; B Hoare, Submission no. 97.

³⁶¹ B Hoare, Submission no. 97, p. 3.

³⁶² WWF, Submission no. 61.

support WWF and stated its opposition to the proposed changes to allow recreational activities within state forests.³⁶³

One potential source of land as a means for expanding the protected area estate is state forests. However, several stakeholders indicated that problems had arisen in the past when this conversion process had occurred. According to the Tableland Forest Users Group, state forestry land is used for a number of purposes that, if converted to national park under the current legislation would mean that those activities, particularly horse-riding would not be able to continue. The Tablelands Forest Users Groups states that any transfer from state forestry land to national park should be undertaken only following consultation with affected users and communities and with a scientific foundation that supports the conversion.³⁶⁴

The majority of the committee supports the views of the Tablelands Forest Users Group and believes that the review of the *Nature Conservation Act 1992* addresses these issues.

The Health and Community Services Committee (HCSC) considered this issue as part of its inquiry into *The Nature Conservation and Other Legislation Amendment Bill 2012*, which repeals the *Brisbane Forest Park Act 1977* and makes amendments to the Forestry Act. HCSC considered matters relating to activities as secondary purposes on forestry reserves including grazing, conservation, recreation, apiary, infrastructure and mining. HCSC found that:³⁶⁵

Adequate measures are in place, or planned, to ensure that the environmental, economic and social impacts are considered when reaching decisions on occupation permits. The committee also notes the Department's commitment to amend the existing policy for assessing occupation permits to reflect the removal of the term and area limits of occupation permits. However, in order to provide greater clarity and assurances to stakeholders, the committee's third recommendation is that the Minister provide further information about the appropriateness of the area and time-frame of occupation permits.

HCSC recommended, in order to provide greater clarity and alleviate stakeholders' concerns, that the Minister:³⁶⁶

inform the Legislative Assembly during the Second Reading debate of the type of assessment criteria he envisages will be used to ensure that the area and time-frame provided under an occupation permit in a State forest is appropriate, including how forest management considerations and potential environmental, economic and social impacts will be taken into account.

The Minister for National Parks, Recreation, Sport and Racing responded to this recommendation in his second reading speech.³⁶⁷

Given that the removal of the seven-year time frame and the 10-hectare limitation on occupation permits is the only change—the only change—to the nature of these permits under the Forestry Act, the assessment criteria that are currently used will continue to apply and I can outline the key criteria for the information of the members today. Uses must be consistent with the cardinal principle to be observed in the management of state forests, which is—

³⁶³ Gold Coast and Hinterland Environment Council, Submission no. 51, pp. 2-3.

³⁶⁴ A English, Chair, Tablelands Forest Users Group, Submission 91, p. 1.

³⁶⁵ Health and Community Services Committee, Report No. 15 – Nature Conservation and Other Legislation Amendment Bill 2012, February 2013, p. 19.

³⁶⁶ Health and Community Services Committee, Report No. 15 – Nature Conservation and Other Legislation Amendment Bill 2012, February 2013, p. 19.

³⁶⁷ Hon S Dickson, Minister for National Parks, Recreation, Sport and Racing, Record of Proceedings, 18 April 2013, pp. 1185-1186.

... the permanent reservation of such areas for the purpose of producing timber and associated products in perpetuity and of protecting a watershed therein.

Uses must be consistent with any existing permit, lease, agreement or contract granted or made by the state in respect of the same land. My department will ensure that state forests continue to be managed to achieve a balance between the use of the forest resource and the carrying out of other activities. Uses under occupation permits must be a legitimate use of forestry land where the activities carried out do not compromise existing management strategies, rights or potential higher-priority purposes for the area.

In relation to determining the appropriate area and time frame for a permit, the following additional principles will apply. Permits are to be generally granted for periods of up to 20 years for the most permanent infrastructure and for shorter periods reflecting the expected life of the infrastructure in relation to semipermanent or temporary uses. Cases that may warrant a period of longer than 20 years due to an expected life beyond that term will be determined on a case-by-case basis.

As is currently the case, administrative plans will define the permit area which corresponds to the footprint of the infrastructure being approved under the permit. Procedures will allow for uses on a state forest which involve a rolling development program, for example coal seam gas infrastructure, to be permitted under a single permit which is amended as infrastructure is commissioned and decommissioned. This approach has been developed to meet the operational characteristics of this type of infrastructure. The amendments to the Forestry Act further rectify the tangled web of red tape strangling industry under the former Labor government. The occupation permit impediments it placed on public and private infrastructure meant that not only would proponents have to lodge multiple permit applications for the same piece of infrastructure multiple times over the life of the infrastructure, but that taxpayer dollars would be spent assessing each and every one even though it produced exactly the same outcome. These amendments will remove these impediments.

Committee comment:

The committee notes the concerns of the Tableland Forest Users Group in regards to the conversion of state forests to the national park estate. According to the Tableland Forest Users Group, state forestry land is used for a number of purposes that, if converted to national, park current legislation would mean that those activities, particularly horse-riding would not be able to continue. The Tablelands Forest Users Groups states that any transfer from state forestry land to national park should be undertaken only following consultation with affected users and communities and with a scientific foundation that supports the conversion.³⁶⁸

The committee is satisfied that the concerns raised by both the Tableland Forest Users Group and conservation groups have been addressed in the Minister's second reading speech by striking a balance between the management of forestry reserves with carrying out other activities.

6.8 Good neighbour policies

Under the *Master Plan for Queensland's Parks System* currently under review by the Queensland Parks and Wildlife Service (QPWS), 'working with community partners is explicitly recognised as one of the four key dimensions of park management.'³⁶⁹ The Department of National Parks, Recreation, Sports and Racing has a Good Neighbour Policy due to its wide variety of neighbours, including rural landholders

³⁶⁸ A English, Chair, Tablelands Forest Users Group, Submission 91, p. 1.

³⁶⁹ Department of National Parks, Recreation, Sports, and Racing, 'Good Neighbour Policy,' downloaded from <http://www.nprsr.qld.gov.au/register/p01658aa.pdf> on 5 March 2013, p. 1.

and primary producers, tourism resorts and guesthouses, industrial and commercial businesses and residential communities. The objectives of the policy are to:³⁷⁰

- develop relationships, promote co-operation and exchange information between landholders and QPWS
- clearly outline QPWS approach to land management issues needing co-operative management, including fire management, control of pest plants and feral animals, management of native animals and the use of pesticides and other substances.

As part of the Good Neighbour Policy, QPWS is also committed to involving neighbours in the development of management plans and strategies for the protected area estate to:³⁷¹

ensure that the interests and rights of landholders are considered and that QPWS plans are co-ordinated as far as possible with planning and management activities on other lands.

This includes working with local government and providing advice when planning schemes are being prepared to:³⁷²

ensure that QPWS land management objectives are recognised in all aspects of planning schemes.

Leaseholders have indicated that they would like the State to practice a 'good neighbour' policy for sharing boundary infrastructure, such as fencing and firebreaks, and managing pests and weeds in State lands and national parks.³⁷³ Some leaseholders have stated that the policy of increasing national parks should not be continued until all land management issues, including who bears the cost of conservation and management, research into how to balance production with conservation, and the need for educational and financial support to farmers, have been adequately addressed.³⁷⁴

AgForce is in agreement and sought assurance that any increase in the size of the national park estate must consider the resources available to manage the expansion.³⁷⁵ However, the committee heard evidence that private tourism enterprise would also be willing to help manage tracks and infrastructure inside national parks that are adjacent to their operations, which are located on freehold land. It was also suggested that this may then in turn be taken into consideration in calculating the lease terms and conditions for any tourism activities run by that enterprise within the national park.³⁷⁶

Committee comment:

The committee recognises the concerns raised by some stakeholders in relation to the State's role as a 'good neighbour' in managing weeds, pests, fences and other infrastructure on state lands. The committee notes that these 'good neighbour' responsibilities are often carried out and reported on by a number of government departments. The committee sees value in consolidating the reporting of the management of state lands into a whole-of-government report that is tabled in Parliament annually.

The committee also heard evidence that private landholders in the tourism industry would be interested in maintaining areas of national parks that are located adjacent to their properties and any tourism-related infrastructure.³⁷⁷ This approach to the management of the protected area estate provides benefits to both the State as owner of the land and the adjacent landholder who is protecting their investment in their property and business. The committee believes that the State Government should

³⁷⁰ Ibid, p. 1.

³⁷¹ Department of National Parks, Recreation, Sports, and Racing, 'Good Neighbour Policy,' downloaded from <http://www.nprsr.qld.gov.au/register/p01658aa.pdf> on 5 March 2013, p. 3.

³⁷² Ibid, p. 3.

³⁷³ B Lord, Submission No 54, p 2; M Finger, Submission No 43, p 2; Plant family, submission No 27, p 2.

³⁷⁴ M Finger, Submission No 43, p 2.

³⁷⁵ L Hewitt, Policy Manager, AgForce Queensland, Public hearing transcript, 24 August 2012, p. 12.

³⁷⁶ D Duell, Chief Executive Officer Spicers Group, Public hearing transcript, Brisbane, 22 August 2012, p. 23.

³⁷⁷ D Duell, Chief Executive Officer Spicers Group, Public hearing transcript, Brisbane, 22 August 2012, p. 23.

consider incentives for lessees with properties adjacent to national parks in order to derive benefits similar to private landholders.

Recommendation 38

The committee recommends that the Queensland Government tables a whole-of-government report annually in Parliament consolidating its reporting on the management of weeds, pests, fences and other infrastructure as part of its responsibility under the good neighbour policy.

Recommendation 39

The committee recommends that the Queensland Government considers incentives for lessees to maintain areas of national parks that are located adjacent to their properties and any tourism-related infrastructure.

6.8.1 Wildlife corridors

As part of its 'good neighbour policy', the Department of National Parks, Recreation, Sports and Racing encourages neighbours to 'maintain or restore natural vegetation to provide additional habitat and wildlife corridors (for example, to link parks to areas of remnant vegetation). This forms part of the strategy to protect and maintain biodiversity of habitat. The department encourages '*participation of landowners in nature refuge agreements...where private land contains areas of significant conservation values*'³⁷⁸.

6.8.2 Nature refuges

A number of stakeholders indicated their support for increased legislated protection of nature refuges, particularly in relation to exempting nature refuges from mining.³⁷⁹ A nature refuge is a class of protected area under the *Nature Conservation Act 1992*.³⁸⁰ According to the Department of Environment and Heritage Protection:³⁸¹

A nature refuge is a voluntary agreement between a landholder and the Queensland Government that acknowledges a commitment to manage and preserve land with significant conservation values while allowing compatible and sustainable land uses to continue. Landholders with a nature refuge continue to own and manage their land to generate an income and in keeping with their lifestyle. Landholders also make an invaluable contribution to protecting our natural and cultural resources for the future.

In a vast state bearing a diverse array of species, ecosystems and significant sites, nature refuges fill an important niche in promoting a community-based landscape approach to conservation.

³⁷⁸ Department of National Parks, Recreation, Sports, and Racing, 'Good Neighbour Policy,' downloaded from <http://www.nprsr.qld.gov.au/register/p01658aa.pdf> on 5 March 2013, p. 5.

³⁷⁹ National Parks Association of Queensland, Submission no. 17; Protect the Bush Alliance, Submission no. 20; Queensland Trust for Nature, Submission no. 26; Sub 28 Jackie Cooper; Sub 34 – Queensland Conservation Council; Sub 38 Dr J Aldenhoven; Sub 39 – Wildlife Preservation Society of Queensland; Sub 55 – Birdlife Southern Queensland; Sub 61 – WWF; Sub 66 – Queensland Greens; Sub 78 - Paola Cassoni of Bimblebox Nature Refuge; Sub 83 – Mackay Conservation Group; Sub 90 – Blair & Josie Angus (Angus Pastoral Company).

³⁸⁰ Department of Environment and Heritage Protection, 'Nature Refuges Information Sheet', downloaded on 30 January 2013 from <http://www.ehp.qld.gov.au/ecosystems/nature-refuges/pdf/nature-refuges.pdf>.

³⁸¹ Department of Environment and Heritage Protection, 'The Nature Refuges Program', downloaded on 30 January 2013 from http://www.ehp.qld.gov.au/ecosystems/nature-refuges/the_nature_refuges_program.html.

There are 411 declared nature refuges in Queensland that comprise approximately 2.9 million hectares of land.³⁸² The committee notes that nature refuges outnumber national parks and ‘comprise the second largest expanse of Queensland’s protected areas estate.’³⁸³

The key concern for stakeholders is to provide greater conservation certainty to current and prospective nature refuge landholders with statutory protection of lands under conservation agreements. A number of concerned stakeholders have recommended an amendment to the *Nature Conservation Act 1992* to introduce a new category of nature refuges that provides this protection³⁸⁴ and be given the same protection currently afforded to national parks.³⁸⁵

Specifically, legislating a new tiered system of categories for nature refuges has been recommended. The Wildlife Preservation Society of Queensland stated:³⁸⁶

Under the Nature Conservation Act, there are different classes of national parks subject to different management regimes. It is only logical that for nature refuges—the result of an agreement between the landholder and the government for the protection of biodiversity and conservation of the environment—a number of different classes exist subject to differing management criteria. Wildlife Queensland, together with like-minded organisations, has been advocating for a tiered system of nature refuges for some time. One purpose would be solely for conservation. One category would be for grazing and conservation, showing they can co-exist. The third class would in fact reflect the current situation...

