

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

INQUIRY INTO PASTORAL LEASES IN WESTERN AUSTRALIA

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 20 NOVEMBER 2013**

SESSION ONE

Members

**Hon Liz Behjat (Chairman)
Hon Darren West (Deputy Chairman)
Hon Nigel Hallett
Hon Jacqui Boydell
Hon Amber-Jade Sanderson**

Hearing commenced at 9.08 am

Mr MICHAEL BRADFORD,
Acting Director General, Department of Lands, sworn and examined:

Mr KAREL ERINGA,
Manager, Pastoral Lease, Department of Lands, sworn and examined:

Ms SANDRA ECKERT,
General Counsel, Department of Lands, sworn and examined:

The CHAIRMAN: Good morning, ladies and gentlemen. I would like to declare this hearing of the Standing Committee on Public Administration open. My name is Liz Behjat and I am the chair of this committee. My fellow committee members are Hon Amber-Jade Sanderson and Hon Darren West; our advisory officer Dr Julia Lawrinson; and Hon Nigel Hallett and Hon Jacqui Boydell. Before we start, there are some formalities that we need to go through. Will everybody be sworn in as a witness this morning?

Mr Bradford: Yes, that would be my intention.

The CHAIRMAN: On behalf of the committee, I welcome you to the meeting. Before we begin I will ask you to take either an oath or an affirmation.

[Witnesses took the oath.]

The CHAIRMAN: You will have signed a document entitled “Information for Witnesses”. Have you all read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, could you please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your evidence is finalised, it should not be made public. I remind you that publication or disclosure of the uncorrected transcript of evidence may constitute contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

You are obviously aware of the terms of reference of the inquiry and the things that we are looking into. Perhaps the best way to start this off is for you to give the committee an update of the status of the lease renewal process.

Mr Bradford: The department is proceeding with the lease renewal. This is the first time that pastoral leases have been renewed. In all previous processes, when it got close to the renewal date, there was a change of legislation that extended the timeframe. This is the first time in over 100 years that the leases will have to be renewed en masse, so it is a novel process on one level. The department is proceeding on the basis that the leases need to be renewed on 1 July 2015 on materially the same terms and conditions as currently exist. The draft lease was prepared on that

basis, taking into account the need to ensure that a new lease does not trigger a future act process under the native title legislation and to ensure that the current rights and obligations are preserved. Since sending out the draft lease, on which we have had a significant amount of constructive feedback and a number of meetings with PGA in particular, the PGA has a different view that the lease should be issued on exactly the same terms and conditions that currently exist. We are currently working through a consultation process that I think will deliver an outcome that ensures that the needs of the government, and the interests of the PGA and the pastoralists are met, and we are currently working through that process.

The CHAIRMAN: Who was originally consulted when the draft lease that is currently out there for consultation was put together?

Mr Bradford: I will give a brief introduction because I have been with the Department of Lands since only 1 July, and then I will ask Sandra to take over. That draft lease has been prepared over the past couple of years. I understand that it took as its basis the existing lease conditions and a number of other matters that were brought together. I am aware that it was provided to the Pastoral Lands Board on at least two occasions. I will ask Sandra to fill in some more detail, if that is okay.

Ms Eckert: That is essentially correct. The document was worked up on the basis of what was in the old Land Act, which has been repealed, what is in the Land Administration Act. It was worked up internally and having regard to legal advice and that sort of thing. It was presented to the Pastoral Lands Board twice and then put out for consultation earlier in the year. That was the first point of call in terms of going externally. It was put out as a document to talk about, which then helps people to focus in on the issues. The document was prepared internally as a draft and then referred to the board that is responsible for giving advice to the minister, and it was provided externally for consultation. At this point, the consultation has been with the pastoralists and then the intention is that it goes more broadly after that.

