



Response to the
Rangelands Tenure Options
Discussion Paper

Government of Western Australia
Department of Regional Development and Lands

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Foreword

Pastoral land tenure must be the paramount issue dealt with in any process of rangelands change.

The addition of a broad interpretation lease (rangelands lease) really does nothing to allay the fears and concerns of the pastoral industry that has experienced many false starts, broken promises and lost opportunities to reform tenure and bring real security.

After almost 3 decades of waiting, the pastoral industry expects the government will come good on its promise of fixing the biggest uncertainty in doing pastoral business, that is land tenure.

Introduction

The Pastoralists and Graziers Association of WA (Inc) (PGA) is a non-profit industry organisation established in 1907, which represents primary producers in both the pastoral and agricultural regions in Western Australia. The PGA is the only WA State Farming organisation with a Pastoral Committee that specifically represents the interests of Western Australian pastoralists.

The PGA represents the majority of pastoral leaseholders through the full spectrum of ownership from some of Australia's largest corporate pastoral groups, to family-owned operators and individual landholders in Western Australia.

The form of pastoral tenure eventually adopted by Government, the conditions and requirements attached thereto and the administrative systems applied to the pastoral industry, will determine whether the industry can continue its valuable contributions to the Western Australian community, economy and regional stability and development.

The role of pastoral leaseholders is not well understood by the general public. Perhaps their most important community function is to act collectively as stewards of a significant area of Western Australia. Their ability to continue to fill this land management role is of critical importance to the community at large. Their management of the land could not be replaced by Government Departments or Agencies without the creation of huge bureaucracies and the expenditure of vast sums from the public purse. The secure interests of the pastoral leaseholder underpin good land management.

The PGA has focused on the need to develop practical systems, so that the needs of other interest groups can be accommodated with minimal impact on pastoral operations. The key to reaching this objective is to construct a system that is not only workable but also acceptable to all parties.

Unless the overall system of managing leases, entry to them, sustainable use of them, monitoring of rangelands and indigenous issues associated with them is acceptably and efficiently married to the pastoral leaseholders' ability to run an effective and

profitable enterprise, then there will never be an end to the conflict of interests which will inevitably arise. This goal must be reached without raising compliance costs unacceptably or creating new problems that will affect pastoral management in general. Only if this can be achieved will the exercise undertaken to date have been worthwhile.

Comment on Issues and Questions

Perpetual Pastoral Lease

This is the PGA's preferred option for pastoral tenure. This could be in the form of a secure rolling lease.

The significance of tenure is the security it provides to the leaseholder. The right of renewal must rest with the lessee. The current situation whereby the lessee may apply in writing to the Minister requesting an offer of a renewal of the lease subject to written advice of the PLB on whether the lessee should be offered a renewal of the lease, not later than 8 years before the expiry of the lease, determined on a number of conditions, including that regulations may provide that specified pastoral leases will not be renewed, is unsatisfactory.

The PGA notes that the discussion paper says (p8) that "an applicant for a perpetual pastoral lease would need to negotiate with relevant native title parties through an ILUA process". Whilst this process has delivered favourable outcomes for a few pastoralists, most pastoralists see this as a major impediment to taking this option up. Indeed some indigenous groups flatly refuse to negotiate on ILUAs.

Negotiating native title is tiresome, time-consuming, excruciating and, though preferable to an expensive court process, it may involve sizeable costs. There are real concerns over the ability of pastoralists to take advantage of this option of tenure.

Rangelands Lease

The PGA recognises that this type of lease is an attempt to attract investment into the rangelands by appealing to interest groups outside of the traditional pastoral industry.

There are concerns amongst many pastoralists that by extending the ability to acquire tenure over large rangelands areas, it will remove the "critical mass" from the pastoral industry that is required to maintain cost effective services in these remote areas. An example of this is the impact of feral animals that already flourish on under managed former pastoral leases used for conservation purposes.

The PGA acknowledges that Rangelands Leases may bring additional investment in these rangelands areas but it is also very difficult to determine if this will bring any advantage to pastoralists. The permit system already covers extra activities on pastoral leases.

It is also known that private conservation groups at the local level are very often funded by, and act as a front for, international conservation groups. There is a sovereign risk of a loss of control of state owned lands. This could be exacerbated by

the suggestion to increase the maximum area of a rangelands lease to 1.5 million hectares.

