AGRICULTURE AND ENVIRONMENT COMMITTEE

Members present:

Mr JP Kelly MP (Chair)
Mrs J Gilbert MP
Mr R Katter MP
Mr JE Madden MP
Mr LL Millar MP
Mr PT Weir MP

Staff present:

Mr R Hansen (Research Director)
Mr P Douglas (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO THE LAND AND OTHER LEGISLATION AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 15 FEBRUARY 2017

Brisbane

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Committee met at 10.13 am

CHAIR: Good morning. We will recommence this public hearing of the Agriculture and Environment Committee. I am the chair, Joe Kelly, member for Greenslopes. I would now like to call representatives of the Department of Natural Resources and Mines.

BARKER, Ms Mirranie, Manager, Land Policy, Department of Natural Resources and Mines

DANN, Ms Liz, Executive Director, Titles Registry, Department of Natural Resources and Mines

HINRICHSEN, Mr Lyall, Executive Director, Land and Mines Policy, Department of Natural Resources and Mines

SPENCER, Ms Helen, Acting Director, Land Policy, Department of Natural Resources and Mines

VIDAS, Ms Marie, Manager, Titles Practices and Standards, Department of Natural Resources and Mines

CHAIR: I invite each of you to start by stating your full name and your title for Hansard, please.

Mr Hinrichsen: I am Lyall Hinrichsen. I am the Executive Director for Land and Mines Policy.

Ms Spencer: I am Helen Spencer. I am acting Director of Land Policy in the Department of Natural Resources and Mines.

Ms Dann: I am Liz Dann. I am the Registrar of Titles.

Ms Vidas: Marie Vidas, Manager, Titles Practices and Standards.

Ms Barker: Mirranie Barker, Manager, Land Policy.

CHAIR: Thank you. I would invite you to make an opening statement and then we will move to questions. Is there only one person who wants to make a statement?

Ms Spencer: There will be a couple of us. Thank you for the opportunity today. We may just address the issues that were raised by the stakeholders that have met you today and I will take any questions after that. I will hand over to Liz first.

Ms Dann: Good morning. As I said, my name is Liz Dann. I am the Queensland Registrar of Titles. I would like to thank the Queensland Law Society for their comments. I will just be addressing the comments that they made. I will pass over to the others to comment on the LGAQ and the AgForce comments.

As always, the Queensland Law Society's contribution is valued and much appreciated. We do have a very positive and close working relationship with them. The Law Society's comments regarding the eligibility to deposit a priority notice are noted. However, I would suggest that their proposed alternative words would actually limit the circumstances in which a priority notice can be used and limit some potentially completely legitimate uses of the priority notice. For example, someone may wish to deposit a priority notice for an intended administrative advice giving notice of the appointment of a guardianship under the guardianship and administrators legislation, or they may wish to deposit one for a caveat where an interest in land is claimed but evidence of the interest is for the court to determine not for the Registrar to determine. There may be a voluntary agreement concerning a freehold farm property between a father and mother and their children. That again would not necessarily be an equitable or an actual interest in land but they may wish to deposit a priority notice. While I understand where the Law Society is coming from, I think that would actually limit some entirely legitimate uses of a priority notice.

In drafting the words of the provision as 'it can be deposited by or for a person who is or will be a party to an instrument', the Office of the Parliamentary Counsel was completely aware of the need to ensure that an appropriate requirement was placed on the person depositing the notice and it was not left open to simply anyone with a bit of a will or a might or an aspiration. 'Is' or 'will be' is quite a clear requirement—to actually have some sort of interest but not necessarily as complete as an equitable or actual interest in terms of the way the Law Society was suggesting.