Nature refuges are a means of expanding the protected area estate at minimum cost to the government. The fact that nature refuges are not protected against mining is a disincentive for some landholders to enter into such an agreement. Amending the legislation to reflect a tiered system would be a positive step in achieving balanced protection for biodiversity.

Committee comment:

The committee recognises the importance of the Nature Refuges Program as part of Queensland’s protection of its biodiversity. The committee believes that the current status of nature refuges, based on a voluntary agreement between a landholder and the government which offers support from government for landholders to manage and preserve land for conservation values, provides the right balance between conservation and sustainable land uses. The committee also recognises the voluntary nature of these agreements and the right of parties to these agreements to terminate if so desired.

6.9 Stock route management network

The Wildlife Preservation Society of Queensland and Stock Routes Coalition Group presented evidence to the committee supporting the use of the stock route network as a tool for protecting and managing biodiversity.³⁸⁷ WPSQ indicated that it would be enhanced if the Stock Route Network Management Bill 2011, presented to the previous Parliament, was enacted.

³⁸² D Boyland, Policies and Campaigns Manager, Wildlife Preservation Society of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 6.

³⁸³ Department of Environment and Heritage Protection, ‘The Nature Refuges Program’, downloaded on 30 January 2013 from http://www.ehp.qld.gov.au/ecosystems/nature-refuges/the_nature_refuges_program.html.

³⁸⁴ Sub 17, NPAQ, Sub 20, Protect the Bush Alliance; Sub 26, Queensland Trust for Nature; Sub 39, Wildlife Preservation Society of Queensland; Sub 34 Queensland Conservation; Sub 78 - Paola Cassoni of Bimblebox Nature Refuge.

³⁸⁵ Sub 55; Sub 61; B O’Hara, Chief Executive Officer, Queensland Trust for Nature, Public hearing transcript, Brisbane, 22 August 2012, p. 1.

³⁸⁶ D Boyland, Policies and Campaigns Manager, Wildlife Preservation Society of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 7.

³⁸⁷ Wildlife Preservation Society of Queensland, Submission no. 39; D Boyland, Policies and Campaigns Manager, Wildlife Preservation Society of Queensland, Public hearing transcript, Brisbane, 22 August 2012, p. 7; Stock Routes Coalition Group, Submission no. 82.

The Goondiwindi Regional Council was also supportive of this as a council audit had determined that some reserve land could be put to better use through creating a lease or authority under the legislation that was developed for the Stock Routes Management Bill 2011.³⁸⁸ The enactment of the Bill would also ensure greater flexibility exists for councils to more easily manage access to reserves and areas of state land through a lease or authority. This would assist councils in determining whether the defined use of the land was still relevant and clarify any environmental and cultural values in order to make best use of the land in the future.³⁸⁹ Other councils supported the need for flexibility regarding reserves and areas of state land so that councils can manage these areas more efficiently.³⁹⁰

The Stock Routes Coalition was also supportive of the stock route network being retained in state ownership to ensure compliance of management rules.³⁹¹

There are approximately 72,000 kilometres of roads that have been declared stock routes in Queensland. The stock route network is used by the pastoral industry to transport stock and long-term grazing. It is also used by utility companies to provide power lines, pipelines and telecommunications and by the general public for road transport and recreational purposes. The stock route network also:³⁹²

has significant environmental value, in part because its unique interconnectedness and geographical extent allows for the movement of wildlife. Many stock routes are in highly cleared landscapes and are adjacent to waterways, providing habitat for threatened species.

The state and local governments share responsibility for managing the stock route network under the *Land Protection (Pest and Stock Route Management) Act 2002*.³⁹³

The committee understands Goondiwindi Regional Council's interest in this matter as local governments are responsible for the day-to-day administration and management, and some maintenance, of the stock route network. The Queensland Government has advised that it recognises 'certain inadequacies in the current statutory framework and management arrangements' and is currently 'consulting with key stakeholders to identify ways of improving network management, operation and administration.'³⁹⁴

Committee comment:

The committee understands that the Queensland Government is currently consulting with key stakeholders to identify ways to improve the management, operation and administration of the stock route network. As councils are a key stakeholder, the committee believes it is vital to include them in the consultation process.

Recommendation 40

The committee recommends that the Queensland Government notes the previous committee report into the *Stock Route Management Bill 2011* and that it reintroduces the Bill in accordance with the recommendations of the report on the Bill by the Transport and Local Government Committee at its earliest convenience.

³⁸⁸ Goondiwindi Regional Council, Submission no. 9.

³⁸⁹ Goondiwindi Regional Council, Submission No 9, p 3.

³⁹⁰ Barcaldine Regional Council, Submission No 46, p 1; Longreach Regional Council, Submission No 1, p 1.

³⁹¹ Stock Routes Coalition Group, Submission no. 82.

³⁹² Department of Environment and Heritage Protection, 'The Queensland Stock Route Network', downloaded from <http://www.derm.qld.gov.au/land/stockroutes/index.html> on 11 March 2013.

³⁹³ Department of Environment and Heritage Protection, 'Stock route network management arrangements', downloaded from http://www.derm.qld.gov.au/land/stockroutes/stock_route_strategy.html on 11 March 2013.

³⁹⁴ Department of Environment and Heritage Protection, 'Stock route network management arrangements', downloaded from http://www.derm.qld.gov.au/land/stockroutes/stock_route_strategy.html on 11 March 2013.

6.10 Adding value and promoting tourism while protecting ecological values and minimising adverse impacts on the environment

A number of stakeholders were supportive of the review of the *Nature Conservation Act 1992* to provide a balanced approach to the management of the protected area estate by improving access for ecotourism facilities and recreation in national parks.³⁹⁵ One stakeholder stated that while national parks should be afforded the 'highest possible protection', tourism, recreational and educational uses do not necessarily interfere with that and supported improved access for these purposes.³⁹⁶

At a federal level, Parks Australia has developed the 'Sustainable Tourism Overview 2011-2016', which identifies the principles and objectives that will guide Parks Australia in managing tourism in Commonwealth terrestrial reserves over the next five years.³⁹⁷ The definition of 'sustainable tourism' according to the UN World Tourism Organisation 2004:

leads to the management of all resources in such a way that economic, social and aesthetic needs can be fulfilled while maintaining cultural integrity, essential ecological processes, biological diversity and life support systems.

For Parks Australia this means that tourism can be used as an effective tool for the conservation and management of protected areas as it can assist in generating the financial and political support required to continue managing and conserving these protected areas, as well as increasing understanding of the areas and their environmental and cultural values. This can then lead to richer visitor experiences and awareness and education that helps in minimising the impact of visitors on the natural and cultural values of protected areas.³⁹⁸

The New South Wales Government's '2021' plan also contains strategies to minimise visitor impacts while enhancing tourism opportunities within the protected area estate. The aim of the strategies is to enhance cultural and recreational opportunities, in partnership with Aboriginal people, within the state's protected areas by providing 'high quality and diverse visitor experiences', while also ensuring the protection of the conservation values of these areas.³⁹⁹

In Queensland, the committee awaits the outcomes from the development and implementation of the Tourism in Protected Areas Initiative, a framework for promoting tourism and adding value to the suite of tourism products available in several Queensland national parks while ensuring the conservation values of the protected area estate.

6.11 Management of walking trails across multiple tenures

The issue of consistent management of long-distance trails across multiple tenures was raised during the committee's consultation process.⁴⁰⁰ As Redland City Council provided by way of example to the committee:⁴⁰¹

³⁹⁵ D Duell, Chief Executive Officer, Spicers Group, Submission 8, p. 2; M Shepherd, Chair, Alliance for Sustainable Tourism, Submission 13, p. 4; G Laverty, Executive Director, Finance and Business, Sunshine Coast Regional Council, Submission 14, p. 2; D Duell, Chief Executive Officer Spicers Group, Public hearing transcript, Brisbane, 22 August 2012, p. 19; D Gschwind, Chief Executive Officer, QTIC, Public hearing transcript, 22 August 2012, p. 20; A English, Tablelands Forest Users Group, Public hearing transcript, Cairns, 28 August 2012, p. 7.

³⁹⁶ D Duell, Chief Executive Officer Spicers Group, Public hearing transcript, Brisbane, 22 August 2012, p. 19; D Duell, Spicers Group, Submission 8, p. 2.

³⁹⁷ Commonwealth Department of Sustainability, Environment, Water, Population and Communities, 'Parks Australia – Sustainable tourism overview 2011 – 2016', downloaded from <http://www.environment.gov.au/parks/publications/landscapes/sustainable-tourism.html> on 4 March 2013.

³⁹⁸ Commonwealth Department of Sustainability, Environment, Water, Population and Communities, 'Parks Australia – Sustainable tourism overview 2011 – 2016', downloaded from <http://www.environment.gov.au/parks/publications/landscapes/sustainable-tourism.html> on 4 March 2013.

³⁹⁹ New South Wales Department of Environment and Heritage, 'Sustainable tourism and visitation', downloaded from <http://www.environment.nsw.gov.au/parks/tourism.htm> on 11 March 2013.

⁴⁰⁰ D Duell, Chief Executive Officer, Spicers Group, Submission no. 8; Sub 14, Sunshine Coast Council; G Photinos, Manager, City Planning and Environment, Redland City Council, Public hearing transcript, Brisbane, 22 August 2012, p. 9.

For instance, we have Venman national park, and if we were allowed to have access for public thoroughfare through that area it would provide a magnificent connectivity for a trail through the whole of Redland city in the southern parts and the hinterland areas.

The Spicers Group expressed an interest in establishing trails between a number of its properties in the Scenic Rim area that would also traverse a number of tenures. When questioned, they indicated that they would be interested in the maintenance of those trails.⁴⁰²

The Sunshine Coast Council has also shown its interest in developing long-distance trails also with its 'Sunshine Coast Draft Recreation Trail Plan 2011'. This plan states that recreation trails are:⁴⁰³ provided for the primary purpose of recreational activities such as walking, horse riding and mountain bike riding. Recreation trails often traverse through a range of land tenures.

The Logan City Council has a similar plan, 'Recreation Trails 2010-2020', that focuses on building a strategy for identifying and building recreation trails. The plan outlines the benefits of trails, including the social and health benefits, the environmental and cultural benefits and the economic benefits. The social and health benefits include providing an avenue for improving physical and mental health and reducing health expenditure, as well as building community through connecting people and places. The environmental and cultural benefits may include providing opportunities for the community to experience natural and cultural environments; educating users about the environment; and increasing cultural awareness and appreciation. The economic benefits of developing trails can be derived from:⁴⁰⁴

- trail visitors spending money in towns and communities along trails
- generating tourism spending and supporting local businesses
- trail users spending money in preparation for their trail journeys and/or recreational activities
- generating employment opportunities through trail construction and maintenance.

In its plan, the Sunshine Coast Council identified a number of key issues relating to management of linear trails across multiple tenure types. These include:⁴⁰⁵

a) Multiple tenure

- complexity relating to differing primary management intent of the land tenures i.e. the primary purpose of national parks and forestry land is conservation and commercial harvesting respectively
- levels of service, maintenance and provision of safety
- infrastructure standards and signage
- trail standards and definitions by managing authorities

b) Management

- Consistent management of multiple tenure trails and ability to coordinate and implement trail development plans
- Access to trails by users, particularly commercial and large groups, varies depending on types of permits. Conditions of use may also vary between land managers.

⁴⁰¹ G Photinos, Manager, City Planning and Environment, Redland City Council, Public hearing transcript, Brisbane, 22 August 2012, p. 9.

⁴⁰² D Duell, Chief Executive Officer, Spicers Group, Public hearing transcript, Brisbane, 22 August 2012, p. 23.

⁴⁰³ Sunshine Coast Council, 'Sunshine Coast Draft Recreation Trail Plan 2011, downloaded on 30 January 2013 from http://www.sunshinecoast.qld.gov.au/addfiles/images/cr_ach/draft_rec_trail_plan.pdf, p. 7.

⁴⁰⁴ Logan City Council, 'Recreation Trails 2010-2020' downloaded on 30 January 2013 from http://www.logan.qld.gov.au/_data/assets/pdf_file/0006/6783/recreationtrailsstrategy2010-2020.pdf, p. 15.

⁴⁰⁵ Sunshine Coast Council, 'Sunshine Coast Draft Recreation Trail Plan 2011, downloaded on 30 January 2013 from http://www.sunshinecoast.qld.gov.au/addfiles/images/cr_ach/draft_rec_trail_plan.pdf, p. 15.

- Addressing private land owners' concerns
- Trail usage
- User group conflict may arise due to multi-use nature of trails and differing expectations of use.

