LAND TENURE REFORM — DIVERSIFICATION LEASES

Statement

HON BEN DAWKINS (South West) [5.31 pm]: My member's statement is about land tenure reforms that passed in this Parliament, the Land and Public Works Legislation Amendment Bill 2022, just prior to when I was elected in the recount. I want to talk about some of the effects of this legislation, which appear to be somewhat offensive to, effectively, property rights, or the right of pastoralists more specifically. The goal of the reforms, allegedly, was to provide an opportunity for pastoralists, native title parties and others to get involved in the growing renewables market, which includes carbon farming, hydrogen, and wind and solar, through diversification. In fact, the land tenure reforms seem to be all about undermining the property rights of pastoralists and potentially removing pastoralists from the land altogether, which, obviously, given the nature of the pastoral industry, I believe the pastoralists will protest strongly.

The Department of Planning, Lands and Heritage, which I will refer to as the department, appears to be using the renewable energy and green hydrogen space to effectively implement a political goal of transitioning pastoral crown land away from pastoralism. It could be said that it is a land grab. I have spoken a little bit about the land grab by the Shire of Harvey in my previous questions. I suppose there is no greater effect on someone's land rights than taking them away completely. The land tenure reforms effectively compel pastoralists to surrender the pastoral lease. This occurs in order to take up a diversification lease, which is essentially about getting involved in the renewable space. The pastoral lease needs to be surrendered. Obviously, that has a number of implications, as members can imagine. There is no guidance on who will be new lessee once someone enters into the diversification lease. That is at the minister's discretion. It could be the developer of the renewable project or it could be First Nation bodies, potentially. Once a diversification lease is in place, the developer—the proponent of the renewable energy project—takes the lease. Basically, there is a sublease to the pastoralist if the pastoralist is to continue. However, that lease is limited to the life of the diversification headlease, if you like. This means that if the developer takes a lease for only 30-odd years and then goes bust, the pastoralism ends. That may create a situation in which the pastoralist effectively sues the head lessee for damages when the head lessee has ceased to exist or gone bankrupt. Again, the pastoralist would be put in a very awkward space.

There is an aspect of this in which a First Nations body may take the lease. I will just touch on that. Obviously, I criticise these reforms as they stand. I have mentioned that First Nations people may take the land as part of this. As an aside, in no way am I against the land rights of First Nations people and bodies. In my short time here, I have seen that someone not in government who raises criticism about any act involving Indigenous issues can sometimes, not always, be labelled a number of things, such as being anti–Indigenous advancement. I believe someone was even called racist during the Aboriginal cultural heritage debate in the other place. I am just putting that out there.

My mother worked on the Native Title Act in Canberra. She was a researcher for the Greens. Hon Dr Brad Pettitt would be quite impressed! That was in the nineties. Not that I can bask in the glory of my mother, but she had significant input into the Native Title Act whilst working for the Greens in Canberra. I have worked for the Aboriginal Legal Service, as Hon Rosie Sahanna knows. I even have Indigenous cousins, not that that means anything necessarily. I just wanted to pre-empt this phenomena of accusing anyone outside the government who talks about Indigenous affairs as somehow being anti-Aboriginal.

Returning to the subject, no matter who takes the lease, the head lessee will become liable to the state for the activities of the sub-lessees. Pastoralists and native title bodies are not energy developers, so there is a question about whether they can even get insurance to take on liabilities that accrue with green energy developments. It will also be frustrating for pastoralists that they will have a developer constantly watching over them dictating what they can and cannot do. As I said, that will not rest well with pastoralists who have been on the land producing food for many years.

The diversification lessee may have unnecessary liability and liability not relevant to them or their activities. It is unusual in leasing law for one lease to cater for multiple land uses. It seems that the department is trying to fit multiple square pegs into a round hole. My question is: who in the department came up with this idea? No matter which way I look at it, it will not work commercially. The only way it would work is if the developer bought out the pastoralists from the beginning. That is happening.

My research shows that two pastoral stations have been purchased by BP and three by Fortescue Metals Group. BP has another under contract. These developers are not interested in running cattle or sheep stations in the long run; they are not pastoralists. It is possible that the department effectively wanted pastoralists to be removed from the land, and they are using the deep pockets of renewable energy companies to ensure that that happens.

The implication for pastoralists who may survive under a diversification lease is that the land tenure reforms may trigger native title. Once pastoral activities return under a diversification lease, they may become a "future act" for the purposes of the Native Title Act 1993—hello, Mum; that's the one I was talking about for you—which would therefore force pastoralists to submit their activities through native title processes, which is currently not the case.

Also, pastoral activities will cease at the end of the lease. A process for the renewal of the lease, which exists currently for pastoral leases, will no longer exist. There is also no longer a process for the state to compensate the pastoralists for improvements made to the land at the end of the diversification lease. There are no longer any rent protections to reflect times of drought and no protections for tourism operators. Pastoralists who run tourism activities may, in fact, have them acquired by the department, and that may provide that mechanism for the department.

We need to preserve the pastoral industry. People need food, the world needs food, and at reasonable prices. I wonder about the motivation for these reforms. Maybe, from what we have seen with the Aboriginal Cultural Heritage Act backflip—which has been an interesting process for me to be involved with, including being down at the Katanning meeting, listening to Hon Darren West and others—these reforms can also be reviewed and they potentially can also come crashing down like the Aboriginal Cultural Heritage Act, for reasons to do with implementation.