In a similar vein, while the sections currently in the Land Title Act against depositing a second or further settlement notice on the same basis have not been replicated for priority notices, I suggest that the potential for mischievous or for vexatious use is unlikely to increase because of that. Basically, if a person is going to misuse the provisions of the Land Title Act they will. Having specific words in the legislation will not guard against misuse in a mischievous or a vexatious way. There are various ways to currently do it with settlement notices—and I am not going to go into them because that would obviously be letting the cat out of the bag—but if someone is going to use something mischievously they can use the words as they stand now for a settlement notice. Even though we have had settlement notices for the last 20 years, I am not aware of any instances where we have been told that they have been misused mischievously or vexatiously. We actually get more than 70,000 of these things a year so it is not a small number. That is in contrast to the far more serious proposition of actually lodging a caveat over a property. I am aware of instances where people have misused those provisions vexatiously and that prohibition against second or further caveats on the same grounds actually remains in the legislation. The whole caveat system is a far more serious and more important tool than a priority notice, which is a much more minor tool, if you like. Both the caveats and the priority notices have that overriding safeguard against vexatious uses, where a person can actually apply to the court to have the notice removed and can claim compensation against the person who lodged or deposited the caveat or notice mischievously. There is that overriding requirement. Even caveats themselves do not actually need an equitable or actual interest to be lodged; they only need to assert an interest. Putting that requirement on a priority notice—which is, if you like, a lesser tool—seems a little bit like extending what we were trying to achieve with a priority notice.

One of the comments that was made was that Queensland has had priority notices for some 20 years, why didn't all the jurisdictions just adopt Queensland's priority settlement notices—call them priority notices if you like. If you can imagine getting all the jurisdictions around a table and trying to agree to the most appropriate provisions for a new priority notice, it would be a very difficult proposition to suggest Queensland's is the best, even though I might think that. We also need to look at it in terms of our experience over the 20 years we have been using it. It was written 20 years ago. It can be updated. There are things that we can add to it to make it even better than it was, plus all the other jurisdictions have their comments and their experience to add too. We believe that the priority notice provisions we have, while different from our settlement notices in some minor ways, are probably better than our settlement notices because we have actually moved on. That is where I am coming from in terms of the comments of the Law Society.

CHAIR: Would anybody else like to make an opening statement?

Ms Spencer: I will respond to the submissions by the Local Government Association of Queensland and AgForce. We thank both AgForce and the LGAQ for their submissions. They are largely supportive of the majority of the amendments. I note that LGAQ has raised some concerns about the ability of trustees, which is mainly local governments, to resign without conditional restriction and that this will actually undermine the relationship between the state and local governments. This was not the intent of the legislation. We have certainly taken those views on board. LGAQ has specifically recommended that the provisions be deleted where the minister may accept a resignation where the resignation is in the interests of the state. The department welcomes the LGAQ's proposed amendments and we have had some further conversations with Mr Hannan and hope to continue to do so.

In relation to the submission by Ms Hewitt and AgForce, I want to clarify how the rolling lease regime works. The proposed amendments will have no impact on the number of times a rolling term lease may be extended or rolled over and does not change any existing lessee rights regarding lease terms or security of tenure. The changes to the Land Act confirm the original intent that a rolling term lease can only be extended once within the current term of a lease. Essentially, most leases are about 30 years in length. A lessee can apply within the last 20 years of that term. If you have a lease coming into its 11th year, the lessee can apply to the department to roll over that lease. The rolling or the extending does not actually start from that point. You do not lose the residual term of that lease. You will keep the next 20 years. The rollover actually occurs after the original length of that term. Ostensibly they should have tenure security for the next 50 years. What would happen is you would have the 30-year lease, you would roll it over at any time in the last 20 years, again for another

30-year term, and once you move into that next rollover, that next term of the lease, you then go into another rollover period and apply again. That was the original intent of the original legislation and we are just clarifying that you can only roll over once in each particular term.

CHAIR: Are there any further statements?

Mr Hinrichsen: Mr Chair, we are happy to take the committee's questions.