6.11.1 Examples of walking trails crossing multiple tenures

The Australian Alps Walking Track travels approximately 650 kilometres from Canberra to Melbourne and passes through a number of national parks and crosses state boundaries between the ACT, NSW and Victoria. The track is managed by way of a cross-border co-operative management program established in 1986. Members of the management group include park and forest managers from the ACT, NSW and Victoria. Each state has responsibility for the sections of the track within their state borders.⁴⁰⁶

The Heysen walking trail runs 1,200 kilometres from Cape Jervis to Parachilna Gorge in South Australia and traverses various land tenure types such as Department of Environment and Heritage reserves, Forestry SA reserves, road reserves, private freehold and other tenures held by other government agencies. One of the challenges for the management of this track is that approximately 20 percent of the track, held under private land ownership, is closed during the annual fire danger season from November. Access to private land is guided by an agreement between the trail manager and the private land owner. This is a common approach across all Australian jurisdictions.⁴⁰⁷

Western Australia is known for some of its world-class tracks, including the Bibbulmun Track which is approximately 1000 kilometres in length and takes 50 to 60 days to walk. The Western Australian Government has developed the 'Western Australian Trails Strategy 2009 – 2015, which is *'a guideline for trails development, management, and programs'*.⁴⁰⁸ The strategy has been developed in consultation with the Department of Environment and Conservation and other groups and individuals, such as Tourism WA, WA Local Government Association, the Federation of Bushwalking Clubs in WA and the Bibbulmun Track and Munda Biddi Trail Foundations.⁴⁰⁹

The Western Australian Government also recognises the numerous benefits from the use of trails, including health, social, economic and community development.⁴¹⁰ However, it acknowledges that *'access to natural areas for trails is declining due to urban encroachment and competing land uses...Access to private land has also diminished'*⁴¹¹.

Additionally, the WA government has signalled that a key issue is governance of trails in terms of planning, design, construction, maintenance and coordination of trails use, which is dependent on a working relationship between multiple government agencies, private enterprise, the not-for-profit sector and club and community volunteers. In its strategy, the WA government states that its current governance structure has been relatively effective in managing trails in the state. The governance structure includes key government agencies and community user-groups and associations.⁴¹²

⁴⁰⁶ W Jarred, Queensland Parliamentary Service, 'Client information brief – land tenure regimes in national parks in Australia,' p. 28.

⁴⁰⁷ W Jarred, Queensland Parliamentary Service, 'Client information brief – land tenure regimes in national parks in Australia,' pp. 31, 34.

⁴⁰⁸ Government of Western Australia, Department of Sport and Recreation, 'Western Australian Trails Strategy 2009-2015', p. 4.

⁴⁰⁹ Ibid, p. 4.

⁴¹⁰ Ibid, p. 12.

⁴¹¹ Government of Western Australia, Department of Sport and Recreation, 'Western Australian Trails Strategy 2009-2015', p. 15.

⁴¹² Ibid, p. 15.

Queensland has a number of walking tracks through its protected areas estate, including its ten Great Walks that offer half day, full day and extended overnight adventures. The Fraser Island Great Walk for example is 90 kilometres long and takes approximately six to eight days to complete.⁴¹³

6.11.2 Right to roam

In the United Kingdom and New Zealand, legislation exists that provides for public access to public places. In the United Kingdom, the *Countryside and Rights of Way Act 2000* (UK) (CRoW) gives a right of access on foot for the purpose of open-air recreation.⁴¹⁴ The Act was interpreted progressively as issues, including trespassing and liability, needed to be addressed. The Act commenced in Wales in 2005 and maps showing accessible areas have now been produced. Local authorities or the National Park authority are responsible for maintaining access to access land. The rights apply to land called 'access land', which is common land (registered under the *Common Registration Act 1965*), land mapped as open country (mainly mountain, moor, heath or down) and any type of land offered by its owner for use as access land. The Act clearly states what activities are part of the rights of access, such as climbing, running, bird watching and picnicking, and those that are not, such as driving, riding a horse, camping, hunting etc. The Act also clearly details landowners' and occupiers' rights and responsibilities. For example, the Act states that there is no general right for landowners and occupiers to compensation for having access on their land, that local authorities or National Parks will provide stiles and gates on access land (a power, not a duty to do so) and that the main responsibility for keeping stiles and gates in working order rests with the landowner. Landowners or occupiers enter in management agreements with local authorities or National Parks.⁴¹⁵

In terms of occupiers' liability, under the *Occupiers' Liability Act 1957*, the occupier owes a duty of care towards people who are invited or permitted to be on his or her land.⁴¹⁶ However, the *Countryside and Rights of Way Act 2000*:⁴¹⁷

changes the law so occupiers will have no duty of care in respect of risks that arise from natural features, rivers, streams, ponds, cliffs, ditches, or misuse of walls, fences or gates on their land, unless they deliberately created the risk or recklessly allowed it to arise. In determining what duty of care is owed by the occupier in respect of access land, the following factors have to be taken into account:

- *The fact that the existence of the right of access ought not to place an undue financial or other burden on the occupier*
- *The importance of maintaining the character of the countryside, including historic or archaeological features.*
- *Any relevant guidance given in codes of conduct by Natural England or Countryside Council for Wales.*

The Countryside Council for Wales advises landowners that it is not compulsory to take out extra public liability insurance if they own land where access rights apply as *'the risk for people walking in open country are low and that although insurance premiums are increasing to the general increase in claims this is not happening due to the CRoW Act'*⁴¹⁸.

⁴¹³ Department of National Parks, Recreation, Sport and Racing, 'About Great Walks of Queensland', downloaded on 30 January 2012 from <http://www.nprsr.qld.gov.au/experiences/great-walks>.

⁴¹⁴ The Countryside Council for Wales, 'Countryside and Rights of Way Act 2000 – Frequently Asked Questions on the Access Provisions of the Countryside and Rights of Way Act,' October 2011, Introduction.

⁴¹⁵ The Countryside Council for Wales, 'Countryside and Rights of Way Act 2000 – Frequently Asked Questions on the Access Provisions of the Countryside and Rights of Way Act,' October 2011, pp. 1-6.

⁴¹⁶ The Countryside Council for Wales, 'Countryside and Rights of Way Act 2000 – Frequently Asked Questions on the Access Provisions of the Countryside and Rights of Way Act,' October 2011, p. 9.

⁴¹⁷ The Countryside Council for Wales, 'Countryside and Rights of Way Act 2000 – Frequently Asked Questions on the Access Provisions of the Countryside and Rights of Way Act,' October 2011, p. 9.

⁴¹⁸ The Countryside Council for Wales, 'Countryside and Rights of Way Act 2000 – Frequently Asked Questions on the Access Provisions of the Countryside and Rights of Way Act,' October 2011, p. 10.

In Scotland, the *Land Reform (Scotland) Act 2003* codified the ancient tradition of the right of universal access to land in Scotland. The Scottish rights are greater than those in England and Wales as the Scottish law codified the ancient tradition of right to roam shared with all of the Nordic countries.

In Australia, however, this right to roam concept has not been enacted into legislation in any Australian jurisdiction.⁴¹⁹

Committee comment:

The committee recognises the health, social and economic benefits of long-distance trails and understands that the establishment and ongoing management of long distance walking tracks relies heavily on the trail manager entering into access agreements with owners of freehold land. The committee also recognises the importance of ensuring a range of trails that can accommodate for the safety and expectations of different user groups.

The committee sees the benefit in the Queensland Government developing a trails strategy that addresses the key issues of multiple tenure, management and trail usage. Part of the trails strategy should consider matters relating to assigning responsibility for maintaining the walking tracks, the level of maintenance required and any compensation for works undertaken on behalf of the managing authority (i.e. local or state government).

The committee notes that a proposal to develop a trails strategy raises issues relating to the laws of trespassing and that some landholders may have objections to the establishment of a walking trail with public access on their property.

To address these concerns and overcome the decline in access to private land, the trails strategy should include guidelines on consultation and development agreements between trail managers and private land owners.

The committee believes that the success of implementing a trails strategy in Queensland will partly depend on establishing an effective governance structure, as well as coordinating with part of a wider network of local government, state agencies, the Federal Government and state and national trails organisations.

The committee believes that a whole-of-government approach is required to develop a management framework for walking trails in Queensland that addresses the opportunities available and the risks associated with establishing and managing walking trails.

Recommendation 41

The committee recommends that the Queensland Government coordinates the development of a whole-of-government management framework that addresses the opportunities available and the risks associated with establishing and managing walking trails.

⁴¹⁹ W Jarred, Queensland Parliamentary Service, 'Client information brief – land tenure regimes in national parks in Australia,' pp. 29, 32.

7 Ongoing and sustainable resource development

7.1 Background: Sustainable resource development

The most widely accepted definition of sustainability is that of the United Nations World Commission on Environment and Development: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.⁴²⁰

Sustainability is the process of improving the quality of human life within the limitations of the global environment. Although there is much disagreement about the precise meaning of sustainability, there appears to be consensus about three basic concepts being central to sustainable measures: living within certain limits of the earth’s capacity to maintain life; understanding the interconnections among economy, society, and environment; and maintaining a fair distribution of resources and opportunity for this generation and the next.⁴²¹

Within a business framework the point of interaction between the three ‘E’s’ (Economy, Environment and Equity) is the zone of ‘sustainability’, represented as a point sometimes called the ‘Triple Bottom Line’ - increasing profits, improving the planet and improving the lives of people. To an extent sustainable resource development can be measured using the triple bottom line which aims to measure the financial, social and environmental performance of a corporation over time.⁴²²

Resources are the backbone of every economy and provide two basic functions – raw materials for production of goods and services, and environmental services. A common classification of natural resources is:

- Non renewable and non recyclable resources such as fossil fuels
- Non renewable but recyclable resources such as minerals
- Quickly renewable resources such as fish
- Slowly renewable resources such as forests
- Environmental resources, such as air, water and soil
- Flow resources such as solar, wind, geothermal and tidal energy.⁴²³

The issue of depletion plays an important role in the use of non renewable and renewable natural resources. With renewable resources depletion occurs when extraction exceeds renewal rate. Environmental services include the sink function which assimilates and recycles waste products from production and consumption. Flow and environmental resources are not depleted and always exist. However environmental resources can be degraded by pollution and rendered useless.⁴²⁴

7.2 Natural resources management in Queensland

Queensland possesses a unique mix of land, water and biodiversity resources. A growing acceptance that these natural resources are finite and require effective management has led to the

⁴²⁰ World Commission on Environment and Development (WCED) 1987. *Our Common Future*. New York: Oxford University Press for the Brundtland Commission.

⁴²¹ Sustainable Resource Use and Sustainable Development: A Contradiction? Mensah, A. M., and Castro, L., C. Centre for Development Research, University of Bonn, November 2004, p. 5.

⁴²² The Triple Bottom Line: It Consists of Three P’s – Profit, People and Planet, *The Economist*, November 17, 2009, <http://www.Economist.com/node/14301663> (accessed 14 May 2013).

⁴²³ Sustainable Resource Use and Sustainable Development: A Contradiction? Mensah, A. M., and Castro, L., C. Centre for Development Research, University of Bonn, November 2004, p. 5.

⁴²⁴ *Ibid*, p. 6.

commissioning of periodic assessments and audits of these resource flows and stocks,⁴²⁵ and of the way in which they are conceptualised and managed.

In 2002, a national audit of Australia's land and resources identified that '*the principle resources that are affected by, and in turn affect natural resource management decisions, either individually or in an integrated manner,*' represent a '*national resources continuum*' made up of:

- land
- water
- biodiversity
- air
- the people making or affected by the decisions.⁴²⁶

Queensland's current, region-based approach to managing its 'natural resource continuum' was finalised in 2011, following a development process that included a series of scoping workshops, the crafting of a draft framework, and the incorporation of revisions informed by stakeholder input and public commentary. The resulting framework is largely in step with various frameworks that have preceded it, and which have in turn generally been shaped by the evolving incarnations of a federal government policy framework and initiatives first developed in 1999.⁴²⁷

At its recent Queensland Plan Summit, held on 10 May 2013 in Mackay, CSIRO scientist, Mr Stefan Hajkowicz addressed the summit and indicated that the demand for natural resources is one of the biggest challenges Queensland will face in the next 30 years and that the entire world will have to deal with declining availability and increased demand for minerals, food, water and energy resources. However, Mr Hajkowicz also foresaw opportunities in this space for Queensland as well. Suggesting that the more innovative we get about how we use resources, the more efficient that we can be, the better we can differentiate ourselves and the greater the opportunity to create positive outcomes.⁴²⁸

7.3 Queensland's natural resource assets: An overview

The second largest of the six states of the Commonwealth of Australia, Queensland occupies nearly a quarter of country (22.5%), extending from 10°S to 29°S in Australia's northeast and across a total area of 1,727,200km.⁴²⁹ The State's vast landscape is also very diverse, with climatic, terrain and other physical features varying widely.