[9.15 am]

The CHAIRMAN: Do you think that it has been sufficiently conveyed to the Pastoral Lands Board, the PGA and the pastoralists involved that this was just a draft paper for consultation and discussion? My fellow committee members and I got the impression from when we went out to speak to people that it was almost presented to them as the fait accompli—there might have been a “draft” watermark across it—and that they would be signing that and that was it. Would you like to make comment in that regard?

Mr Bradford: The letter that went out with the draft lease indicated it was a draft and we were seeking feedback. It also indicated, if I recall, the basis on which it was drafted and that there was potentially limited opportunity to make significant changes because of the possibility of invoking a future act under native title. Having said that, it did say it was a draft for feedback, and we asked for feedback. There is no doubt that we could have communicated the process much better. That occurred very early on, around 11 or 12 July. The department was newly formed and the 2015 lease renewal project had not been resourced as well as it should have been. We are now addressing that issue. There is no doubt that we could have communicated that more clearly and effectively, and I will take responsibility for that. We are now getting back into that and certainly the discussions with the PGA are more constructive.

The CHAIRMAN: For the fullness of our transcripts and evidence, could we be given a copy of the letter sent out with the draft lease, if that is possible? You may not have that with you today but if you are prepared to give a copy of the letter to the committee, we could take that on notice.

Mr Bradford: Absolutely.

The CHAIRMAN: I will call that supplementary information A1. We understand that the termination provisions of the draft lease are being reviewed at the moment. The committee has some concern that the previous termination provisions lacked procedural fairness, and that some of

them regarding animal welfare in particular seemed to penalise pastoralists above and beyond what already exists in legislation. Can you tell us if any preliminary reassessment of those provisions has been made?

Mr Bradford: That was an area of significant feedback and it is very clear from that and our assessment that some of those provisions need to be significantly amended or taken out all together, and that will be in any future draft document that goes out. That was the feedback from a number of parties.

Ms Eckert: I agree with the acting director general. I will not go into the reasons but there was reasoning behind including them —

The CHAIRMAN: It would actually be good if you did go into the reasoning.

Ms Eckert: There are probably three categories of termination provisions. The first one is around the non-payment of rent, which reflects what is in the existing lease. The second one is around the termination for what I call bankruptcy liquidation administration receivership. As the acting director general indicated, there is probably some room for revisiting that one for a number of reasons. It was put in there because it is very common in normal commercial leases. It is not an overarching philosophy but one of the things about the lease was to try to modernise it and bring it into the twenty-first century, and termination for a tenant going bankrupt is quite common for a normal commercial lease. Having said that, as a result of some of the comments that have come in, one provision in the Land Administration Act that we missed contemplated the ability for leases that were under receivership and that sort of thing to be transferred to somebody else as a purchaser. Even with the normal Land Administration Act leases that have provisions around termination for bankruptcy and liquidation and that kind of thing, it is an event of last resort because quite often in those situations receivers come in, negotiate a purchaser, and the lease remains on foot even though there is not a receiver in there, and it then gets transferred. These are provisions of last resort. As I said, there is a provision in the LAA that contemplates that these would be allowed to continue with a receiver and that sort of thing in place. In that respect, I acknowledge that the draft went too far. There have been instances—this is getting very technical and I apologise for that—where leases have been disclaimed by a trustee in bankruptcy or a liquidator, which means that under commonwealth legislation they escheat to the Crown, which is an old concept and very uncertain, particularly around what that means if there is an existing mortgage on the property. In some situations there have been existing mortgages. We have had disclaimers of a pastoral lease some years ago and other crown leases as well. These provisions were not just dreamed up out of the blue but were based on some examples that we had. The difficulty is that if we cannot terminate the lease, there is an issue about whether that mortgage continues in place. If the state does something to improve the lease or put the lease back out on the market and get some money in for the sale of it, does the mortgagee get first right to the money? We acknowledge that the provisions around the bankruptcy termination receivership were, to some extent, inconsistent with what was in the LAA. There is another residual issue around disclaimers of leases by liquidators and what the state can do to protect ultimately its position when the liquidator has walked away from it, which means the lessee has walked away from it, but what that means for any existing mortgages we are not quite sure and the commonwealth legislation is not clear. That is borne out of a couple of examples; it is not just theoretical. There are not huge numbers but I have been in the department for about 10 or 12 years and I have seen a couple of them. We took the opportunity to take heed of lessons learnt.