CHAIR: Thank you. I might pick up on that last point. I can understand AgForce's concern for their membership and, from a financial perspective, why a longer term is always going to be superior, particularly when dealing with financial institutions. Based on the numbers you were giving me there, if I have a 30-year lease, at year 11 I can apply for an extension of another 30 years which would effectively then grant me another 49 years of leasing.

Ms Spencer: Correct.

CHAIR: The original lease would expire at year 30. Would I then have to wait until year 41 to apply for yet another extension and I could only do that once during that second term of the lease?

Ms Spencer: That's correct.

CHAIR: Basically, within each term I can then apply once and once only for an extension. I could not, say, apply for another 30 years at year 11 and then apply, say, at year 25 for even another 30 to take me out to effectively 90 years?

Ms Spencer: Yes. It rolls. You have your original term and then you can roll again for that same length again and then apply within that next term. There are exceptional circumstances where you can apply early, but again it is once a term.

CHAIR: If you choose to you can give yourself 49 years of certainty in each lease?

Ms Spencer: Yes.

Mr Hinrichsen: That is assuming a 30-year lease. They do vary. Just to make that point clear. It is within the last 20 years. If you had only a five year lease, day 1 is within the last 20 years. You could apply basically on that first day of that new term.

Mrs GILBERT: You would just get another five.

Mr Hinrichsen: You would get then another five that would commence on the day after the expiry. You would effectively have then five plus five.

Mr MILLAR: What is the rationale behind the change? Why are you changing it?

Ms Spencer: It was just to clarify in the legislation that original policy intent when the rolling lease regime was introduced. It was only meant to be, as it is described, a rolling term lease, at each expiry date the lease would roll over.

Mr MILLAR: Have you found any problems, any issues, which is why you have to make this change? Can you give me some circumstances of what has happened before and why you have to change now? Give me some circumstances.

Ms Spencer: It is merely a clarification of the original intent of the law. The law was explicit, in saying that the rolling term lease would not actually commence until the end of the original term, but it was not explicit to say that meant that there would be one application per term.

Mr MILLAR: What was happening now is having no impact? If someone wants to do it early on their choosing, because they may have the right financial circumstances to be able to do it, their lender is quite happy for them to move in this direction, they have the funds available, aren't you taking away the choice of the time when someone has the ability and the financial suitability to be able to roll that lease over by dictating you can only do it once at a certain time?

Ms Spencer: It is a 20-year period.

Mr MILLAR: But they might be going through great cattle prices right now, things are looking good, I have been able to pay back my loans, I have been able to get ahead, my current bank manager is very happy with me, I am in a better position now to be able to roll over that lease rather than it being dictated that I have to roll over that lease at a certain time when I might be in drought, cattle prices might have dropped; do you see where the issue is here?

Ms Spencer: I am not sure I do.

Mr Hinrichsen: Maybe I could assist. The application to roll over is a fairly nominal amount. It is not that you are paying upfront for a future 30-year term. The lease is still subject to annual rental charges. The issue that this is addressing is to stop backing up multiple—twice, thrice, four, five—terms of rollovers being applied for. Fundamentally that changes the nature of a lease. These were

rolling term leases and basically it meant that you could get another term but apply for that early, so within 20 years. There was no intent of the legislation as it is now to turn a 30-year lease into a 60-year lease or a 90-year lease or a 120-year lease by having multiples of those terms preapproved. Quite simply to do so would start to impact on rights like native title where the existing provisions clearly do not offend native title if it is a lease that is on the same terms as the pre-existing lease. To start changing the terms of that—effectively turning a term lease of five years or 30 years, as the case might be, into something longer term—is beyond the intent of the original legislation. It is about providing certainty that you will be able to continue those rights, not expanding the rights to give, if you like, an upgraded security. Upgrading security and freeholding, for example, is still able to occur. A holder of a term lease can still make application to freehold if they are looking for more security, but they do need to address native title as part of that process to get that greater security.