More temperate southern regions give way to an arid interior and tropical north, and hot and dry coastal summers or frosty inland winters are often punctuated by cyclones, floods and other natural disasters. The mountains of the Great Dividing Range, which begin in the Torres Strait Islands and extend beyond the State's southern border, separate wide inland plains from coastal rivers, wetlands,

⁴²⁵ Australian Government, *Australia's Natural Resources, 1997-2002 and beyond*, National Land and Water Resources Audit, 2002. <http://www.anra.gov.au/topics/publications/final-report/summary.html> (accessed 13 March 2003).

⁴²⁶ Australian Government, 'Australia's Natural Resources Today,' *Australia's Natural Resources, 1997-2002 and beyond*, National Land and Water Resources Audit, 2002. <http://www.anra.gov.au/topics/publications/final-report/today.html> (accessed 13 March 2013).

⁴²⁷ Queensland Government, Department of Environment and Resource Management, *Queensland Regional Natural Resource Management Framework*, November 2011, p. 8-9. <http://www.ehp.qld.gov.au/land/natural-resource/pdf/qld-regional-nrm-framework.pdf> (accessed 18 March 2013).

⁴²⁸ ABC News Radio 612, Queensland Plan Summit Mackay, Comment from Stefan Hajkowicz, 10 May 2013, <http://www.abc.net.au/news/2013-05-10/mackay-summit/4681982?section=news> (accessed 10 May 2013)

⁴²⁹ Queensland Government, 'Introduction,' *State of the Environment Queensland 2011 Report*, State of Queensland, 2012, p. 2. <http://www.ehp.qld.gov.au/state-of-the-environment/report-2011/pdf/introduction.pdf> (accessed 20 March 2013); Queensland Government, Government Statistician's Office, *Queensland Past and Present: 100 Years of Statistics, 1896-1996*, 1998, p. 23.

sandy beaches, and complex reef systems; contained in a marine environment that extends from a 6900km mainland coastline and features 1165 offshore islands and cays.⁴³⁰

These myriad biological settings support some 783 recognised ecosystems, each with distinct vegetation, biodiversity and environmental attributes and encompassing both relatively pristine areas such as national parks; and also highly modified areas such as cities, mines and agricultural lands.⁴³¹

In line with the various frameworks employed in Australia and overseas, the State's natural material assets can be examined under four main categories:

- a) Raw materials (including biological resources)
- b) Environmental resources such as air, water and soil, which sustain life and produce biological resources.
- c) Flow resources (including solar radiation, tidal flows and other renewable energy sources)
- d) Space

7.3.1 Raw materials

Agriculture and mining have long been considered the backbone of the Queensland economy, capitalising on the State's rich endowments of plant and animal life, productive land, and mineral and fossil fuel deposits.⁴³² (See Appendix D and Appendix E which detail the Gross Value of Queensland's Primary Industries and Mineral Production in Queensland 2008-9 and 2009-10) respectively.

Pastoral industries have traditionally dominated the State's agricultural production, and in a country that is *'one of the world's most efficient producers of cattle and the world's largest exporter of beef'*, Queensland is the largest beef and veal producer.⁴³³ Sheep meat and wool production were established early in the State's history and over the past century Queensland's primary commercial resources also expanded to include pig, chicken, goat and kangaroo meat, together with various fibre and food livestock products such as wool, dairy products and eggs. Sugar was the State's first major agricultural crop, and continues to feature heavily in agricultural areas along the eastern coastal belt.⁴³⁴ In addition to pastoral industries, Queensland supports a wide range of field crops, which include cotton, grains and production pastures; Queensland also has considerable native forest and plantation forestry assets that support the conversion of a wide range of raw materials into forest and wood products and services.

Since the mid-1990s Queensland has been Australia's premier state for the production of fruit and vegetables for human consumption, and at times *'practically the sole Australian source of tropical fruit such as pineapples, pawpaws, passionfruits, avocados and custard apples'*.⁴³⁵ Today, a number of emerging industries are also capitalising on the harvest of contemporary markets for products such as olives, Asian exotic tropical fruits, bush foods, and nutraceuticals; and 'lifestyle horticulture' industries generating turf, flowers and various landscaping and nursery products.⁴³⁶ These and other crop

⁴³⁰ Queensland Government, 'Introduction,' State of the Environment Queensland 2011 Report, 2012, p. 2.

⁴³¹ Queensland Government, Government Statistician's Office, Queensland Past and Present: 100 Years of Statistics, 1896-1996, 1998, p.23-30.

⁴³² Queensland Government, Department of Tourism, Regional Development and Industry, Annual Report 2008, p. 16. <http://203.210.126.185/dsdweb/v4/apps/web/secure/docs/2993.pdf> (accessed 28 March 2013).

⁴³³ Meat and Livestock Australia, Australia's beef industry, 2012. <http://www.mla.com.au/About-the-red-meat-industry/Industry-overview/Cattle> (accessed 28 March 2013).

⁴³⁴ Queensland Government, Government Statistician's Office, Queensland Past and Present: 100 Years of Statistics, 1896-1996, 1998, p. 154.

⁴³⁵ Ibid, p. 152.

⁴³⁶ Growcom, *The Queensland horticulture industry*, 2010. <http://www.growcom.com.au/home/inner.asp?pageID=65> (accessed 25 March 2013); Queensland Government, Department of Agriculture, Fisheries and Forestry, *Lifestyle horticulture*, last updated 30 July 2012. http://www.daff.qld.gov.au/26_12879.htm (accessed 22 March 2013); Queensland Government, Department of Agriculture, Fisheries and Forestry, 'Construction of greenscape

'feedstocks', including plants such as sorghum, algae, sugar cane and many organic waste by-products from the industry, may also be converted into secondary bioproducts to help sustain an increasing demand for 'green' petrochemical and other products and biomass energy generation.

Queensland's more significant contribution to energy generation and manufacturing, however, comes through the harnessing of its significant petroleum and mineral resources. Australia is the world's largest coal exporter, and Queensland's rich endowment of high-quality coals – assessed at more than 33 billion tonnes of raw coal in-situ – has helped to ensure that it contributes the major share of these national exports.⁴³⁷

In contrast, the State's reserves of conventional crude oil and natural gas are relatively modest.⁴³⁸ However, its 'unconventional' petroleum reserves are significant and include major reserves of shale oil and coal seam gas, the latter of which has grown to be the leading industry sector in recent years and a significant energy source, supplying over 75 per cent of the Queensland gas market and constituting over 98 per cent of the State's proved and probable gas reserves.⁴³⁹

Minerals of 'major importance' include aluminium, copper, zinc, lead, gold and silver,⁴⁴⁰ many of which are concentrated in giant ore bodies in the major metals province of Northwest Queensland. This region is the largest producer of Australian copper and supplies around eight per cent of the world zinc supply from its Century zinc-lead silver mine.⁴⁴¹ In addition, the province's Cannington mine is currently the world's largest silver-lead producer; and reports have also identified the State's potential to become a significant producer of nickel,⁴⁴² scandium, yttrium, tin, tungsten, molybdenum, rhenium and uranium.⁴⁴³

7.3.2 Environmental resources

While historically the environment has been recognised as a resource that provides us with minerals, food, fibre, fuel and other raw materials; only recently has there been greater acknowledgement of our basic, life-sustaining ecosystems as assets in themselves; and the value they provide.⁴⁴⁴ The bodies of air, water and land that together constitute the building blocks of Queensland's biosphere together provide the essential ingredients that sustain life. Queensland's atmosphere is the basis of all metabolic processes and the degradation or alteration of this overarching resource base via pollution has implications for plant, animal and human health and productive capacity.

(landscaping)' *Lifestyle horticulture*, last reviewed 25 September 2012. http://www.daff.qld.gov.au/26_18309.htm (accessed 22 March 2013).

⁴³⁷ Queensland Government, Department of Mines and Energy, Queensland's World-class Coals: Mine Production and Developments, November 2007, p. 1. http://mines.industry.qld.gov.au/assets/coal-pdf/wcc_nov_07.pdf (accessed 25 March 2013).

⁴³⁸ Queensland contains most of the known oil shale resources in Australia.

⁴³⁹ Queensland Government, Department of Natural Resources and Mines, Queensland's petroleum – Exploration and development potential – May 2012. Last updated 19 June 2012. <http://mines.industry.qld.gov.au/mining/petroleum-exploration-development-potential.htm> (accessed 25 March 2013).

⁴⁴⁰ T Denaro, C Ramsden and D Brown, Queensland Minerals: A summary of major mineral resources, mines and projects, fourth edition, Queensland Department of Mines and Energy, State of Queensland 2007, p. 1. http://www.lgdi.net/resources/i/docs/11_qld_mineral_4th.pdf (accessed 22 March 2013).

⁴⁴¹ Denaro, Ramsden and Brown, Queensland Minerals: A summary of major mineral resources, mines and projects, 2007, p. 1.

⁴⁴² Lateric nickel-cobalt deposits are also located at Greenvale and Bell Creek, and in the Marlborough area (Queensland Resources Council, Queensland's minerals and energy, 2013. https://www.qrc.org.au/01_cms/details.asp?ID=3054 (accessed 25 March 2013).

⁴⁴³ Ibid; Queensland Government, Department of Natural Resources and Mines, Queensland's metalliferous and industrial minerals, Geological Survey of Queensland, 2011, p. 4. http://mines.industry.qld.gov.au/assets/minerals-pdf/metalliferous-industrial-min-2011_2.pdf (accessed 25 March 2013).

⁴⁴⁴ Queensland Government, 'Introduction,' State of the Environment Queensland 2011 Report, 2012, p. 2.

Queensland's aquatic systems encompass a broad range of natural assets including fresh and saltwater systems, one of the world's largest terminal lakes⁴⁴⁵ (Lake Eyre) and the world's largest coral reef (the Great Barrier Reef). Inland wetland systems⁴⁴⁶ in particular play an important role in the functioning of the whole ecosystem through their provision of services including nutrient recycling; water storage and flood regulation.

The State's land and soil resources include around 1,386 terrestrial ecosystems, all with distinct soil and vegetation properties that affect the nature and type of organic compounds and life-forms they support. These terrestrial assets host organisms that play a crucial role in food webs, as pollinators, and in the recycling, mulching and composting of organic matter in soils – all of which impinge on productive capacity and resource renewal.⁴⁴⁷

7.3.3 *Space*

The size and distribution of Queensland's population has a significant bearing on infrastructure development and resource use profiles. As of 30 June 2011, the estimated resident population for Queensland was 4,580,232. While around two-thirds of these residents live in the south east region, the State's settlement patterns are characterised largely by low population density and urban sprawl.⁴⁴⁸ With a state-wide average of 2.6 people per square kilometre, Queensland is Australia's most decentralised state.⁴⁴⁹

This population spread has contributed to Queensland having the second longest overall road length of all states and territories (just behind New South Wales),⁴⁵⁰ and played a role in private passenger vehicle transport continuing to outstrip walking, cycling and public transport journey options at a rate of around four to one ensuring a constant demand for state land to support expansion of the road network.⁴⁵¹

A trend towards increasing numbers of single and two person households in the State means the growth rate of the number of households is outpacing population growth. Australian homes have the largest average floor size in the world, and the proportion of households with 4 or more bedrooms also continues to rise with significant implications for the population's urban footprint and consumption of environmental space. These and other distributive and consumptive patterns pose a significant challenge to sustainability with flow-on effects for housing affordability, societal development and the environment more broadly.⁴⁵² (See Appendix F for a Summary of Area of Land Uses in Queensland).

⁴⁴⁵ Terminal, or endorheic watersheds and basins are contained water bodies that do not flow to external bodies or waters (such as rivers or oceans), but drain internally into permanent or seasonal lakes and swamps and equilibrate through evaporation.

⁴⁴⁶ Wetlands may be broadly defined as vegetated areas that are permanently or seasonally flooded, typically including lakes, swamps, marshes, springs, mangroves, mudflats and shallow seagrass beds (q150 p. 59).

⁴⁴⁷ Queensland Government, 'Animal Industries,' Business and industry portal, <http://www.business.qld.gov.au/industry/agriculture/agriculture/animal-industries> (accessed 25 March 2013).

⁴⁴⁸ Australian Bureau of Statistics, 3218.0 – Regional Population Growth, Australia, 2010-11, 30 March 2012. <http://www.abs.gov.au/ausstats/abs@.nsf/Products/3218.0~2010-11~Main+Features~Queensland#PARALINK3> (accessed 21 March 2013).

⁴⁴⁹ Queensland Government, Office of Economic and Statistical Research, Information Brief: Regional Population Growth: 2008-09, 30 March 2010. <http://www.oesr.qld.gov.au/products/briefs/pop-growth-reg-qld/reg-pop-growth-2008-09.pdf> (accessed 28 March 2013).

⁴⁵⁰ Australian Government, Department of Infrastructure and Transport, Bureau of Infrastructure, Yearbook 2012: Australian Infrastructure Statistics, July 2012, p. 43. http://www.bitre.gov.au/publications/2012/files/stats_002.pdf (accessed 11 March 2013).

⁴⁵¹ Ibid, p. 145.

⁴⁵² Queensland Government, 'State,' State of the Environment Queensland 2011 Report, 2012, p. 125; Queensland Government, South East Queensland Regional Plan, 2009-2031, July 2009, p. 1; 30. <http://www.dsdiq.qld.gov.au/resources/plan/seg/regional-plan-2009/seg-regional-plan-2009.pdf> (accessed 21 March 2013).