The other category is around the animal welfare issue. It was borne out of lessons learnt within the last 10 to 12 years since I have been in the department where a lease had significant animal welfare issue on it, but under the terms of the LAA the minister had no ability to call the lessee to account because the Animal Welfare Act is the responsibility of the RSPCA. In that situation charges were laid and ultimately dropped. I am not sure of the reason for that but they can be dropped for all sorts of reasons. At the time I will say more generally that the industry—obviously not the whole of the

industry—had an expectation that the minister, as the landlord, would be able to do something, but he had no powers to do anything. The fundamental purpose of the pastoral lease is pastoralism and the raising and grazing of animals. Based on that experience it was considered that the minister needed to have some power if there were significant animal welfare issues. The provision around animal welfare was very carefully considered and crafted. Again, I will go into a little bit of detail so that it is in the transcript for you to go back and look at the detail in the fullness of time. The thinking was that it would not be based on just a successful prosecution, because you can have significant animal welfare issues that might not lead to successful prosecution. The prosecution might be withdrawn because the RSPCA may not have the funds, it may get thrown out on a technicality or whatever, or the RSPCA may have different priorities in terms of where it puts its focus of prosecuting. There are also other powers that it has under the Animal Welfare Act to order certain things to be done; do not quote me on this but I think it is for things like destroying stock or ordering the provision of food and water and that sort of thing, so they are quite significant regulatory powers of the RSPCA. The provision around the animal welfare issue was not because the minister thought there were animal welfare issues, but by reference to an objective standard under the Animal Welfare Act. Admittedly, looking at the drafting, it is perhaps not quite as tight as intended, but it was intended that a formal action be taken under the Animal Welfare Act, whether it was the commencement of the prosecution, the issue of one of these orders, or various other powers that the RSPCA had. The idea was that the minister could not be capricious in terms of exercising his power, and that it was actually by reference to the objective standard of the agency responsible for the administration of the Animal Welfare Act. It tried to address concerns that the pastoralists would understandably have that it was not just that the minister thought it was an animal welfare issue so he would take the lease off the pastoralist, but that if there were significant concerns that precipitated action under the Animal Welfare Act that the minister might have some powers in relation to the management of the lease.

The CHAIRMAN: You say “some powers”. From our understanding the only power was termination. Surely one would think that is like taking a baseball-bat approach. If we are talking about a good relationship between a landlord and a tenant, for instance—if that is how you want to view what pastoralists are—one would think that in any sort of negotiation like that there are provisions for a warning system or a three-strikes provision or something like that, but you seem to want to go for the home run and termination. Has any consideration been given to perhaps softening that approach?

Ms Eckert: Yes, but we have not quite worked that through. In response to the comments that have come through, and in anticipation of one of the recent meetings with the PGA, we identified areas that we thought might be of concern and started to see what we might do. Yes, consideration has been given to it; we have not got to the point of the detail yet.

Mr Bradford: It is fair to say that those provisions will be substantially rewritten or changed altogether. You asked a question about procedural fairness. Although it is not stated in the lease explicitly, the lease relies on the forfeiture provisions under the Land Administration Act, which have a series of check points and ultimately an appeal to the Governor.

The CHAIRMAN: And yet that is not in the lease.