Mr MILLAR: I understand what you are saying there, but are we also taking away the security and the tenure for the grazier? They are the ones operating an operation, which is sometimes multimillion dollars worth of operation. They are looking for security as well. Are we really addressing their issues? You heard previously what AgForce said that it got no rationale whatsoever as to why this needed to change, so there are obviously some concerns from the agricultural sector—the broadacre agricultural sector—about what is actually happening with clause 11. Would you agree?

Ms Spencer: There is no change to the policy intent of 2014. As Lyall has explained, this is purely just clarifying that the lease continues to roll. The lease does not get any longer as that affects native title rights and interests; it just continues to roll at the end of each term. The law says currently that once an application is made in an approved form the minister must approve that rollover, so security of tenure is there and continues to be there.

Mr MILLAR: Just going to amendment of 13A relating to land adjacent to non-tidal boundary watercourses and non-tidal lakes owned by the state, why does there need to be a change there from the current way things operate?

Mr Hinrichsen: There are areas where the bed and banks of a watercourse may be adjacent to, say, a council park but currently there is no tenure or right for the council to apply management over those areas. Quite often there are recreational areas. I guess one example that came to our attention is an area referred to as Green Patch up on the Mulgrave River. The surveyed, if you like, bed and banks only cover part of that current recreational reserve, so it became a potential liability for the council in providing services and making sure that that recreational area, which has existed for many years, could be appropriately managed in that they could erect signage and they could take action if there was any inappropriate activities happening in that area. It is simply to allow coexistence of a trusteeship over a reserve with bed and banks of a watercourse.

Mr MADDEN: Ms Dann, with regard to priority notices, have other states introduced priority notices already under this new national scheme that we have?

Ms Dann: Some of them already have—New South Wales, Victoria and I think South Australia has already as well. What Matthew Raven said was quite correct: they are all new. It has really only been within the last 12 months.

Ms Vidas: Tasmania has had them for years.

Ms Dann: Tasmania has had them for quite a while actually.

Mr MADDEN: There have been no problems experienced with them?

Ms Dann: Not to date, no, because we do talk very regularly and no-one has raised an issue with any of them.

Mr MADDEN: The next question is with regard to the issue of trusteeship, and I understand that we are talking about nearly all the Crown land that council occupy such as roads and reserves. Is this a real threat that they may withdraw their trusteeship of council controlled roads and water reserves or is it just a possibility?

Ms Spencer: Essentially we have about 18,000 reserves and local governments are the trustees for about 90 per cent of them. One of the examples that we had faced in this instance when we were looking at these clarifying amendments was that there were some cemeteries that were run by small community groups or individual trustees and they were the ones that did not have the capability or some of them had died actually, so they are probably buried in that cemetery.

Mr MADDEN: Probably showgrounds as well.

Ms Spencer: That is exactly right—show societies, art societies, Lions clubs and the like that make up that 10 per cent of lessees. There has been a shift towards these facilities moving to local governments as the chair had noted in his electorate and what we were looking to achieve was making sure that that transition between those individual trustees and the move to local governments was smooth.

Mr MADDEN: Of course this happened when the HIH collapse took place. A lot of councils took over showgrounds and they encountered a great deal of difficulty in doing so. With regard to clause 11 relating to section 164C, my understanding is this: if I have a rolling term lease and it is for 30 years, I have to wait until I am within the last 20 years to apply for an extension for the next term.

Ms Spencer: Correct.

Mr MADDEN: Is there any real harm done if the lessee could apply from the first day of the lease? Instead of waiting 10 years, is there any real problem if they could apply from the first day of the lease?

Ms Spencer: That was a policy position that was taken during the development of those rolling lease terms, not something that we have contemplated with this amendment bill. The general process along the renewal process has been that in, say, the last 10 per cent of a lease or the last now 20 years of a lease you can apply for an extension or a renewal. There are exceptional circumstances provisions that can apply.