7.3.4 Flow (or renewable) resources

Queensland has vast, largely untapped flow resources which can be harnessed to provide low-pollution alternatives to conventional energy sources, playing an important role in the State's transition to a clean energy economy.⁴⁵³ The Queensland Government has stated that it *'supports climate adaptation measures which focus on building community resilience, protecting our ecosystems and enhancing industry productivity'*. Through its recognition of both industry productivity and the importance of protecting our ecosystems, the Government has highlighted the potentially significant role to be played by flow resources in managing the impacts of climate change as the State moves toward more sustainable resource development.

In 2010, a review of Queensland's solar energy potential concluded that *'the solar resource available at areas located inland from the coast are equivalent to some of the highest in the world'*, and that *'large scale solar power generation is technically and environmentally feasible'* and could provide many ongoing benefits including *'job creation, technology growth and diversification of markets'*.⁴⁵⁴

While there is currently only a small number of wind farms in operation, particular terrain and climatic features in certain areas of the State – including areas of the Atherton Tablelands, Toowoomba and the South Burnett region – have also been identified as having potential for wind energy development; and the completion of a number of proposed projects could stand to power an additional 680,000 homes and support around 1,100 jobs.⁴⁵⁵

The far south-west of the State has also been identified as a potential hub for geothermal development, and a significant project is currently underway to investigate alternative *'hot rocks'* locations that might expand the existing geothermal generation capacity provided by Queensland's sole geothermal plant at Birdsville – the only such plant in operation in Australia.⁴⁵⁶

The Department of Environment and Resource Management website provides information for proponents of renewable energy projects on how to apply for a lease or for a fee, to purchase an area of unallocated state land.⁴⁵⁷ The DERM website highlights all the usual constraints, processes and compliance requirements that must be dealt with in order to assess the most appropriate tenure and use of the land. The DERM website also outlines the processes for early lease renewals and conversion noting that most term leases are issued for no more than 30 years but that a term lease for up to 100 years may be considered in circumstances where the lease is for a:

- significant development, as defined in section 128 of the *Land Act*, or
- timber plantation, or
- development that involves existing improvements that require a high level of investment.⁴⁵⁸

⁴⁵³ The Climate Institute, *Clean Energy Jobs in Regional Australia: Snapshot Queensland*, 1 March 2011, pp. 1-2. http://www.climateinstitute.org.au/verve/_resources/cleanenergyjobssnapshot_queensland.pdf (accessed 22 March 2013).

⁴⁵⁴ Queensland Government, *Building large-scale solar in Queensland*, December 2010, p. 2. <http://library.parliament.qld.gov.au/Documents/LibDocs/E10/E101214MP03.PDF> (accessed 22 March 2013).

⁴⁵⁵ Clean Energy Council, *Clean Energy Council response to the Technical Paper: Identifying Technical Issues Relevant to Wind Farm Development in Queensland*, 2012, p. 2. Available for download at: <http://www.cleanenergycouncil.org.au/dms/cec/policy/submissions/CEC-Response-to-QLD-Technical-Paper-Wind-Farm-Issues/CEC%20Response%20to%20QLD%20Technical%20Paper%20Wind%20Farm%20Issues.pdf> (downloaded 22 March 2013).

⁴⁵⁶ Queensland Government, Department of Natural Resources and Mines, *Coastal Geothermal Energy Initiative, Geological Survey of Queensland*, June 2012. <http://mines.industry.qld.gov.au/assets/geoscience-pdf/coastalgeothermal.pdf> (accessed 22 March 2013).

⁴⁵⁷ Department of Energy and Water Supply: *Unallocated State Land* <http://www.cleanenergy.qld.gov.au/renewable-energy/unallocated-state-land.htm> accessed on 10 May 2013.

⁴⁵⁸ *Leases - Early Renewal and Conversion (Special Circumstances) PUX/901/335 Version 3 on* <http://www.cleanenergy.qld.gov.au/renewable-energy/unallocated-state-land.htm> accessed on 10 May 2013.

There is also the possibility of converting an existing term lease to a perpetual lease. However, currently, there is no legislative requirement that land leased for renewable energy purposes be issued in perpetuity, nor has there been any precedent for land being issued in perpetuity by a Minister declaring the lease to be in the interest of the state. Again, any native title issues must be addressed before the grant of a lease (refer to the *Native Title Act*).

Queensland also has a number of hydro-electric generating units located on the Barron Gorge on the Atherton Tablelands, Karreya and Koomboolomba on the Tully River, and the Somerset and Wivenhoe dams in the State's southeast. A number of smaller hydro generators operate on private and public dams throughout Queensland.⁴⁵⁹ (See Appendix G for a summary of Queensland's Renewable Energy Generation and Average Direct Returns 2008-2009 to 2010-2011).

Committee comment:

The committee supports sustainable resource development through the expansion of renewable energy resources. It is apparent that there are opportunities for land tenure mechanisms to provide greater tenure security and bankability for major capital infrastructure projects of this type.

Point of clarification:

The committee seeks clarification whether an amendment is required to existing legislation to achieve greater tenure security and bankability for major capital infrastructure projects in the sustainable resource industry.

Recommendation 42

The committee recommends that the Queensland Government introduces incentives for proponents of major renewable energy projects applying to lease or purchase unallocated state land.

7.4 Competing demands for land: A finite resource

Land is a finite resource providing a limited quantity of space and capacity for a variety of competing potential uses. Land is at the heart of the Queensland Government's Four Pillar Economy of tourism, agriculture, resources and construction. Land contains non renewable and non recyclable resources such as coal and gas, and other non renewable but recyclable mineral resources such as gold. However the land itself also produces quickly renewable resources such as fodder grasses essential to the agricultural sector and slowly renewable resources such as forests.

Yet, in order to sustain both rapid and slower renewable resources, it is necessary to manage and preserve the quality of the soil itself, in order to maintain its carrying capacity and high productive value. This will be essential if the Queensland Government is to achieve its goal of doubling the value of food production by 2040. In the words of Henry Agard Wallace in 1938:

*The social lesson of soil waste is no man has the right to destroy soil even if he does own it in fee simple. The soil requires a duty of man we have been slow to recognise.*⁴⁶⁰

The limited space available with the increasing pressures of human activity upon the land also affects the sustainability of the tourism sector, much of which is dependent upon the protection of the natural environment and the growing eco-tourism sector. In Queensland, one of our most important

⁴⁵⁹ Queensland Government, Department of Employment, Economic Development and Innovation, Queensland's mineral, petroleum and energy operations and resources, Map and information 2010.

⁴⁶⁰ Wallace, H. A. Forward to 'Soils and Men: 1938 Yearbook of Agriculture,' The United States Department of Agriculture. Gove Hambridge Edition 1938.

tourist attractions is the Great Barrier Reef and human activity on land adjacent to the reef impacts in a variety of ways that must also be considered when balancing the competing demands for land use and management.

While many environmental groups⁴⁶¹ expressed deep concern about the viability of balancing the tensions and competing demands for land, other groups such as the Queensland Resources Council acknowledged the prospect of concurrent agricultural, pastoral grazing, urban development, conservation, cultural heritage land usage but indicated a belief that with some exceptions many resource activities can co-exist and even compliment, other land uses.⁴⁶²

As Professor Ian Williamson notes, the pivotal tension between sustainable development is between the environment and the pressures of human activity.⁴⁶³ He then goes on to note that it is the system of recognizing, controlling and mediating rights, restrictions and responsibilities over land and resources that forms the fulcrum. Elsewhere Professor Williamson makes the point that the challenge of balancing these competing tensions in sophisticated decision making requires access to accurate and relevant information in a readily interactive form. In delivering this objective, information technology, spatial data infrastructures, multi-purpose cadastral systems and land information business systems play a critically important role. He notes that many modern societies still have some way to go before they will have the combination of legal, institutional, information technology and business system infrastructures required to support land administration for sustainable development.⁴⁶⁴

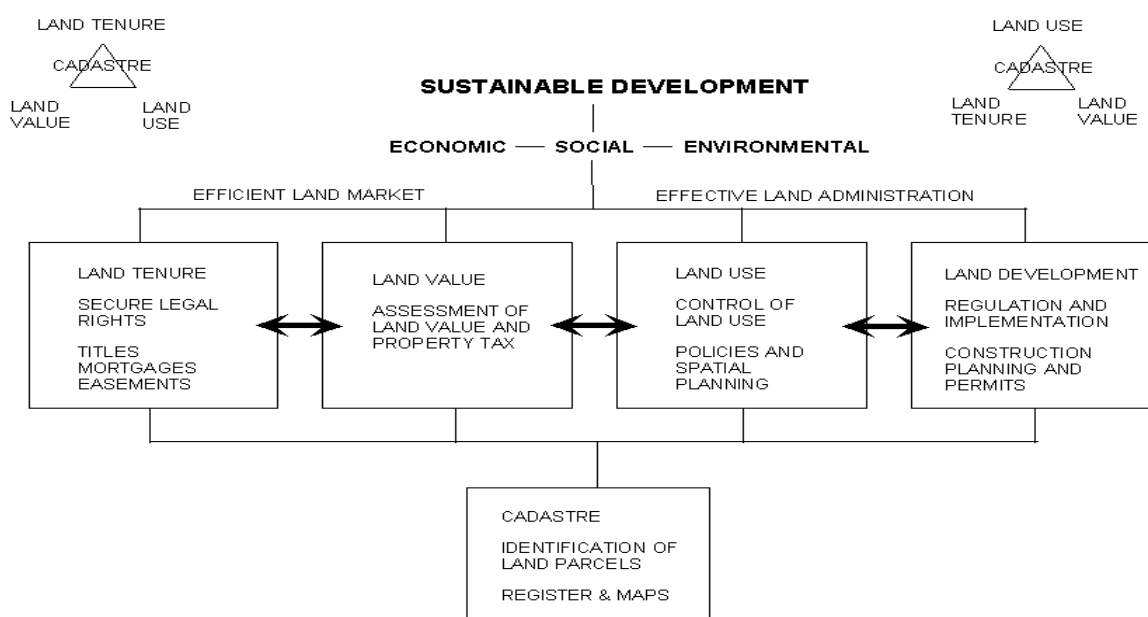
⁴⁶¹ Eg: Queensland Conservation Submission No 34 p.2, World Wildlife Fund Submission # 61 p.1 and Capricorn Conservation Council Submission No 79

⁴⁶² Submission 85 Andrew Barger, Queensland Resources Council, 3 August 2012, p.2

⁴⁶³ Williamson, I., Best Practices for Land Administration Systems in Developing Countries, International Conference on Land Policy Reform, 2000, p.7.

⁴⁶⁴ Ting, L. and Williamson, I. P Land Administration and Cadastral Trends: The Impact of the Changing Humankind-Land Relationship and Major Global Drivers. Technical Papers of UN-FIG International Conference on Land Tenure and Cadastral Infrastructures for Sustainable Development, Melbourne, Australia, 24-27 October, 252-275 (1999).

Figure 7: The land administration infrastructure supporting sustainable development⁴⁶⁵



7.4.1 The committee's experience during the inquiry process

Professor Ian Williamson maintains that in general land policy should precede and determine legal reform, which in turn should result in institutional reform and finally implementation, however he goes on to note the political difficulties associated with legal and institutional reform. Williamson notes that these difficulties generally result in functions and reforms occurring in parallel. Notwithstanding these challenges, Williamson argues that at the very least, reform of a land administration system should be undertaken by one cohesive management team or organisation within a jurisdiction. He notes that policy implementation is best undertaken within the organisation responsible for operationalizing the policy in order to avoid tension and management inefficiencies. Land reform policy development on the other hand requires political leadership which can and is best developed separately from the land administration system.⁴⁶⁶

As noted at the beginning of this report during the inquiry process, the committee faced a number of challenges in gathering evidence from Queensland Government departments. It was apparent at the outset that there is currently a fragmented division of responsibility between departments administering the tenure of various forms of state land. This was highlighted during the departmental briefings where the committee heard from five separate government departments and in one instance one government department sent representatives from two separate units:

- Department of Tourism, Major Events, Small Business and Commonwealth Games
- Department of Natural Resources and Mines
 - Land Management Use and Land and Indigenous Services
 - Mining and Petroleum Tenures
- Department of National Parks, Recreation, Sport and Racing
- Department of Environment and Heritage Protection
- Department of Agriculture, Fisheries and Forestry

⁴⁶⁵ Enemark, S. and Sevantal., H. 1999 Cadastres, land information systems and planning – Is decentralisation a significant key to sustainable development? *Technical Papers of UN-FIG International Conference on Land Tenure and Cadastral Infrastructures for Sustainable Development*. Melbourne, Australia, 24-27 October p. 252-275.

⁴⁶⁶ Williamson, I., Ibid. 2000, p. 9.

While the committee understands that each of these departments does and should have responsibility for land policy development and land use planning, management and implementation as it relates to its portfolio areas, the fragmentation of responsibility for the administration of tenure matters highlighted the need for a more coordinated approach to address and overcome the tensions which arise in circumstances where there is competition for land as a finite resource of the state.

