Inquiry into Pastoral Leases in Western Australia

Submissions from:

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- Pastoral Market Valuation
- Pastoral Lands Correspondence
- Pastoral Lease Improvements
- Reservation in Favour of Aboriginal Persons

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PASTORAL MARKET VALUATION

Australian Taxation Office Circular 2003/1 recommends that a Self Managed Superannuation Fund state its assets at market value at the end of each financial year. As from the 2013 financial year, a market valuation has to be assigned to each investment. This requirement is due to SIS Regulation 8.02B which states "For subsection 35B(2) of the Act, for the year of income 2012-13 and any later year of income, when preparing accounts and statements required by subsection 35B(1) of the Act, an asset must be valued at its market value."

Correspondence received previously indicated that:

The Board is aware that the general rental basis of Crown land leases, other than pastoral leases, is market value and that this basis of rentals including that for pastoral leases, is to be reviewed as part of the proposals already announced by your predecessor, the Hon Kay Hallahan, for a total re-write of the Land Act.[1]

In future, lease rentals will be determined by the Valuer General rather than the Pastoral Board. The rental will be set at fair market values taking into account such matters as pastoral capabilities of the land, distance from a port or railway and any other circumstances affecting one lease over another.[2]

If any portion of your current lease is not renewed in 2015 you will be entitled to receive the market value of any lawful improvements existing on the land. This amount will be determined by the Valuer General and based on improvements on the portion of land not being included in the lease renewal.[3]

Only pastoral lease sales which are considered to represent "fair market" transactions are used in determining what is termed "market unimproved value".[4]

Values supplied by the District Valuer of LANDGATE to the PLB are unimproved (ground rentals) only set at the 1st July 2009. These will be reviewed again in 2014.

It is likely that the ATO are after a WIWO (walk in walk out value) (i.e. value comprising of land, fixed improvements, plant and stock) or a lease and improvements value (lease and fixed improvements).

LANDGATE does determine such values but only on an as required basis from requesting government agencies only. These types of valuations generally require a full inspection. The Valuation of land Act 1978 precludes LANDGATE providing or

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[1] Report of the Pastoral Board on Reappraisment of Pastoral Leases Western Australia 1991

[2] DOLA "A Guide to Proposed Reforms to Pastoral Land Tenure for the information of Pastoral Lease Holders, May 1994

[3] Letter from Doug Shave MLA Minister for Lands 5 Feb 1998

[4] Pastoral Rents and Valuations – 2009 circular

carrying out valuations for private individuals.[5]

Pastoral Lease Rentals do not appear to include any VALUATION on the most recent Invoice from Department of Lands.

The Department of Finance website[6] states that "Agriculture Protection Rates (APR) apply to all land within Western Australia that are held under Crown Pastoral Leases. They are imposed under sections 60 and 61 of the Agriculture and Related Resources Protection Act 1976." The annual Agriculture Protection Rate is based on the unimproved value of each pastoral lease. The unimproved value equates to twenty times the relevant Annual Pastoral Lease Rent, as determined by the Pastoral Lands Board. The Annual Pastoral Lease Rent applicable at 1 February is used to determine the unimproved value for the following financial year.

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[5] Email from Chris Olsen to Caroline Horsfield dated 11 June 2013

[6] http://www.finance.wa.gov.au/cms/content.aspx?id=1413)

PASTORAL LANDS CORRESPONDENCE

Trying to communicate with Pastoral Lands is frustrating.

Under the current Land Administration Act (1997) an Annual Return of Stock and Improvements is to be lodged by 31 December for the previous financial year.

Pre-paid, pre-addressed CONFIDENTIAL envelopes are supplied.

Our most recent lodgement was posted at 1015 am on 17 December 2012 from the Carnarvon Post Office. It was not sent by Registered mail.

On 1 February 2013 I signed for a Registered letter from Manager, Pastoral Land, alleging that the Annual Return had not been received by 31 December 2012 and the consequences were imprisonment for 12 months, $8,000 fine and $200 daily penalty until compliance.

I immediately telephoned David Colvin seeking some clarification. An extension was granted until 22 February 2013.

After further checks of our outward correspondence details with the Homestead Office, I emailed the Administrative Assistant, Pastoral Land with explicit details of our posting.

