



21 October 2022

Dept of Planning, Lands & Heritage
140 William St
PERTH WA 6000

Via email LAA2022@dplh.wa.gov.au

RE: Consultation Draft - Land and Public Works Legislation Amendment Bill 2022

INTRODUCTION

The Pastoralists and Graziers Association of WA (PGA) is a non-profit industry organisation established in 1907, which represents primary producers in both the pastoral and agricultural regions of Western Australia.

According to Landgate figures as of 2021 there are 449 Pastoral Stations in Western Australia which cover 86 million hectares and extend over 26 shires.

The PGA's current pastoral membership numbers equate to 84% of all pastoral leases, excluding First Nations and conservation leases.

As the peak organisation representing Western Australian pastoral lease holders, we are pleased to provide this brief submission on the *Consultation draft Land and Public Works Legislation Amendment Bill 2022 Parts 2 and 3 to the Land Administration Act 1997*.

BACKGROUND

On 7, October 2022 the Government released the *Consultation draft Land and Public Works Legislation Amendment Bill 2022 Parts 2 and 3 to the Land Administration Act 1997 (Bill)*.

The Bill provides 3 main changes to the *Land Administration Act 1997 (Act)*, including:

1. The introduction of a Diversification Lease, which is a new form of non-exclusive leasehold tenure for uses such as renewable energy (hydrogen) to facilitate demand for multiple land uses at the broad scale without compromising access by other key interests such as the resource sector and native title parties.
2. Administrative Improvements to facilitate and improve land tenure approvals and projects by updating the *Land Administration Act 1997* and the *Public Works Act 1902*
3. Pastoral Amendments including recommendations for pastoral lands reform made by the Auditor General as well as amendments to the pastoral rent methodology.

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DIVERSIFICATION LEASE

The Bill introduces a new **Part 6A – Diversification leases** that allows the Minister to grant a lease (diversification lease) over Crown land. A diversification lease may be granted for any purpose or purposes; however, it is not a pastoral lease, nor is it an instrument that allows a pastoral lease to diversify into non pastoral activities. However pastoral activities, such as grazing can occur on a Diversification Lease.

Specifically, a diversification lease is currently proposed to allow proponents to:

- develop the wind and solar farms required for hydrogen production;
- pursue carbon farming projects;
- pursue horticulture projects;
- develop cultural tourism businesses; and
- preserve or rehabilitate biodiversity.

Currently, a pastoral lease can only be used for pastoral purposes, which includes the commercial grazing of stock, and any supplementary and ancillary purpose to facilitate that. While a pastoralist may apply for a diversification permit to undertake activities for non-pastoral purposes, these are only granted in limited circumstances and would not allow for the development of hydrogen and other renewable projects.

In order for a diversification lease to be granted over an area already covered by a pastoral lease, the pastoral leaseholder will need to surrender that portion of the pastoral lease. The proponent seeking the diversification lease (either the pastoralist or a renewable energy developer) would then need to go through all the approvals processes for the grant of the diversification lease. It is unclear what impact the surrender of part of a pastoral lease would have upon the requirements of the remaining portions of the lease, including any impact to stocking numbers and whether the remaining footprint is sustainable.

Nonetheless, the requirement for a pastoralist to surrender a portion of their lease would mean any project proponent will need to negotiate with existing pastoral leaseholders to achieve the surrender of the relevant site so that it is available for a diversification lease - the Government has explicitly provided that a pastoral leaseholder will not be compelled to surrender their tenure, notwithstanding it may have been identified as a prospective site for a hydrogen or renewable energy project. It is also worth noting that the proposed reforms include the potential for the Minister to approve the extension of the term of a pastoral lease for up to 50 years. This means that prospective areas may well be unavailable for longer periods of time.

These reforms have not removed the existing avenue available to pastoralists to seek diversification of their activities (diversification permits). A pastoralist can apply to the Government for a diversification permit to conduct non-pastoralist activities on a pastoral lease. The proposed reforms will focus on streamlining approvals processes for diversification permits and allowing for a diversification permit to be transferred at the same time as a pastoral lease. However, despite these proposed reforms and as flagged above, diversification permits would likely remain unsuitable for proponents of hydrogen and other renewable energy projects.

ADMINISTRATIVE IMPROVEMENTS

There are 18 proposed amendments including allowing the Minister for Lands to hold and deal with land in freehold without having to revest to the Crown estate; allowing service of documents by electronic means; inserting a statutory process for consultation with local governments inviting submissions on proposals within 42 days or local government will be deemed to have not made a submission (subject to some practical exemptions) to name a few.

PASTORAL AMENDMENTS

The PGA notes that there are significant changes to **Part 7 – Pastoral Leases**, including the following amendments:

- **Sec 122H** allows the Minister to determine annual rent based on a CPI model which will increase with inflation each year on 1 July. The Valuer General will determine the rent every ten years using market review methodology with the first review to take effect on 1 July 2029. Rents for new pastoral leases will be first determined by the Valuer General and adjusted via a market rent review every ten years, with the first review to take effect on 1 July 2029. **(Sec 122I)** applies annual CPI increases to permits.