Furthermore, it was only during the final stages of the Inquiry that the committee discovered a number of government policies relating directly to land tenure that had not been brought to the committee's attention by the relevant government department. Despite asking questions of various government departments directly relevant to the subject matter of the policies, the committee was not made aware of these policies. The committee notes that the policies are difficult to locate on the department's website and are not searchable by their titles but, rather, by their policy reference numbers, thus rendering the documents to a somewhat obscure status. As outlined earlier in this report the committee is also concerned that there are a number of policies with some apparent overlap, raising the question of why these policies are not combined making them easier to read and access.

Following on from Professor's Williamson's comments on the importance of combining all relevant system infrastructures that support land administration for sustainable development, the committee notes that the Deputy Premier announced on 2 May 2013 the establishment of the Government Land and Asset Management group (GLAM) which has been charged to audit all of the state's land.⁴⁶⁷ The Commission of Audit report recommended:⁴⁶⁸

a rationalisation of the government's extensive land holdings. It recognised that measures are urgently needed to ensure the efficient management of the state's property portfolio.

This has resulted in the establishment of GLAM to 'deliver enhanced economic and social outcomes from government property.'⁴⁶⁹

GLAM's approach to land management is in alignment with Professor Williamson's comments above as stated by the Deputy Premier:⁴⁷⁰

The group will provide a whole-of-government approach to land management and to the use of that land rather than the former disconnected approach, which not only created unnecessary debt but also failed to utilise the land portfolio to its full extent. The Government Land and Asset Management group, or GLAM as it has become known, will develop and implement a property and asset utilisation review to ensure real property based assets are identified, assessed and managed to their full potential for the benefit of the people of Queensland.

Committee comment:

The committee notes and supports the establishment of the Government Land and Asset Management group and its stated objective of providing a 'whole-of-government approach to land management and to the use of that land'. The committee believes this is an important step towards the reform of land tenure administration.

⁴⁶⁷ Record of Proceedings, Ministerial Statements, *Commission of Audit*, p. 1418 downloaded on 3 May 2013 from http://www.parliament.qld.gov.au/documents/hansard/2013/2013_05_02_DAILY.pdf.

⁴⁶⁸ Record of Proceedings, Ministerial Statements, *Commission of Audit*, p. 1418 downloaded on 3 May 2013 from http://www.parliament.qld.gov.au/documents/hansard/2013/2013_05_02_DAILY.pdf.

⁴⁶⁹ Record of Proceedings, Ministerial Statements, *Commission of Audit*, p. 1418 downloaded on 3 May 2013 from http://www.parliament.qld.gov.au/documents/hansard/2013/2013_05_02_DAILY.pdf.

⁴⁷⁰ Record of Proceedings, Ministerial Statements, *Commission of Audit*, p. 1418 downloaded on 3 May 2013 from http://www.parliament.qld.gov.au/documents/hansard/2013/2013_05_02_DAILY.pdf.

7.5 Surface and sub-surface tenure issues

The committee received a significant submission from the Surveying and Spatial Sciences Institute (SSSI).⁴⁷¹ The submission dealt with three important issues which highlight the importance of aligning mapping and between surface and subsurface tenures and the associated issue of integrating mining tenure records as administrative advices on titles. Over a number of years there has been considerable public comment on issues relating to subsidence and mine shafts, and information relating to these and how they affect land, not being publicly searchable or 'discoverable' as part of everyday property transactions which has potential impacts on current and future mining activity.

7.5.1 Abandoned Mine Shafts

In their submission the SSSI note that:

*Abandoned mines and mine shafts are a major safety concern for the public, as well as a significant liability for the mining companies and the State. For a number of years the "mines" part of DNRM has been in the process of rehabilitating these mine sites and capping mine shafts. This process is costing the State a significant amount of money, and it is understood that when shafts are capped they are located by surveyors and location plans, prepared as identification survey plans, are then stored by DNRM. These locations plans are not easily understood or accessed by the public. The public is largely unaware of the presence of a capped mine shaft on a property.*⁴⁷²

Since 1997, the Department of Mines has been undertaking a shaft capping program to safely cap shafts in residential areas (particularly Charters Towers and Gympie). In order to complete this work the shafts were located using Global Positioning Satellites (GPS) and the results were incorporated into a database maintained at the local level. Unfortunately not all capped shafts were located and it is no longer possible to identify with any certainty the location of all capped shafts. Where shafts have been located, DNRM are now capturing them on the survey plan data base.

However, as SSSI caution:

*The caps are strong however they do remain a potential hazard that all land holders need to be aware of. In the future caps may fail or shafts may subside as the voids below the shafts collapse. Land owners installing swimming pools, bores or developers building underground parking areas may find these buried treasures.All future owners and users of land need to know that a shaft has been capped on the land and the exact location of the shaft.*⁴⁷³

SSSI propose a legislative solution to address this issue along the lines of the provisions in ss. 74, 75 and 163 of the *Strategic Cropping Act 2011*. This fix would enable the presence of a shaft to be noted on the certificate of title by way of an administrative advice on the title acting as a "warning note" to inform a prospective purchaser that a capped shaft exists and indicate that further title searches are required to identify the location of the shaft. SSSI go on to highlight that the advantage of this proposal is that professions dealing in land, surveyors, lawyers, developers are used to the concept of an administrative advice being a warning device.

SSSI suggest that administrative responsibility for this activity best rests with DNRM as they already have the greatest amount of information about the location of capped mine shafts.⁴⁷⁴

⁴⁷¹ P Pozzi, Surveying and Spatial Sciences Institute, Paper on the Integration of Mining Tenure Records as administrative advices on titles, 7 May 2013.

⁴⁷² Ibid, p. 2.

⁴⁷³ SSSI paper, 2013, p. 3

⁴⁷⁴ Ibid, 2013, p. 3

7.5.2 *Areas of subsidence*

SSSI then raise a second and broader concern about the presence of an underlying mining tenure under land and the subsidence that is being caused by underground mining activity, particularly historical mining activity such as is evident in Collingwood Park near Ipswich. In essence the future stability of the pillars in the underground coal mines is questionable and that subsidence is likely to continue, forcing many families to leave their homes unless practical mitigation works can be completed.

SSSI note that the nature of subsurface mining titles, which are distinct from surface land tenure titles and activity are poorly understood by the public. In particular, many people do not realise that mining tenements are tenure blind and may be applicable to both leasehold and freehold land. It is further noted that many freeholders are unaware of the underground mining activity, either historical or current that has occurred or is occurring under their land.

There are hundreds of underground mines in Queensland, many of them present potential subsidence hazards for any subsequent land developments.

At the moment the Coal Mining Safety and Health Act (1999) requires extensive mine plans to be lodged with the Mines Inspectorate each year and also at the end of the mine's life.

However, SSSI highlight in their submission that regrettably the vast majority of these detailed plans which are prepared under the supervision of highly qualified and skilled surveyors are not incorporated into either the DNRM graphical database tenure maps or the DNRM graphical database, the Digital Cadastral Database. It is noted that there is free public access to all mining tenure information but that for the average person, this information could be better presented in the more immediate and relevant context of a warning note on a property title.

The enormous costs of repairing, compensating and mitigating the impacts of subsidence could be reduced by a similar proposal to that which SSSI put forward to deal with the issue of abandoned mine shafts. Specifically they suggest that the presence of underground mining activity should be noted on a certificate of title by means of an administrative advice to warn a prospective purchaser that below the surface of the land there has been or still is underground mining activity.

SSSI acknowledge that this would be a more onerous task than dealing with abandoned mine shafts but DNRM does have existing and ready knowledge of land affected by subsidence from historic mining activity, and while the preparation of administrative advices may still be a relatively simple task, it would undoubtedly be of a larger scale.

7.5.3 *Current and future mining activity*

The importance of improving the sophistication of coordination and accuracy of the current land administration system becomes very apparent when considering the scope of existing mining activity across Queensland and the projections for growth in the on shore gas industry across the state.

Queensland has significant reserves of crude oil and natural gas (including coal seam gas), and with the 'dramatic'⁴⁷⁵ advance of resource industry exploration techniques over the past 15 years, the annual number of wells drilled in the State has increased significantly, jumping from less than 100 wells drilled in the mid-1990s to nearly 800 wells drilled (778) in the 2009-10 financial year, of an estimated 814 wells spudded⁴⁷⁶ – the State's highest annual total to date.

⁴⁷⁵ AgForce Queensland, *Petroleum and gas exploration: Exploration laws explained*, 27 July 2008, p. 2. <http://www.agforceqld.org.au/file.php?id=22&open=yes> (accessed 12 March 2013).

⁴⁷⁶ Spudding is the drilling of a surface hole that initiates the well drilling process.

Growth in on shore gas development in particular has been at the forefront of this increase in annual drilling totals, having accounted for an overwhelming majority of new wells since having first surged ahead of conventional petroleum drilling at the beginning of this century.

The cumulative impact of these substantial and burgeoning programs of drilling has been a steady increase in the State's overall stock of petroleum-producing wells. Current figures reveal an estimated 2,316 wells were involved in the production of petroleum products in the six months to 30 June 2012 and of these, approximately half each were used in conventional petroleum production (oil and gas) (51.4%) and in the production of CSG (48.6%). While in development terms, the drilling of new CSG wells has recently outstripped conventional well development at a rate of around 20 to 1, many of these wells have been drilled for exploration and appraisal purposes and may not have been further developed for petroleum production. As of April 2012, the CSIRO reported that the overall stock of CSG wells alone – including exploration, appraisal and development wells – numbered around 4000 in total.⁴⁷⁷

This growth in resource extraction capabilities is reflected in Queensland's total upward-trending petroleum production and in the trend rise in on shore gas production in particular (see Appendix H).

These production levels are anticipated to continue to increase with the ongoing development of the state's on shore gas to liquefied natural gas (LNG) export industry, with a slated 16.3 million tonnes of LNG slated to be exported in 2014-2015. According to the CSIRO, a total of 40,000 coal seam gas wells are predicted to be drilled in Queensland over the next 20 years.⁴⁷⁸

During the inquiry, the committee heard evidence from a Partner at Bennett and Francis, Surveyors and Land, Development and Information Specialists relating to the lack of integration of land tenure information and mapping of the subsurface and surface and the potential issues this raises for surveyors, land administrators and land holders. This is particularly relevant with the development of the on shore gas industry in Queensland where both subsurface and surface tenure data sets are located in different information systems and sometimes in different government departments and are therefore not integrated. As Mr Pozzi states:⁴⁷⁹

One of the considerations should be in relation to subsurface tenure as well. There are some serious issues in relation to the integration of the subsurface and the surface. In the Department of Natural Resources and Mines now and in the previous Department of Mines we have had an issue, which is still continuing, where there is no linkage in some cases between the surface and the subsurface... and which is just going to exacerbate from here because there is not this integration between the datasets. It is probably not a ... direct tenure issue, but it comes back to that link between the mapping that is available for tenure and the way they tie together. I would implore you to consider the impacts of leasing and coal seam gas. Where the fracturing in seams extends under property, people are not understanding when it will become a problem.

Mr Pozzie goes on to clarify that the actual mining leases are defined by survey on the surface but that:

you will find if you look further that there are a whole series of plans that are backlogged, and the leases may have been submitted but the plans that go with those leases may not have been examined. There are requirements for down-hole mapping on seams and wells. All of this gets done, but one part gets stored over here and another part gets stored over here. There is no integration. There is no reason, with the computer mapping and

⁴⁷⁷ CSIRO, Coal seam gas developments – predicting impacts, April 2012.

⁴⁷⁸ CSIRO, Coal seam gas developments – predicting impacts, April 2012.

⁴⁷⁹ P Pozzi, Partner, Bennett and Francis, Public Hearing Transcript, Brisbane, p. 29.

technology we have now, for them to not be integrated and to build a complete model from surface right down through subsurface.

When he was asked to confirm what he meant by ‘over here and over there’ and how the information might be reintegrated Mr Pozzie stated:

I will probably have to go back to the historical arrangement, before we changed back to the Department of Natural Resources. I have to keep remembering where we have gone to. We were the Department of Environment and Resource Management and were also DEEDI, which had the mines taken into it. There are mines inspectorates, there are mining districts, there are files held in mining districts, there are plans that have been thrown out because storage space became limited and there are things stored in old sheds behind various places. It is all improving. The Department of Natural Resources has a fantastic database and I think Mines have their MERLIN system as well. But as I understand it, there has been a sort of protecting of each other’s turf.

The Surveying and Spatial Sciences Institute has identified the possibility of addressing these issues by offering a number of suggestions on how existing fragmented datasets can be integrated to link the existing surface and subsurface tenure maps maintained by different government agencies.⁴⁸⁰

Committee comment:

The committee notes the evidence provided which identifies options linking datasets to create an integrated subsurface and surface tenure map and considers a land tenure administrative reform of this nature is a critical tool for improved land use and land management, planning and decision making. The committee also notes that the implementation of such a program carries the potential risk of devaluation of land potentially affected by subsidence. However, on balance the committee considers that the broader public interest arguments and the ultimate benefits of increasing transparency of this important issue of health and public safety outweigh the risks of improving the management and access to information.