Mr Bradford: No, but intention of the lease is that if termination is to be contemplated under the lease —

The CHAIRMAN: One of the other things we have heard is that the reason for the vast change of this lease from being a two-page document that it currently is to almost the “bible” of the draft pastoral lease that it has become, is that it will be a one-stop shop so that anyone involved in the pastoralists industry can look at it and know all of the terms and conditions. Why would you then say that that will not be going into this lease, and that it is intended but not stated? Will you state some things and not others again or —

[9.30 am]

Ms Eckert: None of that is in the LAA. Other than the statement of section 104, what is in the LAA remains in the LAA and is not repeated in the lease. That was done purposely so that if there were any changes to the LAA, they operated from whenever they became operative so if you did not have a lease that stated what the LAA is now and then later have amendments to the lease that would change it, then you would have two inconsistencies.

The CHAIRMAN: Moving on to another topic with regards to the Native Title Act, we are aware that it places conditions on leases. One of the things we have heard about during our gathering of evidence is diversification permits. They are attached to a person rather than a lease, which seems to us to be quite extraordinary; is that because there is a problem that if a diversification permit is attached to a lease, you are going to trigger future act provisions under the Native Title Act? Is that the case, and can you come up with a solution for a better way?

Ms Eckert: In fact, Madam Chair, they attach to the lessee.

The CHAIRMAN: I said the person.

Ms Eckert: Yes. An administrative mechanism is in place that when there is a change of lessee, if the new lessee wants to continue with the permit it is virtually almost reissued as a right. The rangelands reform process —

The CHAIRMAN: Do the pastoralists know that? I do not think they do.

Ms Eckert: I suspect the ones who have permits and have sold their pastoral leases know that.

The CHAIRMAN: I think I might disagree with that given the evidence that we have taken and the time we have spent with pastoralists, because that seems to be one of the major issues. They have a lot of difficulties obtaining a diversification permit, which is a subject we want to talk about, because they cannot get their water licence until they get their shire licence but the shire will not give them a shire licence until they get a water licence. There needs to be better management of the process. Without looking at exactly every transcript from our hearings, I think virtually every pastoralist mentioned that as a problem—they could not offer their lease for sale and say that it comes with a diversification permit.

Mr Bradford: Madam Chair, the diversification permit process is under the LAA. It is the responsibility of the Pastoral Lands Board to issue diversification permits. I understand that in recent times, the Pastoral Lands Board has taken a more liberal approach to issuing diversification permits than it has taken in the past, which has been deliberate. My understanding is that about 70 diversification permits have been issued. Certainly in recent times, I am not aware of one that has not been approved. I will ask Karel to comment specifically on the diversification process.

Mr Eringa: I think there are about 70 active permits. From memory, over the years something like 180 permits have been approved. The permits are a fairly light instrument that are intended to be easy to get.

The CHAIRMAN: Easy to get?

Mr Eringa: Easy to obtain in terms of procedures under the Native Title Act; for instance, the lesser process of notification applies rather than the process of consultation in terms of the permits. In issuing permits, the Pastoral Lands Board has to be satisfied that a number of significant pieces of legislation have been complied with. They include the Soil and Land Conservation Act, the Conservation and Land Management Act —

Ms Eckert: The Environmental Protection Act, the Agriculture and Related Resources Protection Act, which is probably now the Biosecurity and Agriculture Management Act, the Environmental Protection Act, the Soil and Land Conservation Act and the Wildlife Conservation Act and any

other written law relating to environmental conservation, which is applicable to the land under the lease.