Mr MADDEN: That is quite an arbitrary thing, isn't it, the 20 years? It does not really relate to anything, does it? It is just a convenient time period.

Ms Spencer: Yes.

Mr MADDEN: To answer my question, there really would not be any harm done if they could apply within the first 10-year period? It is not breaching any policy or anything.

Ms Spencer: No, it is not something that we have contemplated. The law at the moment says 20 years. We have about 2,500 of these rolling term leases and 1,800 of them have been rolled over at this particular point. Once the rest of those leases come up into their last end of their term, they can then apply.

Mr MADDEN: Thanks very much.

Mrs GILBERT: Ms Dann, when you were giving your opening statement you were talking about the priority notice and the caveats and you were saying that the caveats are more serious than the priority notice. Could you just explain what each one of those actually are?

Ms Dann: Marie, can I ask you if you can give me a hand on that?

Ms Vidas: Yes, I will try to assist with that one. Because we have a system of registered title and the registered owner has indefeasibility—the holder of any registered interest has indefeasibility which pretty much means that nobody can challenge them unless they have been fraudulent themselves—in order to allow people that have some other interest in the land, for example under an agreement or under a trust as a beneficiary of a trust and many other circumstances such as there might be a court order in their favour, to allow them to go to court if necessary and get the court to adjudicate on their rights as against the registered owner the mechanism of a caveat has been introduced in every Torrens title jurisdiction. A caveat can be lodged by a person claiming an interest. Nobody knows whether they have an interest until the court decides and that will freeze the register. It will not allow any other dealings with the land to be registered.

In Queensland the caveat lapses after three months—I think Matthew Raven from the Queensland Law Society mentioned that—and there is actually a mechanism whereby the owner can serve a notice which forces the caveator to go to court in an even shorter period. There are controls against misusing the caveat system and a person who improperly lodges a caveat is liable to pay compensation to anyone who has suffered loss. It really is the main mechanism in the Torrens system of registered title to enable other legal interests or equitable interests to be resolved. A settlement notice, which is being replaced by a priority notice, as Matthew also said earlier, was introduced when Queensland began to phase out certificates of title because people held on to their certificate of title to show they were the owner. Really it is the electronic register which shows they are the owner, but it was a way of ensuring that if you had bought a property or you had one under contract no-one could lodge something which prevented you from achieving your registered title. It is a very useful mechanism. Mortgagees have used them and now we are extending it to leases and all sorts of other dealings. It does not have built into it the expectation that the next step after lodging one is to go to court to have the court adjudicate your rights. It is sort of reserving your place in the register until your document gets lodged, so it is usually not contentious.

Ms Dann: In fact, a caveat usurps a priority notice in effect.

Ms Vidas: Yes, a caveat overrides.

Ms Dann: Yes, overrides it.

Mr WEIR: Helen, we were talking about the renewal of the rolling leases and twice you have said apart from exceptional circumstances where it will not be granted. What is an exceptional circumstance? What does that cover?

Ms Spencer: The department has an operational policy that describes the exceptional circumstances. I do not have it on hand, but I can certainly provide that information to you.

CHAIR: You can take that one on notice.

Mr WEIR: Yes, I would be interested. I understand that in your reply to AgForce you said that in relation to tenure neither the existing rolling term leases or the proposed amendments would prevent a lessee from applying to convert a rolling term lease to a freehold tenure. As Ms Hewitt said and as you yourself have said, that is virtually all covered by native title so there would be little or no ability to freehold those leases. Would that be right?

Ms Barker: Some do get freeholded. So far I think to date since about 2014 11 have because they had their native title resolved. Really you resolve through another mechanism, so it depends. Native title is complex.

Mr Hinrichsen: It is rare.

Ms Barker: Yes, it is rare but it can occur.

CHAIR: There being no further questions, I thank you very much for appearing here today. I now declare this hearing of the Agriculture and Environment Committee closed. Thank you very much.

Committee adjourned at 10.44 am