Recommendation 43

The committee recommends that the Queensland Government integrates all tenure data sets and maps to address surface and subsurface tenure issues as a priority.

7.6 Investment security for rail corporations

The committee heard evidence from one submitter, ATEC Rail Group Limited, regarding its concern about the inability of Queensland’s current land tenure system to provide either security or consistency for major rail infrastructure projects ‘due to vagaries in the current legislature’.⁴⁸¹ Specifically, the submitter states that:⁴⁸²

The State’s current position is that it is unable to provide any tenure at all, no matter how secure or insecure, over certain categories of land, for example, the ‘non-tidal boundary watercourse land (Section 13A of the Land Act 1994). So when attempting to negotiate a commercially acceptable and bankable outcome with the State Government, impediments occur when linear rail corridors traverse various watercourses throughout regional

⁴⁸⁰ Pozzi, P., Surveying and Spatial Sciences Institute, Paper on the Integration of Mining Tenure Records as administrative advices on titles. 7 May 2013.

⁴⁸¹ J Balassis, Managing Director, ATEC Rail Group Limited, Submission No. 75, p. 2.

⁴⁸² J Balassis, Managing Director, ATEC Rail Group Limited, Submission No. 75, p. 2.

Queensland, because the private sector is unable to produce security over numerous gaps in the corridor.

The submitter goes on to say that it is aware of recent project-specific legislation that has removed this impediment but that it does not feel that this is an adequate approach as other projects with similar issues will need the same type of legislation to be introduced and passed by Queensland Parliament. Given the capital required to deliver these projects, which are often sourced from the international marketplace, the submitter believes that stronger tenure certainty is essential for 'facilitating private sector investment in freight infrastructure.'⁴⁸³

Professor Ian Williamson supports the view that the legal framework underpinning land tenure is essential for ensuring that:⁴⁸⁴

land holders are secure in their occupation, they are not dispossessed without due process and compensation, and the land market can function with confidence and security.

Committee comment:

The committee understands that this particular land tenure issue does present an investment challenge for private operators sourcing finance because of the difficulties for corporations in dealing with Section 13A of the *Land Act 1994*.

The committee notes the project-specific legislation referred to by the submitter, the *Surat Basin Rail (Infrastructure Development and Management) Bill 2012*, as one approach to addressing this issue. One of the policy objectives of the Bill was to:⁴⁸⁵

enable the construction, maintenance and operation of watercourse crossings over non-tidal boundary watercourses traversed by the [Surat Basin Rail] corridor.

This exempts Surat Basin Rail from Section 13A of the *Land Act 1994* and resolves the issue that ATEC Rail Corporation currently faces.

The committee encourages the Queensland Government to consider the issue of tenure and investment security for corporations investing in major rail infrastructure projects and whether it is best to continue to be addressed on a project-specific basis or alternatively by a more general legislative amendment.

Recommendation 44

The committee recommends that the Queensland Government identifies its preferred approach to addressing the present tenure barriers to investment security for corporations investing in rail infrastructure projects.

⁴⁸³ J Balassis, Managing Director, ATEC Rail Group Limited, Submission No. 75, p. 2.

⁴⁸⁴ Ian Williamson, Best Practices for Land Administration Systems in Developing Countries, International Conference on Land Policy Reform, 2000, p.9.

⁴⁸⁵ Explanatory Notes, Surat Basin Rail (Infrastructure Development and Management) Bill 2012, p. 2.

Appendices

Appendix A – List of submitters

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

Appendices Inquiry into the Future and Continued Relevance of Government Land Tenure

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

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

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

Appendix B – Witnesses at the public briefings**Wednesday, 11 July 2012, Queensland Parliament House**

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

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

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

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

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

Appendix C – Witnesses at the public hearings**Wednesday, 22 August 2012, Queensland Parliament House, Brisbane**

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

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

Monday, 27 August 2012, Mackay

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

Tuesday, 28 August 2012, Cairns

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

Friday, 24 August 2012, Roma

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

Wednesday, 29 August 2012, Rockhampton

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

Thursday, 30 August 2012, Alpha

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

Witnesses
Ms Michelle Finger
Mr Steven Finger
Ms Paola Cassoni

Monday, 3 September 2012, Gold Coast

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

Appendix D – Queensland’s primary industries – Gross Value Product

Queensland’s primary industries - Gross Value Product,
2007–08 to 2012–13 and average for last five years

2007–08(b)	2008–09(b)	2009–10 (b)	2010–11(b)	2011–12(d)	2012 (Sept) (d)	Change Mar to Sept	Last 5-yr average	Difference from previous 5-yr average	
Commodity GVP (a)	\$m	\$m	\$m	\$m	\$m	\$m	%	\$m	%
Livestock									
<i>Livestock disposals</i>									
Cattle and calves	3315	3366	3229	3418	3281	3247	-1	3322	-2
Poultry	315	351	359	396	395	438	11	363	21
Pigs	234	242	231	221	212	204	-4	228	-11
Sheep and lambs	57	60	45	55	60	64	7	55	16
Other livestock	15	16	10	0	10	30	200	10	196
Kangaroos	41	0	15	39	20	12	-40	23	-48
Total livestock disposals	3976	4033	3889	4129	3978	3965	0	4001	-1
<i>Livestock products</i>									
Milk (all purpose)	252	293	296	258	239	230	-4	267	-14
Eggs	105	109	110	149	112	134	20	117	15
Wool	103	87	87	118	120	97	-19	103	-6
Total livestock products (e)	460	489	493	524	471	461	-2	487	-5
Total livestock	4436	4522	4382	4653	4449	4426	-1	4488	-1
Horticulture									
<i>Fruit and nuts</i>									
Bananas	354	390	448	283	360	500	39	367	36
Other fruit and nuts	259	126	257	129	232	198	-15	201	-1
Avocados	70	60	80	170	145	140	-3	105	33
Strawberries	83	87	145	74	150	125	-17	108	16
Mandarins	90	64	76	89	70	75	7	78	-4
Pineapples	55	88	70	50	68	71	4	66	7

Mangoes	79	83	72	55	70	70	0	72	-2
Macadamias	20	16	29	35	44	52	18	29	80
Table grapes	33	24	36	32	50	50	0	35	43
Apples	50	33	34	60	40	40	0	43	-8
Total fruit	1093	971	1247	978	1229	1321	8	1104	20

Vegetables

Tomatoes	210	188	145	230	266	243	-9	208	17
Other vegetables	222	212	200	262	257	223	-13	231	-3
Capsicums and chillies (f)	98	92	100	83	139	139	0	102	36
Beans	51	50	50	94	78	74	-5	65	14
Mushrooms	34	22	60	41	64	64	0	44	45
Potatoes	58	54	57	52	54	54	0	55	-2
Lettuce	66	71	65	64	54	54	0	64	-16
Sweet potatoes	55	44	55	53	56	52	-7	53	-1
Zucchini and button squash	39	49	45	33	43	42	-2	42	0
Melons (watermelon)	38	42	44	30	37	36	-3	38	-6
Sweet corn	27	18	30	36	36	36	0	29	23
Melons (rock and cantaloupe)	20	31	30	24	34	32	-6	28	16
Onions	25	28	25	35	25	25	0	28	-10
Carrots	21	22	25	14	24	24	0	21	14
Pumpkin	31	30	30	26	21	21	0	28	-24
Total vegetables	995	952	961	1077	1188	1119	-6	1035	8
Total fruit and vegetables	2088	1923	2208	2055	2417	2440	1	2138	14

Lifestyle horticulture production

Nurseries	723	788	912	912	867	889	3	840	6
Cut flowers	74	81	151	159	151	151	0	123	23
Turf	101	110	166	182	125	125	0	137	-9
Total lifestyle horticulture production	898	979	1229	1253	1143	1165	2	1100	6

Total horticulture	2986	2902	3437	3308	3560	3605	1	3239	11
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Other Crops

Other Field Crops

Sugar cane (g)	799	968	1425	940	1150	1200	4	1056	14
Cotton (raw) (h)	79	325	355	660	930	640	-31	470	36
Other crops (c)	392	355	255	79	113	216	91	239	-10
Total other crops	1270	1648	2035	1679	2193	2056	-6	1765	16

Cereal Grains

Wheat	353	536	265	302	334	574	72	358	60
Grain sorghum	637	356	155	320	291	429	47	352	22
Other cereal grains	5	81	89	111	39	190	387	65	192
Maize	60	60	37	136	46	55	20	68	-19
Barley	44	43	31	33	45	41	-9	39	4
Total cereal grains	1100	1075	577	902	755	1289	71	882	46

Total crops	5356	5625	6049	5889	6508	6950	7	5885	18
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Total agriculture	9792	10148	10431	10542	10957	11376	4	10374	10
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Fisheries (c) (i)

Commercial fishing

Crustaceans	161	161	166	151	164			161	
Molluscs	10	9	10	9	4			8	
Finfish	109	103	108	100	107			105	
Total commercial fishing	280	273	284	260	275	260	-5	274	-5

Other fishing and harvesting

Recreational fishing	0	0	73	73	73	73	0	73	0
Aquaculture	80	85	102	94	93	103	11	91	14

Total fisheries	360	358	459	427	441	436	-1	409	7
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Forestry									
Forestry and logging (c) (j)	185	162	171	187	189	175	-7	179	-2
Total primary industries (farm-gate)	10337	10668	11061	11156	11587	11987	3	10962	9
First-round processing value added (k)									
Meat processing (c)	936	1547	1492	1584	1526	1521	0	1417	7
Sugar processing (c)	336	406	722	550	672	680	1	537	27
Log sawmilling, timber dressing and plywood and veneer manufacturing (c)	321	334	353	386	390	361	-7	357	1
Fruit and vegetables processing (c)	205	166	190	177	208	210	1	189	11
Milk and cream processing (c)	138	155	156	136	126	121	-4	142	-15
Flour mill and feed processing (c)	205	87	47	73	61	105	71	95	10
Cotton ginning (c)	9	37	40	75	106	73	-31	54	36
Seafood processing (c)	26	54	69	64	66	66	-1	56	17
Total primary industries (first-round processing)	2176	2786	3069	3045	3155	3136	-1	2846	10
Total primary industries	12513	13454	14130	14201	14742	15124	3	13808	10

a) GVP is defined as the gross value of commodities produced. It is a measure of economic output and in this case, relates to the output of primary industry commercial operations only. The GVP is the value of recorded production at wholesale prices realised in the marketplace (e.g. cattle sold at saleyards, sugar cane at the mill door, fruit and vegetables at the wholesale market). It is derived by multiplying the output from each primary industry by the average wholesale price paid to producers.

b) ABS final estimates for 2010–11 unless otherwise indicated.

c) DAFF estimates.

- d) DAFF forecasts.
- e) Excludes minor commodities such as honey, beeswax and mohair.
- f) DAFF estimate does not include chillies.
- g) Gross value of sugar cane at mill door.
- h) Includes value of cottonseed and lint.
- i) Includes catches from both Commonwealth-managed fisheries (including Torres Strait, Gulf of Carpentaria and East Coast Tuna) and state-managed fisheries.
- j) Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) estimates.
- k) The forecasts for the value of first-stage processing in 2009–10 should not be compared with the previous years due to the change in value-added ratios.

Source: Queensland Government, Department of Agriculture, Fisheries and Forestry, *Queensland AgTrends 2012-13: Forecasts and trends in Queensland agricultural, fisheries and forestry production*, 2011, pp.14-16 (amended by the Queensland Parliamentary Library and Research Service).