Mr Eringa: In order for the board to be satisfied that those processes have been followed, it communicates with the other agencies, which might have their own processes in place. A number of years ago it was identified that some of the processes that interacted with each other created cycles whereby a person goes from one place to another and one agency cannot issue a permit or licence until the other agency has issued theirs. The water licence is not one of the acts that is mentioned in section 117. It is not one of the pieces of legislation that the Pastoral Lands Board has to be satisfied with under legislation. That is a bit different. But for clearing permits for native vegetation, for instance, the board does have to be satisfied that the provisions of the Environmental Protection Act and the Conservation and Land Management Act have been met. A number of years ago—I think it was about four or five years ago—quite a few pastoralists indicated that the system was not working as well as they would have liked, because even though the piece of paper involved with obtaining a diversification permit from the Pastoral Lands Board is a relatively straightforward and short piece of paper, doing multiple pieces of paperwork at the same time was causing problems. At that point, the Pastoral Lands Board reviewed its processes and decided to issue permits, for instance, subject to a lessee obtaining a water licence. Rather than waiting for a lessee to be given a water licence, which has previously been the case, the practice is to issue the permits subject to a water licence being obtained. It has taken a number of ancillary pieces of legislation and permits as far as it can go. The process has been simplified with a view to eliminating some of the cycles that were occurring. In my opinion, in the four or five years that I have been involved in the process, the process has been simplified a great deal with a number of the cycles being eliminated. Some cycles still exist for specific pieces of legislation. For instance, with permits under the EP Act, the board cannot act until it has clear advice from the Environmental Protection Authority. That is not something we have been able to change.

The second question was about permits being linked to the lessee rather than the lease. The rangelands reform process that was instigated some four years ago by the Department of Regional Development and Lands looked at a number of options for tenure reform to decide how to create more certainty, create third party investment in pastoral activities and create an environment that is more conducive to conducting a business in general terms. At that point, consideration was given to whether the permits could be reviewed so that they attach to the lease rather than the lessee.

Ms Eckert: That is a proposal for an even more streamlined way of allowing them to be transferred to a new lessee when there is a change of the lease; so basically giving statutory effect to the administrative processes that are done at the moment.

The CHAIRMAN: And work is being done on that at the moment?

Ms Eckert: Yes.

Mr Eringa: Attaching them to the lease itself is viewed to be impractical, because rather than create a minor process under the Native Title Act that currently applies, we would create a more onerous process and effectively remove the benefits of permits, which were intended to be for small ancillary activities to pastoral land and for something that could be issued that does not trigger those future act provisions. We are trying to create the most out of the system we have currently. We are also looking at creating a number of new permits that because they did not exist prior to native title legislation coming into effect and were not pre-existing rights and therefore will trigger native title provisions, but will be under the more onerous native title provisions, but that will allow a number of activities to be conducted that currently cannot be conducted on pastoral lands.

Hon AMBER-JADE SANDERSON: I want to go back to the process of drafting the lease. In your opening statement you said that the lease was sent to the PGA at least twice.

Mr Bradford: No, the Pastoral Lands Board.

Hon AMBER-JADE SANDERSON: Did it provide feedback and, if so, can you summarise that feedback? What involvement did the minister's office have in the drafting of the lease?

Mr Bradford: I will ask Karel to fill in the details at the moment. I understand that the Pastoral Lands Board most recently saw the lease in May this year. It was presented to it in 2012 as well. I will ask Karel to go into the feedback that it provided and the format of that. The minister's office was advised, subsequent to sending out the letter to pastoralists, of the process. I have had discussions with ministerial staff, as have a number of us who are involved in the process. That is the extent of the involvement.

Hon AMBER-JADE SANDERSON: Prior to the lease being sent out?

Mr Bradford: I started on 1 July in the Department of Lands. The lease was sent out on 12 July. I am not sure what discussion the minister's office had about the draft lease prior to that period.

Hon AMBER-JADE SANDERSON: Are you able to provide that as supplementary information?

Mr Bradford: Yes. I will ask Karel to provide details about the two occasions on which the lease went to the Pastoral Lands Board.

Mr Eringa: The lease was provided to the Pastoral Lands Board on three occasions, in fact. The first time was in August 2011 when Sandra Eckert provided it with the first draft of the lease. In April 2012, after some revisions were made in response to some of the comments that the board made, a draft was presented again. That same draft was again provided to the board for further discussion and information in May 2013.

Hon AMBER-JADE SANDERSON: Were those comments included in the subsequent draft?

Mr Eringa: Yes. I have forgotten what those comments were.