This follows previous emails that were required to correspondence that had similarly been "misplaced". Emailed replies from Pastoral Lands were along the lines:

Thank you for your email and bringing this matter to my attention.

Apologies but your correspondence was not forwarded to Pastoral Land and has been sitting within another section of the Department.

Current Departmental practice appears to be a telephone apology so that there is no adverse record on file from the Departments perspective. However, the non-compliance on the Leaseholder's part still remains open.

Commercially, it is very frustrating to receive no immediate acknowledgement to correspondence seeking permission to act. It is even more frustrating to not receive the required consent sought. Ignorance will not make the matter go away, and in most cases will escalate the issue to an external redress.

After more than 100 years, I would have thought the receipt and dispatch of correspondence would be more diligent within the administration of the Lands Department.

PASTORAL LEASE IMPROVEMENTS

As the 2015 termination of current pastoral leases approaches, confusion is apparent with regard to a number of issues dealing with infrastructure. Failure to adequately amend legislation regarding pastoral lands has resulted in unintended consequences. The "bush" lawyers are getting confused.

The current Pastoral Leases "do by these presents lease to ...the natural surface of all that piece or parcel of land situated in the District of ..." etc.

1. Who "owns" any fixed improvement upon the land eg fence, bore, windmill, shearing shed, swimming pool and so on?
2. If compensation is payable under the Public Works Act 1902, is not the "relevant person" the Minister?
3. What policy provisions are in force in dealing with "redundant infrastructure" such as where a property changes from merino sheep for wool production to cattle, and the maintenance of a shearing shed and all the sheep yards are redundant henceforth?
4. Installation of "monitoring sites" upon the natural surface of the land as directed by the Pastoral Land Board is a fixed improvement at some cost. The unintended consequence of this direction is that if paid for by the Lessee rather than the Minister, "ownership" may reside with the Lessee.
5. Below ground swimming pools that have been captured under changes to Local Government town planning amendments over the years, are imbedded below the natural surface of the land leased. Who "owns" the swimming pool, and is ultimately responsible for the erection and maintenance of protective fencing surrounding the pool?
6. Are "development plans" that a prospective purchaser of a Pastoral Lease is required to submit to the Minister, sanctioned by Local Government town planning for conformance to the current town planning scheme?
7. The absence of any detailed map or plan of the Lease given today's technology is astounding. "Back of the

RESERVATION IN FAVOUR OF ABORIGINAL PERSONS

Prior to the Land Act of 1898 pastoral leases were issued under Land Regulations, which had their origins with the Colonial Office in 1828.

The first pastoral leases appear to have been issued under regulations published in 1850 and 1851. There were significant changes to these regulations and the wording of the reservation allowing Aboriginal access in 1864, 1872 and 1878.

In 1887 the Land Regulations were redrafted and lease terms were extended to a common expiry date of 1907.

In 1889 a Land Act was proclaimed and existing leaseholders were given the right to surrender existing leases and be issued with new leases with a 1928 expiry date. Conditions were added by way of a scheduled form and included a reservation providing conditional access for Aboriginal people to certain parts of pastoral leases.

In 1917 amendments again provided for the surrender of existing leases and the grant of new leases with a 1948 expiry date.

Amendments in 1932 removed the Aboriginal access reservation from both the Act and the scheduled form.

A new Land Act (1933) was proclaimed in 1934 and no provision was made for Aboriginal access in either the Act or the schedule. Again, all existing leases under the previous 1898 Act were required to be surrendered and new leases were issued.

The Land Act (1933) was amended in 1934 with a proclamation in 1935, to re-introduce an Aboriginal access provision by way of a statutory condition.

The wording of the provision was changed from that applied previously. It has remained unchanged since then, although there have been other changes to the term of pastoral leases and a continual amalgamation of smaller leases into new larger leases.

S106 of the Land Act (1933), inserted 21 January 1935, provides that "the aboriginal natives may at all times enter upon any unenclosed and unimproved parts of the land subject to the pastoral lease to seek their sustenance in their accustomed manner."

Under the Lands Act (1933) no statutory reservation existed in respect of pastoral leases granted between 4 March1933 and 21 January 1935.

The current Land Administration Act 1997 Sect 104 states:

"Aboriginal persons may at all times enter upon any unenclosed and unimproved parts of the land under a pastoral lease to seek their sustenance in their accustomed manner."