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# PROVIDING SITES FOR SHIFTING CAMPS: LAND TENURE REFORM TO SUPPORT THE RANGELAND TRANSITION

*J.H. Holmes*

School of Geography, Planning and Architecture, The University of Queensland, 4072

## ABSTRACT

Australia's rangelands have a distinctive land tenure regime, namely pastoral leasehold, capable of adaptive reform to accommodate emerging multiple values, uses and users. The most promising ingredients in tenure reform are: reactivation of the Crown's powers to allocate and regulate non-pastoral resource use, not only to lessees, but also to third parties; expansion of public access routes and destinations within pastoral leases; recognition of new modes of diversification by lessees; trade-offs with lessees awarding additional rights over core areas, or other incentives, in return for reduced rights in peripheral multiple-use areas; and re-allocation of strategic land parcels to public ownership for multiple use.

## INTRODUCTION

"As service-sector employment grows at the expense of manufacturing and the more basic extractive livelihoods, the domestic importance of land-based occupations fades along with the declining significance of land as a factor of production, social status and basis of wealth. In an economy increasingly dominated by tertiary and quaternary sectors, land assumes new importance as a recreational and aesthetic good, reinforcing the passive (nonproductive) relationship between the population and the land as opposed to an active, material-based, sustenance relationship. As in the past, ownership will adapt to multiple-use demands, some of which are commodity-oriented and others which are not." (Geisler, 1993).

More so than other extensive zones of human occupation, Australia's rangelands are experiencing a "post-productivist" transition towards multiple use with an increasing emphasis on amenity values, both market and non-market. This transition has been expedited by the limited capacity of the rangelands in serving productivist goals, reinforced by their potential in satisfying a diverse set of emerging amenity values, providing new opportunities but formidable challenges (*Rangel. J* 16(2): 1994; Australia: National Rangeland Strategy 1996; Taylor and Braithwaite 1996; Holmes 1997, 2002).

Rangelands are also distinctive in providing "wide, open spaces" which, together with natural and semi-natural landscapes are the prime resource. This is so for entrenched modes of land use, notably pastoralism and mining, as well as for emerging or revitalized modes, such as traditional indigenous uses, conservation of biodiversity and of natural landscapes, and wide-ranging private and commercial tourism. Apart from pastoralism, these modes of land use are not readily internalized by a single landholder. Rather, multiple uses imply multiple users, all requiring specified rights of access and use (co-existence), but none, other than the pastoralist, seeking exclusive possession. Here is a critical difference in multiple-use occupation between the rangelands and the more intensively utilized, freeholded lands of the ecumene, where alternative uses are either internalized by the landholder or must be accommodated on separate land parcels.

In the rangelands of western United States, continuing federal ownership has enabled the ongoing evolution of a system of co-existing use rights in response to the needs of multiple uses and users, none with exclusive possession. However, ranchers all have a freeholded home ranch (Hess 1992; Loomis 1993). By contrast, Australia's rangelands have a distinctive land tenure regime, namely pastoral leasehold, designed to award a limited set of property rights consistent with extensive, broadscale pastoral

occupance. Leases are intended to serve as flexible policy instruments, capable of reallocating property rights and duties in response to changing directions in land use and management (Holmes and Knight 1994; Holmes 2000). Although much of this flexibility has been lost, lease tenures still retain some capability to accommodate emerging multiple use/multiple user modes of occupance, notably in recognising non-pastoral interests, non-market values and the needs of third parties.

## **POLICY GOALS AND DIRECTIONS IN TENURE REFORM**

A basic set of policy goals, towards multiple use, where outcomes can be facilitated by reform of the lease tenure instrument, can readily be identified. These are:

- Encourage lessees to recognise and utilise appropriate non-pastoral values.
- Encourage and provide security for third-party ventures, particularly where complementary to pastoralism.
- Facilitate collaboration between lessees and third parties.
- Enhance the opportunity spectrum for footloose visitors, while minimising negative impacts on other values, both pastoral and non-pastoral.
- Encourage Indigenous Land Use Agreements.
- Provide incentives to lessees (and others) to manage sustainably and to preserve biodiversity.

Each of these goals needs full appraisal, well beyond the scope of this paper. Here attention is given to three interest-groups, namely lessees, third-party enterprises and individual third-parties, seeking to gain access and selective use of non-pastoral resources on leases. Only brief mention is made of indigenous, conservation and mining values, each of which merits a separate paper, delivered by persons more qualified than I am.

In pursuit of the policy goals outlined above, the most promising directions in lease tenure reform are:

- Reactivation of the Crown's powers to allocate and regulate non-pastoral resource-use, not only to lessees but also to third parties.
- Expansion of public access routes and destinations within pastoral leases.
- Recognition of new modes of diversification by lessees, including gaining income from access fees.
- Trade-offs with lessees, awarding additional rights over core management areas, or other incentives, in return for reduced rights over peripheral areas, available for conservation or multiple-use purposes.
- Re-allocation of strategic land parcels to public ownership for multiple use.