Ms Eckert: The one issue that I recall—I am not saying that this is the one issue about which we had a discussion—was the nature of one of the reservations in the lease about retaining the right of government officers to go across pastoral leases on government business. There was discussion about how broad or confined that right would be. What is in the draft lease is what was discussed and was the position that the board was happy to endorse, which was that government officers on government business would have the right to go across pastoral leases.

Hon AMBER-JADE SANDERSON: Is it possible to table those drafts?

Ms Eckert: Yes—I think! I am sure we can.

The CHAIRMAN: It would be helpful because it will help us see what has happened in a chronological order and have that correspondence. We will give that A2.

Hon DARREN WEST: I understand what a difficult job this is with the requirements of pastoralists who want tenure. They want tenure because they need to go to financial institutions to borrow money which, in turn, want security of that tenure. There are conflicting pieces of legislation at a state and federal level. Will you be able to come up with a perfect arrangement under those or should we review some pieces of legislation at both the state and federal level to bring about an outcome that suits everybody more achievable?

Mr Bradford: I think we will come up with an effective solution within the current constraints in which we operate—in fact, we have to. We can do that through a constructive consultation process which is now going and I think it will work pretty well.

Hon DARREN WEST: Because the first cut seems a long way away.

Mr Bradford: I am the first to admit we did not communicate that well and that we could have done better. There is no doubt about that.

The CHAIRMAN: You said you did not communicate well and that you could have done it better. Is that because there were issues within the department? I know it is difficult because you have only

just come into that position. Why did the consultation not take place? Surely you would have known that this was going to create huge interest in the pastoral area.

[9.45 am]

Mr Bradford: One of the reasons the Department of Lands was created and separated from the department for regional development was to provide a dedicated focus on land administration. My observation of the function inside regional development and lands—this has been pretty well discussed—is that it was pretty tight on resources, particularly in the pastoral area we did not have as many resources for the management of the project, particularly the 2015 project, as it warrants. That is now being addressed through the creation of the department. I think resourcing has been a factor in that process. My observation is that understanding that engagement with stakeholders on everything we do in land administration is vital. Creating a department and elevating stakeholder management to be a critical focus for the department certainly is a focus coming from my experience at Landgate and engaging with customers. We will put much more effort into that. In terms of how we might have improved the draft lease that was released on 11 July, we could have sent a better explanatory letter that included frequently asked questions that explained the context of the lease. That would have assisted, but having received the feedback and having had discussions with the PGA, it would not have been enough. Some of the observations we have made about the provisions that we will change, I think a more rigorous process inside the department we might have made those changes before it went out as a draft.

Hon JACQUI BOYDELL: When you consulted the Pastoral Lands Board in 2011, 2012 and 2013, what did the board do to provide feedback? What is your knowledge of that process? How did it gain that feedback? Did it talk to the PGA and pastoralists and gather in a consultative period and then come back to you, or did it simply meet as a board and provide its feedback?

Mr Bradford: I do not know personally. I will ask Karel or Sandra.

Ms Eckert: I do not know what the board did.

Hon JACQUI BOYDELL: So on three occasions you provided the draft and on three occasions you received feedback from the PLB, but you are not sure what process it undertook to garner feedback?

Mr Bradford: I do not know in what form they were given it and whether it was simply one of many agenda items for the meeting, the level of the discussion or in fact whether it undertook a separate process. Those are questions the board would have to answer.

Hon NIGEL HALLETT: I am a bit confused about some of your original comments. You appear to have taken a simple lease forward and modernised it from a two-page document to a document that appears to have been attacked by a sledgehammer. Why was there a lack of consultation with pastoralists? The document has gone out and from what we have heard at our hearings, industry does not like it. Why did it all break down?