The PGA also notes with concern the number of times the phrases, “as the Minister thinks fit, the Minister will have the discretion, determined by the Minister, will be set by the minister, at the Minister’s discretion, the Minister is to have the discretion, the application is to be made to the Minister, will be made by the Minister, for the Minister to grant, he would have the ability to vary it, a direction of the Minister, references to complying...will be replaced with complying with directives of the Minister”, etc.

The PGA appreciates that the Minister does need discretion. However, we believe that good policy, as expressed in good legislation will do justice to the principle of the “Government of Laws and Not of Men”.

Ability to Tie to Other Tenure

In Section 4.2.2, (xiv) mention is made of enabling a rangelands lease to be tied to other tenures, the reason being that for financial reasons a more secure form of tenure is required for part of a project involving a rangelands lease or pastoral lease. To protect infrastructure requiring significant investment, freehold tenure or a section 79 lease is suggested.

However, this section further states that provision will be allowed for freehold, section 79 leasehold or other tenure to be tied to the associated rangelands lease or pastoral lease so they can only be transferred together.

Such a provision can only appeal to someone with a liking for unnecessary complexity.

It seems likely this would discourage partnerships and specialist and niche market investment. However, the PGA's past position has been that ownership of high value infrastructure should follow the land (i.e. they are indivisible). It is probable that lawful arrangements under the appropriate commercial contract laws would be a better solution to this issue.

Rangeland Condition Monitoring

The PGA is perplexed as to how and why the issue of rangelands condition monitoring came to be referenced in a discussion paper associated with rangelands reform.

As is well known, many pastoralists object to carrying out this function after it was done for many years by government inspectors.

Having said that, pastoralists do not object to monitoring the condition of their rangelands. Many already do so and maintain historical records.

The issue is that pastoralists have been told that they will have to follow a regime of monitoring that is more rigorous than that imposed by the government on itself.

Senior Officers' Group

The PGA acknowledges that there is a long history of reports into the pastoral industry, dating back to 1940 Royal Commission up to the most recent "Duncan" report in 2009. However, this does not mean there should not be continuing consultation along the way.

The PGA commends the level of liaison shown by the Hon. Ms Wendy Duncan MLC in her role of stakeholder liaison, and those directors and managers working on rangelands reform in the Department of Regional Development and Lands. However, the PGA notes that the SOG consists of many departments and agencies with no direct association with pastoralism, or agencies and departments with a history of antagonism towards pastoralists.

In the interests of openness and transparency, a formal mechanism of open session Senior Officers Group meetings must be established and stakeholders must be invited to participate.

Continuation of the Traditional Lease

We note that a traditional pastoral lease will still be available for those who do not wish to incur any further costs that might be associated with upgrading their security of tenure, be that as a result of financial stringency or for other reasons.

There has been a considerable debate as to the length of tenure for leases. The PGA believes that a 50-year lease will be a fair term for all parties involved, or with an interest in the rangelands of Western Australia.

There has been an anomaly where in the past, lease adjustments have resulted in a much shorter tenure period leading up the 2015 renewal process.

The PGA recommends that all fixed term leases beyond 2015 have a 50-year term.

This will alleviate the acute concern felt by those pastoralists who have been so affected and placed at a disadvantage by the reissue of short leases due to amalgamations, excisions and realignments.

The PGA believes that the reform of land tenure options provides an opportunity for the state government to clarify the definition of pastoral purposes in section 93 of the Lands Administration Act 1997.

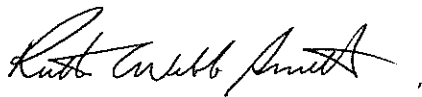
The definition should be brought into line with section 24GA of the federal Native Title Act 1996, in line with the wider definition of primary production activities.

These are;

- ✓ cultivating land;
- ✓ maintaining, breeding or agisting animals;
- ✓ taking or catching fish or shellfish;

- ✓ forest operations;
- ✓ horticultural activities;
- ✓ aquacultural activities;
- ✓ leaving fallow or de-stocking any land in connection with the doing of any thing that is a primary production activity

The PGA thanks the government and department for the opportunity to participate in the feedback process associated with rangelands tenure options.



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