The utility of any of these proposed reforms will vary according to contexts, not only between jurisdictions, but also at regional, local and property scales. The extent and direction of tenure change will be shaped by the relative importance of pastoral vis-à-vis non-pastoral values, the degree of functional complementarity (or otherwise), the capacity for spatial separation of uses, the potential for income generation by the lessee or by third-parties, as well as the spectrum of non-pastoral values and uses, including commercial tourism ventures, individual visitation, indigenous access, biodiversity conservation, landscape maintenance, catchment management and so on.

Underpinning these priority goals is the overarching objective not merely to facilitate complementary multiple use, but also to ensure economic and ecological sustainability based on custodial management of the rangelands. Emerging multiple uses generate multiple structural problems. There is a critical custodial problem, recognised in America's public lands... "in which all Americans are welcomed as visitors but none is encouraged to care for the land and its resources... (with) landscapes for the temporary convenience of transient interests rather than permanent places for residence and work" (Hess, 1992, 194). This is reinforced by structural economic disabilities, tied to the switch towards non-market values and the

"geographical transfer of value", leading to more value but less cash (Holmes, 1997, 3-4). Land tenure reform must be designed to mitigate these structural problems.

## **REACTIVATION OF THE CROWN'S POWERS OVER NON-PASTORAL RESOURCES**

Pivotal to these reform proposals is reaffirmation that the lessee has rights only to the pastoral resource, with the Crown retaining beneficial ownership of all non-pastoral values. This ownership is not in doubt. In all jurisdictions, the Crown continues to exercise its powers by issuing permits or licences to engage in non-pastoral activities, usually to lessees. Moreover, in all jurisdictions, there is long-standing special-purpose legislation enabling third-parties to utilise resources on leases, focussing on royalty-yielding Crown resources, notably minerals and timber. These reserve powers still exist, but any further use needs to be made explicit through amendments to relevant legislation, according to legal opinion recently provided to one pastoral administration.

Recently all jurisdictions have relaxed constraints on lessees against engaging in non-pastoral ventures, in recognition of opportunities, sometimes the necessity, to diversify. This is a desirable step but it is not enough. Among the emerging spectrum of ventures, requiring access to pastoral leases, not all can readily be monopolised by individual lessees, nor should third parties always have to rely on the goodwill of the lessee. Pastoralists will insist that insecurity is a deterrent to investment. The same goes for non-pastoral ventures. Recently some pastoral administrations have encountered serious problems where well-established, well-regarded local tourism ventures have been undermined by access vetoes or prohibitive conditions suddenly imposed by lessees. This issue requires an urgent legislative response enabling bona fide tourism ventures specified access rights and with mechanisms for interparty negotiations, compensation and dispute resolution. From a lessee's viewpoint tour operators will usually present fewer management problems than do existing third-party interests, such as mining exploration or timber getting. Agreements with operators can be specific on matters such as routes, destinations, schedules and personnel, providing a good context for person-to-person negotiations. Tenure reform would provide much-needed security for third-party ventures. In sensitive areas, there are additional benefits if public access is available only through managed group visits.

## **EXPANSION OF PUBLIC ACCESS ROUTES**

In SA, WA and NT legislation is in place for the declaration of public access routes across pastoral leases, but only in SA has significant progress been made in establishing routes. This matter also received much attention in the NSW Western Lands Review, but seems to have been placed in the too-hard basket. Experience in SA reveals an initial hurdle. With only a few routes declared there is an inevitable concentration of demand on these routes to the detriment of the interests of the affected lessees. Ongoing expansion of the network should relieve this problem. The NT legislation offers interesting possibilities, giving the lessee first say in designating the location of the route, with the Pastoral Board having a follow-up role. So far, no routes have been declared. Likewise in WA.

Given the continuing growth in off-road travel, it is in the interests of lessees to find manageable solutions focussing on responsible travel behaviour. Declared access routes are an important component in a comprehensive package to manage Outback travel.

## **NEW MODES OF DIVERSIFICATION**

Where recreational and tourism opportunities are complementary to the pastoral enterprise it is desirable that these should be undertaken by the lessee, for many good reasons. Most important are the economic benefits, particularly where viability is an issue, but also there are very substantial management benefits. Lessees are being given more capacity to diversify, with a phased sequence of informal acceptance, permits and separate tenures according to the extent to which the activity is ancillary to pastoralism. More

remains to be done, for example on the issue of lessees charging fees for access to prime destinations, such as fishing sites in the N.T. Gulf Country. Obviously, many lessees have not considered how this may impact on their public liability insurance, where the duty of care of the landholder is directly related to the status of the visitor. Liability is least for trespassers and highest for paying invitees. This is a complex area and all that may reasonably be expected of pastoral lease administrators may be to publish and widely circularize a set of guidelines or protocols relating to charges by lessees for access provided to casual visitors. There is a further problem. Legal advice in one jurisdiction provided a Catch-22 situation, whereby neither the pastoral administration nor the lessee could legally approve access across the lease, sought by organizers of a car rally.