Mr Bradford: I have stated that we could have communicated better. In terms of going from the existing lease to the current draft that has been prepared and that I have acknowledged will change, the existing lease is a 1965 document. It refers extensively to legislation that has been repealed or replaced by other forms of legislation. It refers to provisions that are out of date. It is a 50-year-old legal document. It would be very difficult to reissue it today in practical terms. The department's position was to use modern language to describe the terms and conditions. One of my observations about going from two pages to 14 pages is that typing it in Times New Roman 12 point rather than very tight script would make the lease larger than the two pages it is currently. We wanted the lease to be written in modern language and to include, for the sake of clarity, obligations of lessees from other areas and modern terms such as "GST" and insurance requirements. Those things led it to being a larger document. There is no doubt that if we had sent the existing draft with an explanatory memorandum, we could have made those points clear. Based on discussion and feedback, the

document itself would not have been adequate at that point either. As to whether the process inside the department broke down, we applied enough resources to get the task done. The intention was to go out for consultation. We are trying to do this as far in advance of 1 July 2015 as we possibly can. Getting it out in July 2013 is evidence of that. The intention was to work with the industry to arrive at an effective solution. What we want for 2015 is clarity, transparency and certainty—that is in everybody's interest.

Hon JACQUI BOYDELL: Given that the PGA was aware that the draft lease was out for consultation and that you were receiving feedback, did it approach you to provide any feedback or did you approach the PGA? If so, when was that?

Mr Bradford: I will have to ask Karel about anything prior to 12 July. My understanding is that the letter of 12 July that went to pastoralists also went to the PGA. I am not quite sure what consultation may have occurred prior to the Pastoral Lands Board getting the document and whether there was any interaction prior to that.

Mr Eringa: I recall a number of letters from PGA members about the lease. They wanted to have a look at the new lease over a period of time prior to the July 2013 period. Pastoralists rightly wanted to know about the lease and its terms and conditions so they were asking questions. A reasonable amount of information was requested from a number of parties. They wanted to know what was in the new lease and whether they could look at it, which is why we released it earlier rather than later.

Hon DARREN WEST: In other jurisdictions in Australia, pastoralists have perpetual leases and a stronger level of tenure under the same commonwealth legislation. What restrains us from pursuing a line like that in Western Australia?

Ms Eckert: One of the proposals under rangelands reform program is perpetual pastoral lease. In order to go from an existing term pastoral lease to a greater term lease—whether it is for one year, 10 years or perpetual—requires a native title act to be processed and followed, which is more than just mere notification. At the moment the Land Administration Act does not allow for the issuing of perpetual pastoral leases, but that is one of the legislative proposals. That will give the option for lessees to go to a perpetual lease. It would be a matter of going through the native title process to do that.

Hon DARREN WEST: So it is possible, but difficult.

Ms Eckert: It is possible. Madam Chair, one of you asked a question about amendments to legislation. The problem for us is that part VII is severely constrained by the operation of the Native Title Act. It is stuck at a snapshot in time, 30 March 1996. We have to turn ourselves inside out to try to address the needs of the industry but at the same time not invoke greater processes under the Native Title Act, such as the renewable process.

The CHAIRMAN: No-one has ever tested this provision.

Ms Eckert: No, not in terms of a court decision. We are always testing it from the point of view of whether or not we can do this or that. In terms of the other states, the native title decisions on leases in other states are unique to each state. It is an accident of history how the lease looked at the time that the Native Title Act came in, which validated things and affected previous acts, whether or not it extinguished native title. As we know in Western Australia the pastoral leases did not. That is one of the severe constraints that we have to work with. In an ideal world if we turned back the clock and did not have native title and a Native Title Act—perhaps “in an ideal world” is not the right context. If we did not have the Native Title Act, we could do whatever we liked with pastoral leases under the Land Administration Act. I take back “in an ideal world”. I just used it in the context of the pastoral industry's point of view.

The CHAIRMAN: It is pleasing to see that you are going back to the drawing board with the draft lease. Mr Bradford, you seem to be the new broom that is going to sweep clean a number of things. I wish you well in that task. It is my gut feeling that if there had been more consultation in the first

place, this inquiry may not have taken place. Good luck with your future processes in that regard. Thank you for your time today.

Hearing concluded at 9.55 am