Appendix E – Quantity and value of minerals produced in Queensland, 2008-09 and 2009-10

Type of mineral	Unit of Quantity	2009–10		2008–09	
		Quantity	Value	Quantity	Value
METALLIC MINERALS					
BAUXITE (total, of which)	Tonnes	17 889 697	368 493 657	17 415 489	230 917 798
Metallurgical	Tonnes	17 889 697	•	17 356 584	•
Alumina produced	Tonnes	n.a.	•	n.a.	•
Abrasive	Tonnes	•	•	58 905	•
Calcined product produced	Tonnes	•	•	48 007	•
COPPER CATHODE	Tonnes	•	•	12 405	90 192 311
Copper content	Tonnes	•	•	12 405	•
COPPER CONCENTRATE	Tonnes	973 412	1 800 990 798	1 347 515	2 307 843 131
Copper content	Tonnes	214 877	•	342 895	•
Gold content	Kilograms	1 615	•	4 466	•
Silver content	Kilograms	47 414	•	20 913	•
COPPER PRECIPITATE	Tonnes	675	1 077 630	•	•
Copper content	Tonnes	169	•	•	•
GOLD ALLUVIAL	Kilograms	56	2 076 098	51	1 916 759
Gold content	Kilograms	48	•	43	•
Silver content	Kilograms	5	•	5	•
GOLD BULLION	Kilograms	24 414	489 799 750	22 092	508 466 377
Gold content	Kilograms	11 509	•	13 584	•
Silver content	Kilograms	12 810	•	8 443	•
MAGNETITE	Tonnes	87 513	953 495	4 142	8 703
Iron oxide	Tonnes	55 502	•	1 582	•
MOLYBDENUM CONCENTRATE	Tonnes	•	•	25	23 832
Molybdenum	Tonnes	•	•	3	•
LEAD CONCENTRATE	Tonnes	574 974	1 833 862 319	665 171	1 434 216 818
Copper content	Tonnes	1 065	•	11	•
Gold content	Kilograms	19	•	11	•
Lead content	Tonnes	417 319	•	404 012	•
Silver content	Kilograms	1 370 596	•	1 305 649	•
Zinc content	Tonnes	175	•	2 978	•
SILVER ORE	Kilograms	•	•	5 419	3 212 185
Gold content	Kilograms	•	•	6	•
Silver content	Kilograms	•	•	5 413	•
TIN CONCENTRATE	Tonnes	3	57 434	•	7 412
Tin content	Tonnes	•	•	•	•

TITANIUM MINERALS (total, of which)					
Ilmenite (sub-total, of which)	Tonnes	322 503	19 058 832	210 066	19 097 090
Other and/or unspecified	Tonnes	322 503	•	210 066	
Rutile (sub-total, of which)	Tonnes	78 003	57 319 638	49 821	46 418 482
Other and/or unspecified	Tonnes	78 003	•	49 821	•
WOLFRAM CONCENTRATE	Tonnes	•	•	15	198 287
Tungsten content	Tonnes	•	•	9	•
ZINC CONCENTRATE	Tonnes	1 592 625	1 143 700 091	1 660 590	1 595 129 281
Lead content	Tonnes	9 697	•	6 670	•
Silver content	Kilograms	263 786	•	219 776	•
Zinc content	Tonnes	831 724	•	876 679	•
TOTAL METALLIC MINERALS			5 717 389 742		6 237 648 466
FUEL MINERALS					
Coal - black	Tonnes	205 619 027	22 779 051 204	190 552 968	41 497 522 898
Coal seam methane gas	Kilolitres	5 387 949 997	441 810 014	4 077 926 048	429 163 988
Crude oil	Kilolitres	432 896	158 566 602	549 831	492 935 116
Natural gas condensate	Kilolitres	93 373	51 680 677	191 059	86 306 983
Natural gas	Kilolitres	1 627 365 886	213 002 106	2 011 571 707	337 483 727
<i>Liquefied petroleum gases (b)</i>					
Butane	Kilolitres	77 029	25 557 529	99 931	3 480 592
Propane	Kilolitres	77 029	25 557 529	99 931	3 480 592
TOTAL FUEL MINERALS			23 695 225 661		42 850 373 896
OTHER NON-METALLIC MINERALS					
CLAYS					
Bentonite (total, of which)	Tonnes	103 055	13 887 463	96 145	11 672 362
Stockfeed	Tonnes	•	•	9 343	•
Other and/or unspecified	Tonnes	103 055	•	86 802	•
Kaolin (total, of which)	Tonnes	3 900	117 539	7 324	14 013
Other and/or unspecified	Tonnes	3 900	•	7 324	•
Structural Clays	Tonnes	1 111 964	2 681 923	1 000 549	3 650 359
Brick and paver clay and shale	Tonnes	849 751	•	643 980	•
Cement clay and shale	Tonnes	262 213	•	356 569	•
DIATOMITE (total, of which)	Tonnes	2 433	929 700	2 740	683 875
Absorbents	Tonnes	1 254	•	1 964	•
Other and/or unspecified	Tonnes	1179	•	776	•

DIMENSION STONE					
Basalt	Tonnes	•	•	297	7 105
Marble	Tonnes	1 298	935 574	6 537	1 119 633
Porphyry	Tonnes	•	•	4 000	20 000
Sandstone	Tonnes	48 395	4 570 575	67 053	3 367 001
Slate	Tonnes	14	10 500	•	•
Other and/or unspecified	Tonnes	3 235	22 500	30	5 000
FELDSPAR	Tonnes	•	•	2 379	333 060
Sodium feldspar	Tonnes	•	•	2 379	•
GEMS (B)					
Garnet				•	380
Opal			659 444	•	256 671
Other			17 438	•	168 624
Sapphire			307 881	•	318 992
Topaz			5 265	•	•
Zircon			9 017	•	4 890
GYPSUM (total, of which)	Tonnes	49 351	1 630 682	34 441	665 836
Agricultural	Tonnes	8 297	•	4 034	•
Other and/or unspecified	Tonnes	41 054	•	30 407	•
LIME SAND (total, of which)	Tonnes	2 876	71 891	11 629	145 740
Agricultural	Tonnes	•	•	1 505	•
Lime	Tonnes	2 876	•	10 124	•
LIMESTONE (total, of which)	Tonnes	3 431 381	37 906 330	3 048 306	32 732 944
Agricultural	Tonnes	5 737	•	36 384	•
Cement	Tonnes	1 774 646	•	1 983 100	•
Lime	Tonnes	797 081	•	456 132	•
Metallurgical flux	Tonnes	•	•	120 829	•
Other and/or unspecified	Tonnes	853 916	•	451 861	•
MAGNESIUM RICH MINERALS					
Dolomite (total, of which)	Tonnes	53 095	1 986 191	35 041	1 856 198
Agricultural	Tonnes	8 788	•	5 986	•
Other and/or unspecified	Tonnes	44 307	•	29 055	•
Magnesite (total, of which)	Tonnes	275 819	19 574 848	344 962	34 762 356
Raw	Tonnes	275 819	•	340 160	•
Other and/or unspecified	Tonnes	•	•	4 802	•
PEAT (total, of which)	Tonnes	856	38 905	349	27 050
Other and/or unspecified	Tonnes	856	•	349	•
PERLITE (total, of which)	Tonnes	6 616	1 152 776	7 649	1 425 346
Other and/or unspecified	Tonnes	6 616	•	7 649	•

PHOSPHATE RICH MINERALS	Tonnes	2 132 465	53 311 625	1 958 691	146 879 062
Apatite	Tonnes	•	•	1 572	•
Phosphate rock	Tonnes	2 132 465	•	1 957 119	•
SALT (total, of which)	Tonnes	92 158	13 726 000	150 000	18 656 338
Other and/or unspecified	Tonnes	92 158	•	150 000	•
SILICA (total, of which)	Tonnes	2 101 241	32 881 704	2 245 214	33 823 273
Lump (sub total, of which)	Tonnes	64 106	•	70 087	•
Flux	Tonnes	64 106	•	70 087	•
Sand (sub total of which)	Tonnes	2 037 135	•	2 175 127	•
Foundries	Tonnes	414 002	•	390 873	•
Glass	Tonnes	1 403 031	•	1 570 146	•
Other and/or unspecified	Tonnes	220 102	•	214 108	•
ZEOLITE (total, of which)	Tonnes	900	99 000	310	31 000
Other and/or unspecified	Tonnes	900	•	310	•
ZIRCON (total, of which)	Tonnes	69 712	61 954 189	45 254	49 831 341
Other and/or unspecified	Tonnes	69 712	•	45 254	•
TOTAL NON-METALLIC MINERALS			248 488 960		342 458 449
TOTAL ALL MINERALS			29 661 104 363		49 430 480 811

(a) Value at mine

(b) Value only collected for gemstones

Source: Queensland Government, Department of Natural Resources and Mines, *Queensland's metalliferous and industrial minerals*, Geological Survey of Queensland, 2011, pp. 53-55. http://mines.industry.qld.gov.au/assets/minerals-pdf/metalliferous-industrial-min-2011_2.pdf (accessed 25 March 2013).

Appendix F – Area of land uses**Area of land uses in Queensland, 1996-97**

Land Use Description	Total Extent ('000 ha)	Total Extent (%)
No Data	16.2	0.0
Nature conservation	6889.2	4.0
Other protected areas including indigenous uses	2507.7	1.5
Minimal use	9713.8	5.6
Livestock grazing	141505.9	82.0
Forestry	4322.0	2.5
Dryland agriculture	5285.4	3.1
Irrigated agriculture	380.3	0.2
Built environment	788.1	0.5
Water bodies not elsewhere classified	1238	0.7

Source: Australian Government, Australian Natural Resources Atlas, *Land Use – Land Use in Queensland*, last updated 25 May 2009. <http://www.anra.gov.au/topics/land/landuse/qld/index.html> (accessed 26 March 2013).

Appendix G – Renewable energy generation and average direct returns

Queensland's renewable energy generation and average direct returns, 2008-09 to 2010-11

Renewable fuels	2008-09		2009-10		2010-11	
	GWh	Value (\$m) (a)	GWh	Value (\$m)	GWh	Value (\$m)
Bagasse, wood	1,472.10	50.05	1,466.50	48.83	823.70	25.51
Biogas	116.40	3.96	81.50	2.71	97.00	3.00
Wind	27.30	0.93	30.90	1.03	27.30	0.85
Hydro	820.20	27.89	572.80	19.07	965.60	29.90
Solar PV (a)	na	-	68.50	2.28	212.10	6.57
Total renewable (b)	2,436.30	82.83	2,220.80	73.95	2,126.40	65.85

(a) Value is derived by multiplying the annual energy generation output of each renewable sector by the average wholesale annual price per unit of energy.

(b) State disaggregation of solar data before 2009-10 is unavailable

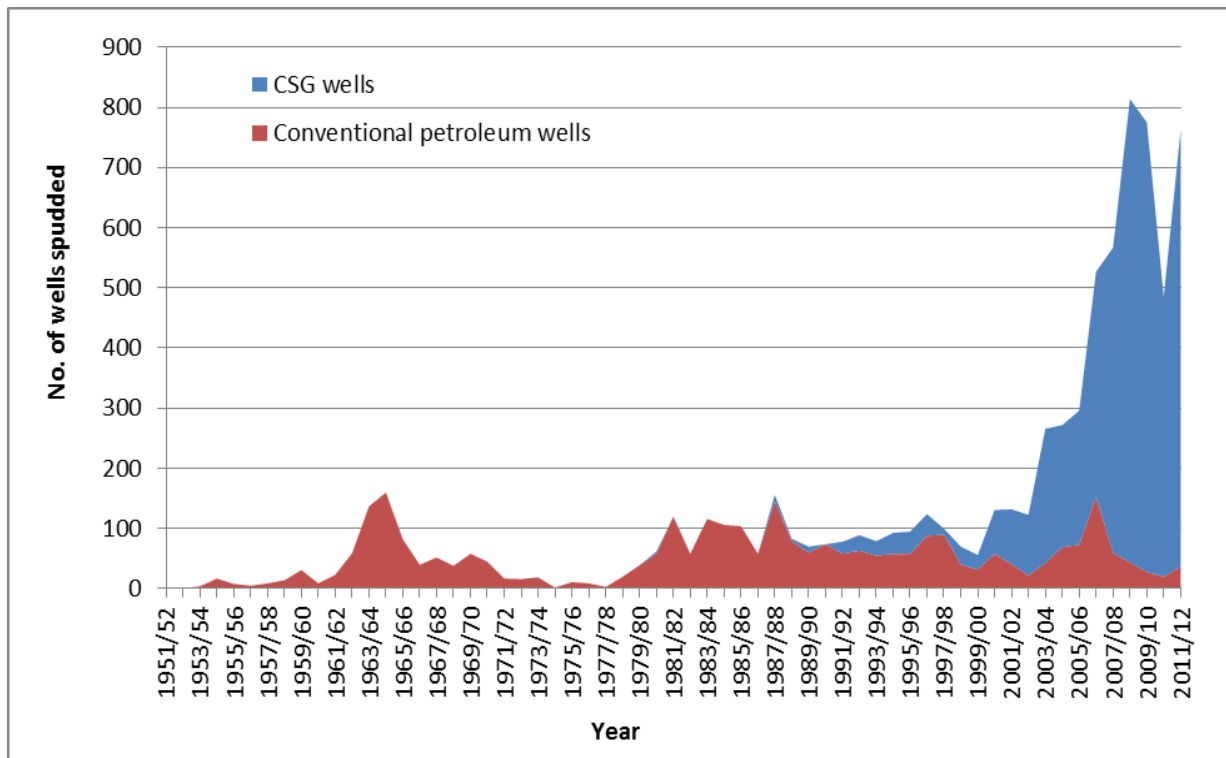
(c) Includes geothermal which is not identified for confidentiality reasons.

Compiled by the Queensland Parliamentary Library and Research Service using data sourced from the Australian Bureau of Resources and Energy Economics' 2012 Australian energy statistics data (Table O4, Australian electricity generation, by fuel type, physical units) and average annual price information from the Australian Energy Market Operator

Appendix H – Historical petroleum well development

In 2010-11 drilling programs were significantly affected by the impacts of severe flooding in January.

Total wells spudded, 1951-52 to 2011-12



Compiled by the Queensland Parliamentary Library and Research Service. Data sourced from the Queensland Government, Department of Natural Resources and Mining, Geological Survey of Queensland, 2012 (figures provided 13 March 2013). NB: In 2010-11 drilling programs were significantly affected by the impacts of severe flooding in January.