## **TRADE-OFFS INVOLVING CHANGES IN TENURE**

Reactivation of the Crown's rights over non-pastoral resources can provide a useful bargaining tool in the emerging context in which lessees seek additional rights, but where other interests also need to be recognised. The most evident opportunities for trade-offs are in marginal zones where non-pastoral values on existing leases are often substantial, particularly in comparison with very modest pastoral values. In the northernmost savannas and the arid interior, properties usually exceed 1000 square kilometres, with stocking rates of 30 hectares or more per beast. An appropriate strategy during the BTEC herd control campaign was to concentrate investment in a core management area, complemented by renewed open-range grazing in the remaining "pastoral support" area after the disease control programme was completed. Detailed property proposals were presented for all N.T. Gulf stations in a report to the then Department of Lands and Housing (see Holmes 1990) subsequently incorporated into the Gulf Regional Land Use and Development Study (Northern Territory 1991).

Any within-property division between core and support areas could provide the basis for a bifurcation in resource use and property rights, similar to that prevailing in America's rangelands, where most ranchers rely on a freeholded home ranch, supplemented by grazing permits on adjoining multiple-use federal lands. In exchange for enhanced rights on core pastoral lands, lessees would receive limited grazing rights on the remaining land, also available for conservation purposes or indigenous use or multiple uses. Recently, a lessee on Cape York Peninsula has presented a proposal along these lines.

Trade-offs are being arranged in the NSW. southern mallee. The core element in the DLWC. Regional Planning Strategy has been to offer lessees cropping rights on suitable land in exchange for land being set aside in private conservation reserves. Patton and Mullen (1999, 246) report that 45 properties submitted proposals seeking 20% of land for cropping and, in return, offering 15% for conservation. The Department of Land and Water Conservation generally requires a one-for-one land area trade-off.. There are also opportunities for trade-offs in regions requiring public funds for property build-up and other forms of rural adjustment. Property plans could be required to incorporate not only strategies for sustainable grazing but also conservation areas. Suggested guidelines for using tenure instruments in support of within-property biodiversity values are presented in Morton et al (1995).

## **MULTIPLE-USE PUBLIC LANDS**

At present, public lands in Australia are for designated purposes, such as National Park, Conservation Reserve, State Forest and so on. Although State Forest lands are increasingly being restructured to serve various recreational activities, Australia still has no public tenures designated towards flexible multiple use. This is in marked contrast to the United States where over 20% of all land is held by the Bureau of Land Management and the National Forest Service, both of which have a legislated mandate to serve multiple uses and multiple users.

With the rapid expansion of non-pastoral uses in Australia's rangelands, there is a growing need for a strategic network of multiple-use lands, to service these uses. These lands would help to meet the demands

of free-wheeling travellers and tour operators, easing the pressure on pastoral lands and National Parks. They could also usefully serve as reserve grazing lands, as suggested by Robson (1994), as well as supporting conservation and indigenous use. These lands can only be acquired by purchase from lessees.

Australian land administrators have had ample experience in the flexible award of property rights and use rights through special-purpose leases, licences and permits. Certain time-honoured mechanisms such as annually renewable occupation licences could well be ripe for revival. They will need adaptation to accommodate new modes of multiple use on public lands. American experience in managing multiple uses can provide useful guidelines on matters such as use rights and responsibilities, public participation, dispute resolution and criteria for land use/management zoning. See Loomis (1993).

Effective management and use of these lands will require the involvement of private ventures and contractors, with preference desirably been given to local sources, including nearby landholders, who may be attracted to a secure source of supplementary income. As in the United States, and also with Outback National Parks, public lands could enhance the local market economy in remote regions.

## THE CHANGING ROLE OF LAND ADMINISTRATORS

Governments (and pastoral administrators) have been responding to the emerging context of multiple values and uses, but in a belated, reactive manner, addressing problems as they become too pressing to be ignored. Needed changes are placed in the "too hard" basket by governments. This seems to be the case with the 1999 N.S.W. Western Lands Review. Down the track, governments will have to undertake comprehensive reform of rangeland administration (including a change of title for Pastoral Branches and Boards). Guided in part by American experience, reform must include the adoption of processes of public consultation and participation, to accommodate the diverse interest-group constituencies now directly involved in shaping rangeland futures. It will also require comprehensive regional planning in marginal pastoral regions, experiencing a major transition in land use. This will involve land allocation, and economic and social infrastructure as well as land tenures.

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