The proposed amendments to the LAA provide for a new model for determining pastoral rents, commencing on 1 July 2024. The starting point for rents on this date will be whichever is the lowest out of the current rent for the pastoral lease, or the average rent for the pastoral lease over the last 20 years (as determined in 1999, 2004, 2009, 2014 and 2019). The CPI review date will fall annually on 31 December with the rent determination to take effect the following year on 1 July. Rents will be changed in line with the Perth All Groups Consumer Price Index (the current Perth CPI for the June 2021-22 quarter in 7.4%)

- **Sec 105** states that the terms of a pastoral lease cannot exceed 50 years. Under **(105A(1)(a))**, if the term of a pastoral lease is less than 50 years, the Minister may in writing extend the term of the lease; or **(b)** accept the surrender of the lease and grant under section 101 a new lease to the lessee.
- **(Sec 105(2))** sets the conditions on which the Minister will determine the new lease, including under **(Sec 105(3))** where the Minister must have regard to whether a pastoral lessee is a certified pastoral lessee, a new term which defined in **(Sec 93)** means a pastoral lessee who is currently certified under an approved land management accreditation system that applies to the lease.

- **(Sec 100A)** allows for the introduction of an approved land management accreditation system and prescribed land condition standards and guidelines by allowing the Pastoral Lands Board under **(Sec 100A(1))** to issue standards setting out benchmarks and objectives in relation to the condition of land held under a pastoral lease. While under **(Sec 100A(2))** the Board must consult the Commissioner before issuing land condition standards, under **(Sec 100A(3))** the Board may issue guidelines that provide guidance on best practice for the management of land held under pastoral leases. This seems somewhat confusing.
- **(Sec 100C)** the Minister may approve land management accreditation systems, where under **(Sec 100C(1))** participation is voluntary. However, given that under **(Sec 105(3))** where the Minister must have regard to whether a pastoral lessee is a *certified pastoral lessee*, it is clear that there is a strong reason for pastoralists who wish to have their lease extended or receive a new lease to participate in this ‘voluntary’ scheme.
- **(Sec 111A)** states that the Board may make determinations and directions as to number and distribution of stock. According to **(Sec 11A(1))** the Board may from time to time determine the minimum and maximum numbers and the distribution of permitted stock to be carried on land under a pastoral lease. However, it is not clear whether this is on the advice of the Commissioner, or any other agency.
- **(Sec 112A)** allows that if the numbers of permitted stock are reduced under the above direction, that **(Sec 112A(2))** The Minister, on the advice of the Board, may reduce the rent for the pastoral lease in proportion to the reduction in permitted stock. This is a sensible decision; however, the PGA reiterates its position that Lease Rents should not be determined on carrying capacity.

SUMMARY

In making this submission the PGA is of the position that although the Bill provides a significant modernisation of the Act, there still remain several deficiencies which will hinder the growth and development of the pastoral estate, including the following:

- One of the longstanding issues for pastoralists has been the inability for those pastoralists who are compliant with their lease obligations to exercise, as is the case with any commercial lease, a right of renewal. The PGA is disappointed that this statutory right of renewal has not been included in the Bill.
- One area where there is no further clarity in these proposed reforms is the interaction between the proposed diversification leases and existing mining tenements. There are currently potential sites for hydrogen and renewable energy projects located on mining tenements, and in many cases the use case for these projects may not be a purpose directly connected with mining. It will be necessary to

carefully review the proposed legislation to determine how the interaction between mining tenure and these new diversification leases will be managed, including whether there will be any changes to the Mining Act processes.

- Some pastoralists have raised concerns about the practicality of the diversification lease and whether the proposed amendments will make much difference to the average pastoralist. Most renewable energy projects are very costly and require investment from external sources in order to be established.
- Diversification leases may only be a viable option for pastoralists with other interests, or those who can gain large investments. However, a diversification lease may be an avenue for pastoralists to establish carbon projects and participate in the Commonwealth's ERF scheme.
- The PGA notes that if a diversification lessee has failed to comply with a provision of this Act, or of the lease, that the lease is liable to forfeiture under section 35 and the land will revert to unallocated Crown land. The PGA is concerned that this may result in valuable grazing land removed from the pastoral estate.
- The PGA is concerned that the proposed CPI increases are based solely on the Perth All Groups Index, and not on a regional CPI Index, which was originally discussed in detail with the PLB. Having regional rents increase by a Metro based CPI Index, creates an artificial inflation which does not accurately reflect true inflation in the regions, especially throughout the pastoral estate.
- Further, the PGA remains concerned that there is no cap on the maximum increase for the Market Review. Given the increase to ten years, it is conceivable that there would be significant increases (+25%), which would severely impact most leaseholders.

Yours faithfully



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PGA President



Ashley Dowden
PGA Pastoral Committee Chair