EARLY PASTORAL LEASES IN THE KIMBERLEY

At the meeting of 4 February 1998, Dr Cathie Clement, a public historian, presented an illustrated talk that provided insight into how land in the Kimberley was first allocated to pastoralists. The following precis covers the main points of the talk.

When people think about pastoral leases, they tend to focus on land. While logical, and in line with official policy for dealing with Crown land, this is a focus that can blind people to the reality of what really occurred when land was allocated to, and occupied by, pastoralists. The key to understanding the early acquisition of land is to split the focus equally between acquisition of land and control over access to water.

Europeans obtained water from the Kimberley long before they acquired land there, as is evident in one of the earliest known depictions of European presence — a sketch showing barrels of water being handled by a group of Aboriginal people and crew from the *Cygnet*. The role of water is also evident in maps that show early land alienation in localities other than the Kimberley. Most towns and settlements are situated on rivers, and land grants tend to be clustered along the rivers. If pastoral leases appear on such maps, they tend to be more remote but linked to sources of water nonetheless.

In Western Australia, John Septimus Roe oversaw the alienation and other allocation of land for 41 years from the establishment of the colony in 1829 until his retirement in 1870. This period covered the 1838 introduction of pastoral leasing legislation and the 1850 ruling that the 'aboriginal natives' of the colony were entitled to enter lands held under pastoral lease and seek 'subsistence therefrom in their accustomed manner'. Roe's service as Surveyor General also covered Frank Gregory's exploration around the De Grey, Yule, Sherlock, Fortescue and Ashburton Rivers. Gregory visualised cotton growing on the banks of the De Grey and the lower Sherlock River, and on the flanks of the Hamersley Range, and he thought that land in the vicinity was sufficiently elevated for wool growing. His report also suggested that settlers might augment their incomes by harvesting pearl oysters and sandalwood trees.

Prosperous colonists in Western Australia and Victoria were enthusiastic about Gregory's report and, at the close of 1861, it looked as though the locality he explored would be occupied by Victorians. The Western Australian Government was not in a position to manage northern settlement but, because some people were pushing for Australia's internal boundaries to be rearranged, the officials feared losing land to another colony. They therefore decided that the territory explored by Gregory should have 'temptingly liberal' land regulations created for it. Then, because people were also showing interest in land in the far north and the south-

east of the colony, they made the new regulations cover those areas too. In their haste, the officials ignored key lands' management lessons of the past.

In the new districts, land more than two miles (3.2 kilometres) from the seacoast was available under the most generous terms in the colony. There was no application fee, no charge for a permit to land stock, and no requirement to pay rent in the first four years. Within one year of landing livestock, a permit holder was entitled to select a run of up to 100,000 acres (40,468 hectares) and, whilst holding that land under a non-transferable licence over the next three years, was allowed to select pastoral leases of up to 20,000 acres (8,094 hectares) apiece from within it. To then become a lessee, with non-renewable tenure extending over eight years, the licensee had to pay a fee of five pounds, plus annual rental of five shillings per 1,000 acres (405 hectares) for four years and double that thereafter. These inducements reflected the fact that the new settlers were going to remote localities with no guarantee of services or protection.

Within weeks of the new regulations being proclaimed on 23 December 1862, entrepreneurs in Melbourne were promoting ambitious settlement schemes based on the availability of the free runs. The settlers who went into the new areas in the 1860s found that they needed all the bonuses offered by the government and more. Many realised that the potential of these areas had been overstated and, when faced with disillusionment, strong Aboriginal resistance and prohibitively high costs, they withdrew. Neither a depot established on the Glenelg River nor the settlement at Camden Harbour led to the allocation of runs. The runs allocated to the Roebuck Bay Pastoral and Agricultural Association (Limited) were abandoned when the last of the Association's workers pulled out of the Lagrange Bay area before the end of the decade. Some of the former settlers from the far north joined those who had gone into the area examined by Frank Gregory but, even there, people were facing similar problems and some abandoned their runs when the rent-free tenure ended.

The offer of free tenure ended in the 1870s and the length of tenure available to lessees whose land carried livestock increased to fourteen years. Fresh land regulations were proclaimed in 1878, revoking all earlier regulations governing the colony's 'waste lands' and dividing the colony into the Central, Northern, Central-Eastern and South-Eastern Districts. The district now known as the Kimberley was part of the Northern District. Pastoral land was described as First or Second Class, with the latter comprising all land north of the Murchison River and east of a line that connected a bend on the Murchison River with the mouth of the Fitzgerald River on the south coast. The provision for Aboriginal access remained in place and, while lessees had no right of renewal, they were entitled to unconditional pre-

emptive rights to purchase land within their leases and could thus protect themselves against loss.

The 1878 regulations did not make the granting of leases subject to stocking and applicants had to pay only two shillings and sixpence to lodge an application. Both of these factors invited speculation, and it also happened that a £5000 reward, posted in 1872, was still on offer for discovery of a workable goldfield in WA. Indeed, even as the 1878 regulations were awaiting proclamation, men interested in pastoral leasing were planning exploration in the far north—Australia's last extensive area of untried grasslands and river frontages—and the Commissioner of Crown Lands, Malcolm Fraser, was thinking about introducing more liberal land regulations for that district.

An expedition led by Alex Forrest traversed the north-west of the continent in 1879 and reported the discovery of some twenty to twenty-five million acres (8,093,712 to 10,117,140 hectares) of pastoral land. Allegations of improper acquisition of leasehold land were being made around this time and the government felt obliged to place a moratorium on the selection of pastoral leases north of the 19th Parallel. More than a year passed before the Imperial and colonial governments agreed on the regulations that would allow land to be allocated in a way that would prevent improper acquisition and speculation and thus encourage rapid settlement of the district now known as the Kimberley. Meanwhile, two firms associated with Julius Brockman and Alexander Richardson ignored *The Waste Lands Unlawful Occupation Act* and took sheep there.

In October 1880, the government invited people to lodge applications for Kimberley pastoral leases. All the sealed envelopes were to be opened on 1 February 1881 and, if two or more were for the same land, the decision was to be by ballot. In the final analysis, however, neither the new land regulations nor the ballot provided an adequate defence against the chicanery that marked the early years of leasing in the far north. There was no limit on the number of applications an individual could lodge for the first release of land, no limit on the acreage sought either in total or within each lease, and no guarantee that applicants would pay rent on approved leases. The non-refundable application fee of 2/6 thus allowed would-be pastoralists or speculators to apply for whatever land they wished as long they ensured that blocks with frontage to water had a depth at least three times their width.

When hundreds of applications arrived, Fraser approached the Governor and, implying that a problem existed because some envelopes contained two or more applications, secured approval for new allocation procedures. The so-called problem could have been handled by the arrangements already in place but Fraser

proposed that all applications compete for priority of entitlement to lands and, more importantly, that the Land Office should allot adjacent vacant lands to applicants if someone else had already taken part of the lands they wanted. Had the government limited the number of applications per person or firm, Fraser's approach might have allowed equitable allocation. As it was, more than one third of the applications belonged to a cartel, and Fraser's intervention, knowingly or otherwise, dramatically improved the cartel's chances of securing land. In fact, his displacement principle resulted in George Shenton winning three leases (from 24 applications) with each one separated from the other by land allotted to the cartel.

The cartel comprised William Edward Marmion (a Fremantle politician), his brother-in-law Richard Gibbons, Dr Charles Henry Elliott and the three Pearse brothers: William Silas, George and Samuel. Between them, these men lodged 160 of the 448 applications in the ballot. Other applicants and the public seem to have remained unaware of the existence of the cartel, its bid to circumvent the ballot, and Fraser's new arrangement for allocating the first Kimberley leases. Yet the cartel's applications, by duplicating and overlapping one another to blanket the richest segments of the Fitzroy and Meda River valleys, secured one third of the first 102 Kimberley pastoral leases. It had lodged at least eleven applications in four different names to win six adjoining blocks totalling 300,000 acres (121,406 hectares) on the north bank of the Fitzroy River and had won other blocks on the Meda River. The stations known as Liveringa and Meda thus came into being, and research has shown that, in thus favouring the cartel, the Lands Office ignored or reduced the entitlements of other would-be lessees.

Of the 102 leases approved as a result of the ballot in February 1881, 61 lapsed when the first instalment of rent was left unpaid. Of the 41 on which rent was paid, twenty belonged to members of the cartel and most had frontage to the Fitzroy or Meda River. Several other lessees established stations, but those like George Shenton had to admit that their leases did not, and would not, constitute viable pastoral stations. He paid a total of £300 in rent before letting his lands revert to the Crown. New lessees were never in short supply and, in this case, Alex Forrest secured fresh leases over the land.

Alex Forrest played a central role in the acquisition and turnover of pastoral leases in the Kimberley. He gave up his contract surveying work in 1881 and opened a land agency that specialised in Kimberley leases. He had clients in the eastern colonies, some who were quite blatantly speculating in leases and others, like the Duracks and the Emanuels, who subsequently rationalised their holdings and established pastoral stations. Forrest also lent money to the cartel's Kimberley Pastoral Company, purchased a share in both the company and one of the vessels that it used to ship sheep to the Kimberley, and acted as the Western Australian

agent for Englishman James Game who commenced his long term acquisition of Kimberley land by purchasing Yeeda station from Alexander Richardson and his associates.

It was only in October 1882, after the Land Office had accepted at least 930 applications for Kimberley pastoral leases, that the government curbed the lodgement of speculative or otherwise spurious applications. New land regulations applicable to the whole colony were proclaimed at this time. The Kimberley lands were not unlocked until 1884 and, until then, politicians who included William Marmion (Fremantle) and McKenzie Grant (North District) ensured that the legislation remained favourable while they and their associates pursued Kimberley pastoral ventures. Indeed, their blatant quest for still further gains—pre-emptive rights to renewals on all pastoral leases and a relaxation of the stocking requirements on Kimberley leases—caused British officials as well as their fellow colonists to denounce them as land sharks and land jobbers. There were also bids for pre-emptive rights to purchase homestead blocks and for the establishment of a mission station where they could 'have the natives congregated together at some spot, instead of rambling about the country, endangering the lives and property of pioneers, and making raids upon their flocks'. The bids for the mission station and the pre-emptive rights to purchase failed while those for pre-emptive rights to lease renewals and relaxation of the stocking requirements succeeded.

By the end of 1884 all but the most rugged or remote parts of the Kimberley had been subject to at least one approval for a pastoral lease. Subsequent research has shown that comparatively few of these approvals actually led to occupation of land by pastoralists. What they did lead to was a jumbled history of pastoral lease tenure that has made the Kimberley one of the most complex parts of Australia for determination of native title.